

Shutesbury Select Board Meeting Minutes  
November 17, 2021 Virtual Meeting Platform

Select Board members present: Rita Farrell/Chair, Melissa Makepeace-O’Neil, and Eric Stocker  
Staff present: Becky Torres/Town Administrator; Linda Avis Scott/Administrative Secretary  
Conservation Commission members present: Miriam DeFant/Chair, Scott Kahan, Mary David, Robin Harrington and Beth Willson  
Other Staff present: Town Counsel Donna MacNicol, Penny Jaques/Temporary Land Use Clerk, Acting Police Chief Kristin Burgess and Town Clerk Grace Bannasch  
Guests: Janice Stone, Don Wakoluk, Leslie Bracebridge, Mary Lou Conca, Joan Hanson, Catherine Hilton, Henry Geddes, Gail Fleischaker, Ken Lindsay, Sharon Weizenbaum, Joe Salvador, Laurel Facey, Leslie Cerier, Jill Buchanan, Renee Moss, Chris McCubbin, Genny Bee, Eric Bachrach, Remy Fernandes-O’Brien and other unidentified guests.

At 5:34pm, Farrell calls the Select Board to order and Miriam DeFant calls the Conservation Commission to order.

Agenda Review: The goal of the meeting with the Conservation Commission is to discuss the Commission’s roles and responsibilities and the Select Board’s authority relative to four topics with Town Counsel Donna MacNicol; the appointment of the Land Use Clerk will occur during the 11.23.21 meeting.

**Discussion Topic:**

1. Role, Responsibilities and Authority of the Select Board and Conservation Commission:
  - a. Associate Members: MacNicol refers to the document “Shutesbury Conservation Commission Associate Members Roles, Responsibilities and Limits of Authority Approved July 8, 2021” and explains that statute does not provide for Conservation Commission associate members which Zoning Boards of Appeal and Planning Boards are allowed to have. Because MGL Chapter 40 Section 8C allows volunteer consultants, MacNicol recommends the Commission consider having volunteer consultants. MacNicol continues: the Conservation Commission is not an appointing authority; the associate members, referenced in the document, cannot sit at the head table as doing so is a misrepresentation to the public; they cannot offer comments and cannot be invited to attend an executive session unless it is to offer testimony; the document needs to be revised.  
Per MacNicol, if the Commission wants to have associate members, their bylaw will need to be amended to include associate members; the Attorney General’s office would determine whether such an amendment is legal. Miriam DeFant/Commission Chair: the Commission will review the document and make the necessary revisions; doing so will not change the substance of what we are doing; comments by Don Wakoluk and Janice Stone, identified as associate members, are necessary and assist the Commission. Robin Harrington/Commissioner: Stone and Wakoluk’s contributions have been incredibly valuable. Scott Kahan/Commissioner echoes Harrington’s sentiments; the Commission is trying to be consistent with the Mass Association of Conservation Commissions’ (MACC) handbook which references associate members in other towns. MacNicol: those towns amended their bylaws

which were subsequently approved by the Attorney General's office and their associate members were appointed by the appointing authority. MacNicol to DeFant's questions: volunteer consultants do not need to be appointed; alternate or associate members are the same; when a public hearing is started, it is necessary to designate the members who will make quorum; members cannot be switched off during the process. MacNicol to Michael DeChiara's question: the number of members needed to make quorum for a public hearing cannot be more than the number of members of the full board.

- b. Access to Private Property: MacNicol: Town boards/commissions/committees have no right to access private property without the owner's permission; if there is concern about a violation and no permission to access the site is given, the area must be viewed from an abutting property with permission, a stream or a roadway. MacNicol: if a site of concern cannot be viewed, with reason, i.e., potential wetland protection act violation, the Commission can apply at the Court House for an administrative search warrant; without an administrative search warrant, if court action is needed, the case can be thrown out; most of the time, property owners will cooperate; if there is a recalcitrant owner, obtain an administrative search warrant then issue an enforcement order. MacNicol: once an application is filed, permission to access is given because part of the application process includes a site visit. DeFant: if a Request for Determination of Applicability has been submitted and a Determination of Applicability conditions is issued, does this give permission to access? MacNicol: yes, with notification. DeFant: an Order of Conditions could include inspections without notice. MacNicol: this can be done however doing so is heavy handed in a small town. MacNicol clarifies that the condition "giving notice of inspection" means reasonable notice however permission is not needed; "reasonable" is defined by the situation with 24-48 hours being reasonable except in an emergency.

