Shutesbury Conservation Commission
Minutes – 01/13/2022
(Approved 2/10/22)
Virtual Meeting

Meeting Start: 7:01pm (meeting is recorded)
Commissioners Present: Miriam DeFant, Robin Harrington, Scott Kahan, Mary David, Beth Willson
Commissioners Absent: None
Other Present: Chris Stoddard (Stoddard Engineering), Janice Stone (SCC Consultant), Don Wakoluk (SCC Consultant); Ashleigh Pyecroft, Bob Armstrong, Bob Goss, Catherine LeBlanc, David Buchanan, Deborah Evans, Elizabeth Fernandez O'Brien, Eric Bachrach, Fran Merrigan, Gail Fleischaker, Ian Buchanan, Jan Rowan, Jane Costello, Jan Urban, Jean Meister, Jill Marland, Jill Buchanan, Joseph Salvador, Ken Lindsay, Kenneth Holt, Lenore Bryck, Lesley Redonnet, Edward Redonnet, Leslie Carter, Leslie Luchonok, Maggie Houghton, Mary Hoyer, Mary Lou Conca, Mary Thomas, Michael Hussin, Miriam Kurland, Nate Heard, Pat De Angelis, Sarah Manteiga, Shane Bajnoci, Steve Schmidt, Susan Millinger, Alice Walter, Gabriel Fontes, James Owen, Jane Scanlan-Emigh, Renee Moss, Sabrina Hamilton, Sharon Weizenbaum, Thomas Matsuda, Brad Brummett, Carlos Fontes, Emily Stockman, Jenny Kallick, Jill Buchanan, Josette Henschel, Penny Jaques and all unidentified individuals

DeFant notes that the 8:15 pm public meeting for the ANRAD is being continued on March 10th as a request from the applicant. DeFant states that they plan to open the meeting to vote on continuing it but will not be briefing or deliberating this matter at this time. DeFant also states that it is not fair to the applicant to allow discussion without them present.

Review of draft public comment procedures for Public Hearings: DeFant: draft policy is to support public comment and participation while ensuring an orderly process and ensuring the SCC has time to ask questions and gather information it needs to make decisions. tasks the SCC to review a draft policy for how to handle public comments in the public hearings. DeFant asks if any of the commissioners got a chance to look it over. Harrington says she has but doesn't have a hard copy due to being unable to print at this time. DeFant shares the policy document. DeFant points out that this policy is to support the public while also allowing the commissioners to ask question that they need. Willson states she has a couple of comments such as adding 'the Chair opens the Public Hearing' to the statement the Chair makes a brief introduction. Willson also suggests that 5 minutes for updates on current projects is great but wonders if 15 minutes is enough for new applicants. DeFant adds her first suggestion onto the policy and suggestion taking out the 15 minute limit sentence from the policy all together because time needed may vary based on applicant proposed project. David suggests they leave that time limit sentence because it allows the applicant to understand that it is a limited time. DeFant suggests that they remove the 15 minute limit sentence and reword the policy to 'for continued public hearings, applicants are allowed 5 minutes to provide updates'. DeFant states that the public comment section was to ensure that this time was limited to 30 minutes each meeting and that questions would be directed at the commissioners and not applicants; also allow applicants to answer directly if they wish. Harrington suggests an order of how comments should be made: Commissioners, town officials, residents and non-residents/others. DeFant adds in this suggestion. **Motion: Harrington moves to approve amended Public Hearing Procedures**

Policy. Second: David. David- aye, DeFant- aye, Harrington- aye, Kahan- aye, and Willson- aye.

