

**Shutesbury Conservation Commission**

Minutes – January 9, 2025  
Approved – January 30, 2025  
*Virtual Meeting*

**Commissioners Present:** Bob Douglas, Janice Rowan, Beth Willson, Mare Fox, Scott Kahan

**Commissioners Absent:** None

**Other Staff Present:** Matteo Pangallo (Land Use Clerk)

**Others Present:** Meaghen Mikolajczuk, Steven Mikolajczuk, Mark Wightman, Kathy Salvador, Miriam DeFant, Tom Siefert, Joyce Braunhut, Ward Smith, Michael DeChiara, Jim Martin

**Call to Order:** 7:00pm.

**Comments from the Chair**

This meeting is being recorded.

Welcome to Mare Fox as the new Conservation Commission member.

Next meeting, on January 30, 6pm–8pm, will be exclusively about the Regulations revision.

**Review and vote on minutes of January 2, 2025**

Willson has a few corrections to wording in the section about the mowing at the Baker Fields.

Motion to approve the minutes as revised: Douglas; second: Kahan. Approved unanimously with one abstention (Fox).

**Site Visits Update**

Rowan reports on site visits.

December 15, 2024: Willson and Rowan went to Kestrel’s bog for an informational meeting about changes to trails. They may be putting together an NOI in the future.

December 17, 2024: Rowan visited the library site. Hydroseed had been spread, but it snowed and rained heavily, resulting in erosion around retention basins. No mulch had yet been applied and there was significant erosion around three of the ponds. The pond closest to the road had been breached and water was flowing out. Again recommended mulching and filling the breach. Also looked at where the underground electric line will run; it requires that the erosion fence be pushed out in one spot during installation. They modified the plan for running the lines. The utility company has approved the plan.

Willson and Rowan visited Sirius for wind turbine project. No wetlands in proximity.

January 7, 2025: Visit to library. Still no mulch on the steep sides of the basins. Considerable erosion around at least three basins. They had plugged the hole in the breached basin, but in other places along the west fence line water had gone over the snake tube and was hitting the plastic barrier. The next rainstorm could be a problem. Rowan pointed this out to them in the site report. They seem willing to make the necessary corrections. Some of the plastic silt fences had gone floppy and needed re-stapling, and some of the silt rolls that had been overtopped need to be replaced. Next visits on January 21 and February 4; will check on all those problems again.

Willson adds that if the silt socks are starting to deteriorate, they need to be fully replaced with fresh socks on top and Rowan agrees. Rowan adds that on north side basin, on its east side, there was considerable erosion by construction equipment, so the contractor moved the equipment away and put in riprap to prevent further erosion. Willson points out that it is most important that the erosion does not enter any wetland areas and that the sedimentation basins will need to infiltrate eventually so if the sides keep washing down into the bottom future infiltration will be a problem. When project nears completion, if those basins are filled with sediment, they will need to clean them out. Rowan indicated the contractor knows this and has agreed to do it.

Douglas asks whether anything is getting over the bales into the wetland or wet meadow. Rowan answers that the only thing leaving the envelope was water and not sediment, which was being caught in the basin. The gap was filled with mulch but it will have to be reshaped. Douglas expresses disappointment at the repeated failures on the site and wants to attend the next site visit. Fox asks for a general description of the site and its basins and what Rowan is looking for. Rowan describes it as a quagmire of mud or a skating rink. There are two layers of erosion control: a buried plastic curtain with a sock in front of it. Water carrying sediment would have to get past both barriers to get into the wetlands. They built the drainage basins for catchments and did not get grass seed out before rain came, so they have eroded on the steep ends. The four basins on the west side will remain after the project ends. The wetlands on the east side are safer because water does not flow that direction. Willson notes that the sediment has not passed the silt fence and Rowan agrees that it was mostly just water filtering through it into the field after the huge storm because the basin was full. Willson expresses concern about the wattle and silt fence being kept up appropriately. Rowan agrees because the fences are getting worn and torn. Willson wants the layers to be tightened up and a fresh layer of wattle added where it has been destroyed.