Farrell: issues regarding management of the South Brook and Town Beach areas are related by geographic location.

- c. South Brook Conservation Area: MacNicol: the South Brook Conservation Area was purchased in 2000 and is under the Conservation Commission's management and control; the Commission's installation of a sign allowing snowmobiles when snowmobiling is not passive recreation is a concern; the law is clear that handicap vehicles, i.e., wheelchairs and scooters, must be allowed regardless of other restrictions; in order to allow snowmobiles, a distinction needs to be justified as to why they are allowed given that they are not passive recreation. MacNicol continues: the other concern is that the Commission asked the Highway Department to install boulders at the South Brook area's entrance; the Highway Department is under the Select Board's jurisdiction; they give permission and instruction to Highway Department employees; installation of boulders to block the entrance is not safe and raises the Town's liability, i.e., in the case of injury or fire, emergency vehicles could not access the area; the Commission does have the authority to install gates though this needs to be done in a safe way and the Fire and Police Departments will need keys and access; safety and emergency access without discrimination must be considered and other boards/committees, especially the Select Board, need to be

consulted. DeFant explains to the members of the public that in October, the Commission learned about an individual driving a truck in the South Brook Area and harvesting mountain laurel for commercial purposes; this person told Acting Chief Burgess that he had done so in the past; the trails are not designed for truck traffic; the Department of Conservation Services (DCS) allows snowmobile use as they have less impact on habitat because they are used in the winter. MacNicol suggests “no motorized vehicles except handicap vehicles”; DCS allows snowmobile use; they do have less impact when the ground is frozen however, they can be used when the ground is not fully frozen; conservation restrictions do not allow snowmobile use; further discussion about their use is needed. Kahan’s understanding is that there is an established snowmobile trail that is maintained and has trail signage; the Commission has the right to manage the area in accordance with the plan and impacts to the land need to be considered. MacNicol: this land was clearly purchased for conservation purposes; the Commission has care and custody though needs to consult with other boards to track issues; snowmobiling is an important recreational activity in small towns; how to distinguish between vehicles, i.e., snowmobiles and all-terrain vehicles, needs to be considered. MacNicol recommends including source material in the Commission’s minutes when discriminating between vehicles.

Penny Jaques: using Community Preservation Act funds, a fence, steps and a stone pad for the canoe/kayak launch have been installed at the Top of the Lake Conservation Area; stones have places to block access to the 60’ wide 120’ long strip of land to the lake; installation of a parking area by the Highway Department is pending. MacNicol: emergency personnel/first responders can easily access the area; boulders to block vehicles from parking on the lawn are okay.

Jaques: the Town Beach/South Brook management plan written by Janice Stone in 2000; the trails are contiguous so these areas have been thought about as one unit.

MacNicol: they have been separated here because the discussions are different.

Grace Bannasch/Town Clerk refers to the May 2001 “Management Plan for the Town Beach and South Brook Conservation Areas” bullet #2 (page 6) “formation of a Trails Committee to consider and advise on trail use, maintenance and new trail creation” and notes the need for others to be included in the discussion about how the area is used.

MacNicol: South Brook is conservation land managed by the Commission; the reason the management plan has conflicting issues is the difference between the uses of the two parcels. Janice Stone: when the purchase came through for the South Brook Conservation Area, using Self-Help and other dollars, it was a unanimous town meeting vote; the snowmobilers had been using this area for a very long time and it was agreed they could continue to do so; the purchase may not have had the support it did without this agreement. Bannasch asks what authority Commission members have to confront people directly if there is a question of violation. MacNicol: the first concern is the protection of the Commissioner; confronting someone alone is not a safe practice; if they are on Commission land, Commissioners have the right to ask the person about their activities; if illegal activity is a concern, police assistance should be requested.

- d. Town Beach Conservation Area: Farrell: the Lake Wyola Advisory Committee (LWAC) began the discussion with the Division of Fish and Wildlife (DFW) to

improve the parking area; as a result, the Commission began to look into who has jurisdiction over the property; the boat launch, parking and beach were created in the late 1960s. MacNicol: in 1965, town meeting voted to purchase property including Randall Road and the beach area for the purpose of developing the Town's natural resources; the Recreation Commission was involved at this time; in order to obtain Self-Help funds to purchase the land, the Conservation Commission was also involved; from Conservation and Recreation Commission minutes from the 1960s, the land was purchased for recreation and a boat launch, dock, bath house, and beach sand were installed. MacNicol continues: if this area is, in fact, considered conservation land, can the boat ramp even be there; from the votes in the 1960's, it was to be recreation land however because it was included in the Management Plan, much of how it is/has been used would not be allowed.