Follow-up to 31 Lakeview Road Enforcement Order/Site Visits: DeFant asks if Salvador brought anyone with him tonight. Salvador brought along Chris Stoddard, his engineer, who has not joined the meeting yet. DeFant: Salvador is here for follow-up to an Enforcement Order issued in January for tree removal without a permit and an RDA in March that required submission of a mitigating plan before a new septic tank was installed. The SCC did not get the mitigation plan. In May, the Land Use Clerk sent an email about the missing mitigation plan. Another Enforcement Order was issued in October for house demolition without a permit. DeFant states that the Orders required Salvador to present for SCC approval a restoration plan and a planting plan. Salvador provided a planting plan in December to the SCC which has been distributed. DeFant: the SCC needs to decide whether the planting plants meets the Conditions in the Orders. The SCC needs to decide if you have met the requirements of the Enforcement Orders and what else might be still required. When we consider the Notice of Intent, the SCC will want to ensure that everything else complies. The Enforcement Orders and the Notice of Intent will be addressed separately. DeFant asks if anyone has any comments. Salvador notes that the SCC conducted a site plan in October to approve the required erosion controls. He believes the only requirement remaining was the planting plan which he submitted. The engineer's site plan combines the planting plan with the design, so it is a complete plan. DeFant agrees that the SCC inspected the required erosion controls and found them to be adequate; the original Enforcement Order required mitigation for the tree removals; needed to be approved by the SCC; the SCC has not yet reviewed and approved a written mitigation plan. Salvador: the mitigation involved adding conservation mix grass seed; that was part of the mitigation plan; believes he has met the requirements when he submitted a planting plan in December.

Wakoluk: MassDEP standards include both mitigation but also improvement of conditions; what exists now is stabilization; wonders what do they mean by improvement; would like to see a better planting plan if that is the case; use of native species rather than what you can pick up at Home Depot; to improve the habitat have to go a place like New England Wetland Plants and purchase plant, not just shrubs, to improve the quality of the resource area. Wakoluk wonders if clarity from MassDEP can be obtained. Salvador: engineer added plants on the NOI site plan.

DeFant: we should save that discussion for the Public Hearing for the Notice of Intent; need to focus on what the SCC wants for the Enforcement Orders; what has been satisfied and what still looking for. The comments from MassDEP about Riverfront Redevelopment improvements were for the NOI and not the Enforcement Orders. Kahan: the applicant believes he has submitted certain things, but a mitigation plan is missing need to address the tree removal and other aspects of site restoration.

DeFant takes a moment to acknowledge Shutesbury's new Land Use Clerk Carey Marshall.

DeFant screenshares a draft letter to Salvador summarizing what has transpired and what we are looking for; acknowledging the erosion controls have been approved and the planting plan has been received. Letter includes definitions of mitigation and restoration from the WPA Riverfront Area Regulations. Letter includes some possible actions steps that may be asked of including a

clear map with plant identification, locations, quantity, and their distances from other features, maps should be consistent with other submitted maps; planting plan submitted by Salvador differs from the NOI site plan; all new plants must be non-invasive native; planting plan included euonymus which is invasive; plan included other non-native plants such as boxwood; attempting to bring the site pack to a more natural state to protect wetlands values of Riverfront area; since 10+ trees and other vegetation were removed; SCC is looking for significant improvement over current degraded conditions; looking for a native plant community with combination of plants; submitted plan included only grass and small number of trees and several non-native plants; asking for a plan by 2/7/22; recommendation that Salvador hire a wetlands consultant to assist him. Harrington and Stone agree that the wetland consultant is a great suggestion because Salvador needs assistance. DeFant explains to Salvador that the mitigation plan is his responsible and not of the commission's. Salvador asks if this requirement could just be a condition added to the Notice of Intent permit. DeFant: the SCC wants to see you brought into compliance with the Enforcement Orders. The SCC needs to see the mitigation plan so that we know what is being approved; just talking right now about the Enforcement Orders. Harrington and David like the letter. Kahan believes it create clarity. DeFant explains that acknowledges his erosion control efforts in a timely manner; SCC appreciates the effort; but we would have preferred to have a viable permit in place first; habitat has been degraded; mature trees providing shade to the riverfront area have been removed; native vegetation has been removed; slopes no longer stabilized by vegetation; wish to see the site restored to greatest extent that is economically viable and reasonable. **Motion: David moves to approve the letter as submitted; Second: Kahan. Roll Call: David- aye, DeFant- aye, Harrington- aye, Kahan- aye, and Willson- aye.**