Upcoming visit to 375 Locks Pond Road for AAR being discussed at February meeting. Site visit is still to be scheduled.

### **Land Management Update**

Kahan reports on the West Quabbin Conservation Area parking lot. Best course of action will be working with the Highway Department using the CPA grant funding for the construction. Anticipates that it will be done in spring 2025 when weather conditions allow.

Kahan thinks additional work is needed at South Brook Conservation Area. It has been a year and a half since they did a walk-through on the trails and found some trails that go through resource areas resulting in degradation to wetland habitats. Those trails need to be rerouted. Also there are structures for crossings used by hikers and snowmobilers that need to be repaired and

replaced and one new one added. That work should be done in 2025. Willson notes that \$1,000 in the original CPA grant for the trail consultant remains. Pangallo notes there are limitations on using CPA funds for reasons not part of the original grant. This will be discussed at the CPC's meeting on Monday. Willson recommends reaching out to the snowmobilers for help with work and possibly funding. Kahan notes he has reached out to some of the snowmobilers because they did help with one of the crossings in the past. Miram DeFant is recognized by the Chair and reminds the Commission that Evan Jones helped organize the labor in the past and Cowls donated the lumber. The Commission helped them submit an Emergency Certification because one of the bridges was about to collapse; the work was completed within ten days. Kahan recalls that he had reached out to Jones about this work and will follow-up with him again.

### **Public Hearing regarding Notice of Intent for 58 Lake Drive (DEP #286-0307)**

The public hearing for the NOI for 58 Lake Drive is opened by Willson at 7:30pm.

Ward Smith is recognized by the Chair and explains the project as squaring off the existing deck outside the 50' buffer in the backyard the house. The expansion is 10' parallel to the shore and 15' away from the lake. The deck would be extended and a stairway placed beneath the deck. There is no machinery access so all work will be done by hand. Expects eleven hand-dug holes for Sono tubes for supports of the pressure-treated frame and Trex decking. Erosion control straw wattle will be placed between the work area and the lake. Excessive material will be removed by hand. The area under the extension is all lawn, with no trees or shrubs.

Willson notes it does not enter the no-disturb zone and has erosion controls. They did look at the bank during the site visit to ensure there is vegetation between the house and water. There is no dock and the work will be done by hand. The impact of the holes is minimal.

Douglas asks about whether water will percolate through the deck. Smith says that it will and the water will go down into the sandy soil beneath. Douglas agrees with Willson's opinions given that it is far from the lake bank and will be done by hand.

No other comments from the Commission. No comments from the public.

Motion to close the public hearing for the NOI for 58 Lake Drive: Fox; second: Douglas. Approved unanimously with one abstention (Rowan recuses).

Willson expects to have an Order of Conditions ready for approval at next meeting or the February meeting.

### **Conservation Restriction, Mark Wightman, Lot H-151 on Leverett Road**

Rowan notes that in the draft CR there is nothing indicated about payment for monitoring. Willson notes the Commission has the right to ask for it and has consulted with the interim Town Administrator about setting up an account for it. Because this is a draft, Commission should only be focusing on the conservation aspect. Later it will go to Town Counsel and the Select Board for legal review and approval.

Fox asks for clarification about where the lot is located and Wightman's role. Willson explains where it is, and that Wightman is the owner of the lot and is looking to sell the property for construction of a house. The Planning Board requires that it includes a CR.

DeFant is recognized by the Chair and points out that the Order of Conditions for 58 Lake Drive would have to be issued before the February meeting in order to be done within the 21-days window. Willson agrees but notes that the applicant can give permission for more than the 21 days if needed.