Per MacNicol, the town needs to consider what it wants to do as various options are possible; this land was purchased for recreation purposes using conservation funds and is part of the Management Plan; special legislation can allow conversion of purpose. MacNicol continues: the Select Board and Commission need to discuss what steps to take; given its historic use, how does the whole town feel about its current/future use.

Kahan appreciates MacNicol's thoughts; this situation puts recreation at odds with conservation; the boat launch does facilitate passive recreation; the rest of the property is used for passive recreation. MacNicol: the State was contacted and affirmed that a boat ramp is not allowed on conservation land; the problem is the use of Self-Help funds. DeFant refers to the relevant regulations and the MACC handbook and notes that approval for disposition or change of use for land purchased by Self-Help funds requires approval by the Commission, an annual town meeting vote then special legislation; the regulations set a high bar for conversion. MacNicol: in this situation, there will not be a high bar given the mitigating circumstances; the Commission will need a majority vote to straighten out the situation. MacNicol restates that the land was purchased for recreation purposes. DeFant: the deed makes no reference to the purchase with Self-Help funds; DCS recommends attaching the deed to the town meeting vote. MacNicol: does not recommend doing so; the Town needs to decide on how the land is to be used; subsequent steps can be taken after the use is unraveled.

Beth Willson/Commissioner: the Paul C. Jones Conservation Restriction has language allowing snowmobiles use. MacNicol: that language was negotiated with the State; the general overall language from the State does not allow motorized use; the language allowing snowmobile use is negotiated, i.e., snowmobile is a popular recreational activity. Willson: Puffer's Pond/Amherst is conservation land under Conservation Commission management and is used recreationally; canoes and kayaks and floatables are allowed. MacNicol: the rub here is the boat ramp; the State told DeFant that rooftop boat access is okay however motorized boats are not; an answer is needed as to why it is called the "State boat ramp"; if this is the case, the Town would not have any jurisdiction.

Farrell notes the blended use of this 49 acres parcel purchased for natural resource development and that the use of Self-Help funds creates a conflict; Town Counsel is advising the Commission and Select Board to go back to town meeting to obtain

clarification about the area's use. MacNicol: maybe the Department of Conservation and Recreation (DCR) would give special dispensation; right now, it is being called conservation land; the State has been contacted and stated that a boat ramp is not allowed; the first step is for the Town's public officials to figure out what to do then hold a town meeting vote. MacNicol continues: at this stage, leave the State, including DFW, out of the discussion until we figure out what our community wants to do; DFW's proposal brought this to the fore.

Stone: this was one of the first Self-Help grants in the State; it is called the "State boat ramp" because State money was received and its use cannot be restricted to only Shutesbury residents. Bannasch: records indicate that the first vote to put in a boat launch was in 1965; the Conservation Commission was also established at that time. Stocker suggests the Select Board meet with the Commission to figure out what to do. Farrell thanks those present for a good discussion to begin addressing the issues with the Town beach/boat launch area and that the Select Board looks forward to meeting with Commission. Farrell continues: LWAC will need to know that contact with DFW will be put on hold. MacNicol to DeFant's question about who will control the area: the Recreation Committee if it is for recreational use and the Conservation Commission if the use is conservation.

At 7:00pm, Stocker moves and Makepeace-O'Neil seconds a motion to adjourn the Select Board meeting. Roll call vote: Makepeace-O'Neil: aye, Stocker: aye and Farrell: aye; the motion carries.

At 7:00pm, DeFant moves and Harrington seconds a motion to adjourn the Conservation Commission meeting. Roll call vote: David: aye, DeFant: aye, Harrington: aye and Kahan: aye; the motion carries.

Documents and Other Items Used at the Meeting:

1. "Shutesbury Conservation Commission Associate Members Roles, Responsibilities and Limits of Authority Approved July 8, 2021"
2. "Management Plan for the Town Beach and South Brook Conservation Areas" May 2001

Respectfully submitted,  
Linda Avis Scott  
Administrative Secretary