Public Hearing: Notice of Intent for 31 Lakeview Road/Salvador, demolition/rebuild, MassDEP File #286-0286: DeFant opens up the public meeting for the NOI. Salvador asks if Stoddard is here, and Salvador confirms. Stoddard introduces himself. DeFant asks if he was present in the meeting earlier. Stoddard was present; requests a continuation of the Public Hearing; he was not aware of the Enforcement Orders. Stoddard recognizes that the current plan created cannot be approved in current form; DeFant: agree Public Hearing needs to be continued but a discussion now might help focus on what should be revised in plan; DeFant and other Commissioners have questions. Stoddard shared his screen of the site plan. DeFant asked if Stoddard has seen Salvador's submitted planting plan. Stoddard has not. DeFant: the planting plant given differs from Stoddard's plans which has created some confusion. Stoddard agrees. Stoddard: reviews the site plan; notes location of new leach field and septic tank; existing foundation on the property that is 890 square feet; building has been removed; new building 900 s.f. with a deck; will infiltrate all the water on the site; will catch water with a stone/gravel drip edge with 4 inch pipe feeding into stone dry well; gutters will divert water to the dry well. Erosion controls will be added; a temporary spoils pile will hold all gravel and stone from the demolition that may be used later in the construction, along with a silt fencing for erosion controls. Stoddard notes that they did have a planting plan but due to comments had earlier he understands that those will need to be changed. Stoddard states that they are reducing the amount of impervious area by treating the runoff made by the property using the dry well. Stoddard believes they are meeting DEP's requirement for significant net reduction of impervious surfaces. Stoddard restates that the replanting part of the plan will need to be fixed and agrees that a wetlands scientist to develop a planting plan. DeFant asks if the Mean Annual High-Water

Line is delineated on the plan. DeFant asks the distance from MAHWL to the the house. Stoddard states that original property was 64 feet, and the current proposed house would be 64.5 feet. DeFant asks if Stoddard is aware that there is a BVW listed to the right of the leach field. Stoddard says he did not. Stoddard says he was using the septic tank plan for his plan. DeFant says it would be good to have the BVW reflected onto the current plan, along with culvert passing under the road. Stoddard: we will probably use Ward Smith as a consultant. David: where is the current well on the current property? Stoddard points out its location. DeFant asks if there will be any track pads during the construction? Stoddard: there can be; don't anticipate many construction vehicles for this project; driveway is gravel; because the foundation has already been dug; not a lot of fill required. Stoddard adds that if track pads are recommended that they would comply to that request. DeFant: site is muddy right now; going to need heavy equipment down the slope to do the house install. Stoddard agrees to add it to the plan. DeFant asks if a crane will be used to build the house. Stoddard: house is post and beam; will use a crane or boom truck in the driveway and the staging area would be placed to the right side of the driveway. DeFant points out that staging area is close to the BVW and asks for erosion control applications to be used to protect that area. Stoddard agrees. DeFant asks if there will be a dumpster on the site. Salvador says that there will not be any materials causing the need for a dumpster; concrete will be taken off site; stones will be used on-site; DeFant points out that there no retaining wall listed in the plan and Stoddard answers that there is not a need for one based on how the house will be position with the contour lines of the property. DeFant: during a site visit Salvador had mentioned a retaining wall near where the temporary spoil spot would be placed. Salvador: the retaining wall is not confirmed in the plan yet due to cost. DeFant points it would be good to include it on the plan because it would impact where trees can be added.it Salvador agrees but states that it will depend on cost; he may haul the stones out. He will leave it to whomever does the planting design. Willson: will you trench to the well? Stoddard: no excavation would not be needed because they plan to use the pre-existing hook up to the house used before demolition. DeFant asks if anyone has any more questions or comments. Stone asks about the time frame for construction and if they were planning to wait for the spring/summer to start construction because the weather conditions would be different and lessen the amount of mud on the property; there should be a construction schedule. Stoddard: schedule depends on when the building is available. Salvador: once he receives the proper permits, he would like to get the foundation in before spring. Stone asks if it a pre-built house that is being placed on the foundation. Salvador says it is a post and beam house that is pre-built kit; can be put together in 3 days. DeFant screen shares the planting plan that was received in December. DeFant points out the differences in the two plans. DeFant also points out differences in the tree placement and the use of a retaining wall. Salvador explains that he had created this tree placement plan to block out any sounds from the road but understands that it's subjected to change. DeFant points house that in the planting plan some of the trees or shrubs were to be placed on top of the septic tank. Salvador clarifies that he understands that cannot be done and should be 10 feet from the septic tank. DeFant points out trees listed in the area which Stoddard had sectioned off as a driveway in the other plan. Salvador says that he believes there may be room for trees near/next to the driveway. DeFant asks if there were trees to the right of that section that were removed earlier. Salvador answers yes but they were dead and hanging over the road which as declared hazard trees by the town. Salvador clarifies that trees were removed where the septic tank was being placed; never touched any trees in the front of the house facing the water; only big trees were where the septic system went. Stone: asks Wakoluk to clarify how far new trees should be set