Mark Wightman is recognized by the Chair and explains he hired Berkshire Design Group to help him draft the CR. The previous CR was very restrictive because it was for NHESP but it did not need to be, so this new one is rather different. Willson asks Wightman about what he learned from Berkshire Design about the process and explains the Commission will then go through it to provide feedback. After this, it goes to Town Counsel for legal review and the Select Board and Town Administrator need to sign it as well. After going through the Town, it goes to the State for approval and more potential changes.

Willson notes that the forestry section (page 7, number 11) is a new section and thinks it should not be included. Wightman notes that Berkshire followed standard CR language. He thinks item c (harvesting for personal use) makes sense for firewood and such and notes that forestry activities would have to be allowed by the grantee—that is, the Commission—as they come up. The owner would not be allowed to do them without the Commission's approval at the time. Would like to keep sections a and b to retain the owner's ability to harvest in a reasonable fashion. The Commission can reject a request to do a forest harvest, but keeping it as an option in the CR seems preferable because at some point in the future the Commission or the Town might want to see managed forestry done on the parcel. Douglas states he has no objection to keeping those sections and making decisions on a harvest-by-harvest basis.

Kahan wants to try to sort out what is prohibited and what is allowed. Notes that in a.4, prohibited acts include adverse impacts to vegetation, such as cutting or removing vegetation, like trees. Wightman notes that in section b, there is an exception for the matter of forestry. Kahan agrees but raises concern about a reserved right that is allowed when there is a grant in the CR that prohibits the same act. Thinks these sections should be clarified so they don't appear to contradict each other. This will make it clearer and easier to enforce in the future by clarifying whether cutting trees is permitted and who gets to approve or deny it. Wightman agrees it is confusing because of the way legal prose is written but this follows the model. Would be willing to have the language revised to clarify what is allowed, what is prohibited, and who gets make determinations about that. Kahan notes that some parts of the prohibited activities list are clear, but some are not and those should be revised and made consistent across the document. Wightman agrees; he notes that this language was in the model the Commission supplied to him, but it is up to the Commission to decide what it would like to see changed or removed because it is the Commission that will hold the CR. Suggests Commission review the draft and come up with those sections it would like to see changed. Notes that most activities that are designated as approved are only approved with the consent of the grantee.

Willson asks if there will be a baseline report. Wightman answers that Berkshire Design Group is working to prepare it. There are not many trails or paths in the conservation area, so that limits access. Notes that new trails would not be permitted except with consent of the grantee.

Willson's main concerns are number 11, the forestry section, and number 13, the green energy section, both of which were part of the template from the state. Both indicate that written prior approval of the grantee would be required, but would like to see those removed from the CR. She is fine with the prohibition on public access. Wightman notes that access would be allowed with grantee's consent. Would be curious to know from Town Counsel if removing the green energy section would open the door to implicitly allowing the activity.

Kahan shares Willson's concerns about 11 and 13, as well as with vegetation management section. Thinks that section would make sense for CRs in open fields, but here it would just create confusion. Kahan is fine with keeping in section on personal use harvesting of wood but it needs to be better defined and quantities specified. Asks why, if there are no trails, the CR would keep the language about existing trails. Wightman notes the road entrance is an existing trail. Wightman is fine with making wording of grantee-permission clauses clearer or stricter or removing them if the Commission decides it would require that, as long as removing them would not cause a problem for the grantee in the future. Kahan expresses concern about forestry harvest on the lot given its small size and the time it would take the Commission to review such requests.

Wightman asks about how the Commission monitors compliance with the CR and notes that it would be expensive to do.

DeFant is recognized by the Chair and recommends the Commission looks at the other CR documents that the Commission holds for information and for the sake of consistency. Wightman also notes that he could ask Planning Board for copies of other CRs that were required for Open Space Design permits. Michael DeChiara (Planning Board) notes that only two other Open Space Design permits with CRs have been issued. The Land Use Clerk could provide those. Willson recommends the DiMare one especially because it has language about the endowment for paying for the monitoring, which would answer Wightman's question about monitoring compliance.

Willson says the Commission will review this draft and mark it up with their suggestions.

### **Order of Conditions Review for Mikolajczuk, 32 Lake Drive (DEP #286-0278)**

Jim Martin presents on his clients' behalf about the Mikolajczuks' efforts to finalize the project on their property. They had been told by the Commission they needed DEP permission first for a dock permit. After a long wait, the DEP said the State first needed to receive the negative determination from the Conservation Commission. They are here now to request the Commission issue the Certificate of Compliance to be recorded and sent to the DEP for notification for the dock permit. This would give the owners clean title to their property.

Willson notes that a partial Certificate of Compliance was recorded. Mikolajczuk notes that was for a separate project. Explains that the Commission in 2020 required them to submit for a

Chapter 91 license from DEP before they would act on an Order of Conditions. The OOC public hearing was held and all the documents were submitted.

Martin notes that the Commission reviewed the license and had no comments, as stated in the Order of Conditions. Willson notes in the partial Certificate of Compliance it states that the second NOI included an indication of the Commission's approval of the dock and that the Order of Conditions for that project explicitly states that there were no objections. Would be willing to submit a letter to DEP from the Commission explaining that the Commission at the time did conclude that there was no further requirement.

The Mikolajczuks reject the idea of sending a letter to DEP and only want the Certificate of Compliance. They indicate they do not want to be sent back to DEP because DEP is non-responsive and takes too long to act.

Willson explains to the rest of the Commission that in the OOC from 2020 the one condition was that the owners obtain a Chapter 91 license. Mikolajczuk explains the condition was that they apply, not that they obtain it. Martin notes they applied and paid the fee. But the license is secondary to the problem to their clear title caused by the lack of a Certificate of Compliance.

The Order of Conditions for 32 Lake Drive is reviewed, which states as #1 in Comments that the Commission received the Chapter 91 license application and has no further conditions.

The partial Certificate of Compliance for 32 Lake Drive is reviewed. Mikolajczuk states that Shutesbury never sent a negative determination to DEP. Willson notes that the partial Certificate of Compliance should have sufficed for that. Martin agrees and explains that is why they are now coming to the Commission for something to close this loop because everything has been complied with. For that reason, they would like the Certificate of Compliance.

Mikolajczuk notes that the Findings referenced in F4 in the partial Certificate of Compliance do not align with the conditions in the Order of Conditions. Willson explains that those are General Conditions, not special conditions of the OOC.

Martin notes that F4 indicates they can request a Certificate of Compliance if they can demonstrate compliance with Chapter 91.

Willson notes that the Commission can contact the individual at DEP who has been the point person the Mikolajczuks have been contacting and issue them a letter clarifying that the conditions had been met. Martin asks if that would preclude the issuance of a Certificate. He notes they have applied for the Chapter 91 permit, and the permit is ready to be sent by DEP pending receipt of a negative determination by the Conservation Commission. His clients are in full compliance and they would like a Certificate to that effect. He will continue to engage with DEP but would like the Commission to issue the Certificate and not a letter.

Willson proposes that this be added to the agenda for the meeting on January 30 to allow the Commissioners time to research it and issue the Certificate. Mikolajczuk expresses that he does not want to wait another month and that the Commission was supposed to have acted on this

within 15 days back in 2023. Martin asks that a Certificate be issued tonight and that verification of negative determination on the dock be submitted to Ms. Hobbs at DEP. Does not see any reason his clients should have to continue to wait.

Douglas asks if Form 8A has been submitted to actually request the Certificate. Mikolajczuk answers at Form 8A was submitted for the second OOC in 2023 and they were told at the time that they would not have to attend another meeting or submit anything else.

Rowan thinks it would be best to vote on the Certificate and end this process.

Kahan thinks it would be important to have a conversation with DEP before making any decisions and that waiting two weeks is reasonable. Mikolajczuk objects because of the cost of the attorney. Martin recalls that he has had considerable difficulties getting any responses from Ms. Hobbs after many years of trying to get answers from her. He suggests DEP will just push responsibility back to the town, if Ms. Hobbs even replies at all.

Douglas expresses sympathy and notes Chapter 91 does not require a Certificate, just an OOC. He is not sure why the DEP has done this to them. Martin explains that this is why he has no confidence that taking two weeks for Willson to reach out to DEP will change anything.

Miriam DeFant is recognized by the Chair and asks whether the Commission has consulted with Mark Stimson, the DEP Circuit Rider, and suggests a conference call with Stimson, Willson, and the DEP staff and applicants. Also notes that under state regulations, when a partial Certificate of Compliance is issued, a new Form 8A with documentation needs to be submitted and then the Commission has a 21-day window to grant, deny, or modify the Certificate. Mikolajczuk notes that when DeFant was Chair of the Commission 14 months ago, she provided no support or help on this other than to call the state's 1-800 number. Furthermore, in November 2023, DeFant had told them that they would not need to submit anything else or have any further meetings. Expresses surprise and frustration that now DeFant appears to be advising something different and was apparently incorrect in her original advice as Chair. Martin notes that phone calls to Mark Stimson will just further delay this. The last time the Mikolajczuks communicated with the Commission in 2023 they were told everything was in compliance. There is nothing else under the law or regulations they need to do.

Willson summarizes that the partial Certificate required the Chapter 91 license. They do not have the license, but they have applied for it. They also do need to apply for a Certificate of Compliance even though they may have been told by the Commission that they would not need to do so after they submitted for the partial Certificate in 2023. Willson would like to send a letter to Ms. Hobbs that there were no findings of wetland impacts.

Motion to issue a Certificate of Compliance for 32 Lake Drive (DEP #286-0278): Rowan. No second. Motion fails.

Kahan agrees with Willson about submitting a letter explaining that the applicants have met the conditions, and he thinks the dock license should be released. If that letter has no response in two weeks, then he would be in favor of acting on a Certificate.

Douglas agrees with Kahan and finds it very odd that the DEP requires a COC for the permit. Is not able to find in the minutes a reference to DeFant indicating nothing else would have to be submitted. Also notes that the applicants could request a Certificate by submitting the Form 8A and the Commission would have to act on it. Martin asks if a verbal request suffices. Willson notes there is a fee and form required to act on it; verbal requests are not sufficient. Martin proposes the Commission still vote on issuing the Certificate tonight but condition the vote on receipt of Form 8A and the fee.

Fox suggests returning to the minutes from the past minutes to see what happened.

Mikolajczuk asks that the Commission vote on the Certificate request conditioned on receipt of the form and fee. Willson notes the Commission was given no indication the applicants would be asking for a Certificate at this meeting. The Commission was under the impression that this was going to be a discussion about what course of action to take next and thinks there should have been an indication to the Commission that this is what was going to be asked of them. Suggests again they take two weeks so the Commission can try to contact DEP for clarification rather than only go off what has been said at this meeting. Douglas agrees because there is a valid Order and the proper thing would be for the Commission to reach out to the state. The applicants can submit the 8A in the meantime so the Commission can act on it at the next meeting.

Willson thanks the applicants for bringing this to the Commission's attention and looks forward to straightening the matter out in two weeks.

### **Michael DeChiara, presentation on new Clean Energy Law**

Michael DeChiara is recognized by the Chair and reports on the State's new Clean Energy Law, approved in November. He explains that the new law defines small clean energy as solar and wind under 25 megawatts and batteries under 100 megawatts. Department of Energy Resources will be the entity responsible for standards, requirements, and procedures for permitting, applications, filing, and determining site suitability. Municipalities can still permit review for projects under 25MW for solar and wind and under 100MW for energy storage. The law retains local bylaws as long as they comply with DOER's rules. Permitting will have to comply with DOER standards and developers can appeal a local decision to the state as a *de novo* decision.

The consolidated permit is to speed up permitting but there is no current process for how this would be accomplished. It would consolidate all municipal permits into a single stream.

A decision that an application is complete would have to be made within 30 days of receipt and then a decision on the application would have to be made within 12 months by all the committees and boards. DeChiara notes that constructive approval—official approval if a body does not act on an application within its required time—could mean a project gets approved under common conditions. It seems to him that much of this was based on Planning Board and zoning processes and with less consideration about wetlands permitting.



His concern is that the constructive approval deadlines are too firm and too short. The consolidated permit process is untested and nobody knows how long it would take or what would happen if one of the boards does not approve but all the others do.

There is a backup option for smaller towns which can be used within 60 days to request that the state handle the permitting review for a project on behalf of the town.

Willson notes that getting a third-party to do a wetlands delineation can take a long time. DeChiara agrees that the process seems unaware of how long wetlands review can take.

Willson notes that wetlands permitting is tied to the State and DEP has forms and fees and timelines. Asks how those will be accounted for in the consolidated application. DeChiara answers that DOE has to come up with the standards and that the consolidated permit folds in the State as well, so DEP would, presumably, align with the consolidated permit.

DeChiara notes appeals go to just one person, the Director of the Energy Siting Board, which seems like a real potential for a bottleneck in the timeline. Douglas asks if the appeal to the Director is *de novo*. DeChiara answers that it is and notes that this means it will be duplicative and thus more costly for applicants.

It seems to him like the State assumes municipalities are barriers to clean energy adoption in Massachusetts. He suggests reaching out to see if MACC or others in the Conservation Commission community are engaged on the consolidated permit concept.

Willson asks if their requirements about site suitability will limit what the Commission can protect or condition. DeChiara answers that it might. Notes the solar exemption under state law from 1985 already limits municipalities in what they can regulate. He describes the criteria the State has already been using for determining site suitability and says he has been advocating that those criteria be adopted, but notes the State seems to be thinking about zoning but not wetlands when it comes to determining site suitability.

Willson notes the Wetlands Protection Act does include some exemptions for solar, but people still need to apply and need to request those exemptions, and the Commission has a role to play in deciding whether and how applicable the exemptions are. This, however, seems to be taking away the Commission's power to protect the wetlands.

DeChiara does assume DEP is playing a role in this process at the State level but he has not heard the agency mentioned once in all of the State's presentations on the law. He will keep the Commission informed if he learns more or otherwise. Notes that the State seems to envision that a single point person in each municipality would be the manager for each permit submission. That, however, would contradict how different kinds of applications need to be received and processed by different municipal boards in order to comply with other state laws. Is especially concerned if more than one project is submitted at a time—as is currently happening in Shutesbury—since that would create real problems with getting them reviewed in time.

Fox wonders if the 30-day clock would depend on who the point person is and how and when they get the application out to the different boards.

DeChiara notes the law goes into effect March 2026 and the siting office is starting to staff up.

Douglas asks DeChiara if this seems like something coming in on the 40B track. DeChiara says it does because they want to move this forward but it also seems like they haven't considered the details or how municipalities actually work. Notes that legislators seem to view municipalities doing due diligence as pesky and slowing things down in the face of the climate crisis.

Willson asks if it is still possible for MACC or others to have an impact since the law was approved. DeChiara notes there is still the process of devising how to design regulations, so if MACC works with DOER they could have a role in how the law takes effect and is enforced.

### **Unanticipated Business**

Fox asks about process for suggesting revisions to the regulations. Willson explains she will send out the current version and suggested revisions should be sent only to her. She will incorporate those changes into the document, noting the changes, and the Commission will go through them all at the meeting. If someone is not comfortable sending them to her, they can also bring them up verbally at the meeting.

### **Adjournment**

Motion to adjourn: Kahan; second: Douglas. Approved unanimously.

**Adjourned:** 9:49pm

### **List of Documents Used:**

- Site Plan for 58 Lake Drive NOI
- Draft Conservation Restriction for Lot H-151
- Michael DeChiara's presentation on Senate 2967, the Clean Energy Law