back from edge of the road. Wakoluk: the site plan is static without level stakes, or elevation stakes. Wakoluk asks if they will place to place the foundation without bring in any loam, compost, or fill to raise the grade around the house? Salvador says they were planning to use left-over materials to make up the difference of the grade. Stoddard points to house plan indicating same elevation as is pre-existing; some areas will need fill to blend to existing grades; have to fill between foundation and septic area; Wakoluk: was expecting a topographic map indicating of elevations lines and the final grade around the house; important because has to do with where you will plant and survivability of those plants; wetlands plants such as sedges have specific location requirements; need to not just mitigate but also improve as stated by MassDEP: once this project is finished that the landscape should blend together without any erosion traces or leftover materials; it should be very different from what abutters' landscaping looks like. DeFant asks if there and any other questions or comments. Willson makes a comment that she would like to see applicant work together with the recommended wetland scientist to fix and complete restoration and planting plan; then have Stoddard create a complete NOI construction plan with topographic lines; she is not sure sedges are appropriate as it is a wooded riverfront habitat; she would like to see mature trees placed back on the property because that was taken down; she would like to see a nice wooded riverfront; when filing a NOI in a Riverfront Area requires general improvement; she hopes to see planned improvements directed by the wetland scientist that show restoration for the Enforcement Orders and a good proposed NOI.

Stone: the map should show the wetlands, buffer zones, and 100' Riverfront Area from Mean Annual High Water Line mark. Stone also asks if this property sits in the 100-year flood plains. Stoddard asks that they look into that when working with the wetland scientist and will make note of it. DeFant asks the commissioners if there are any incomplete parts of the NOI that the SCC would like to have more information about. Willson comments that in regards of storm water, what they are proposing is great. DeFant mentions that she would like to see the whole landscape plan, including any proposed hardscaping such as retaining walls, driveways, sidewalks etc. DeFant points to elevation being a concern for that specifically the northeast corner. DeFant also mentions that it was originally planned to have that area grassed over; she would like to see much less grass, maybe 10-15' around the house, and inclusion of native trees, plants and shrubs to stabilize that slope. DeFant also notes that Salvador has boulders materials to hold up the slope(s). DeFant asks if anyone agrees. Harrington, Stone and Willson agree. DeFant states that she has a draft Order of Conditions that is not ready yet. DeFant notes that she would like to attach In Perpetuity Conditions to the deed that would not be released with the Certificate of Compliance; taking a 50 -foot no-touch zone along the river and marking it pins and ordering no development in that buffer zone; the dry well maintenance be a Condition In Perpetuity so any new home owners know they are responsible for maintenance due to it being necessary to reduce impervious surfaces on the property; also no increase of impervious surfaces in the future. Willson agrees and suggests using boulders or birdboxes to establish the line. Harrington agrees. Salvador asks if the 50-foot zone was negotiable, could it be 30'? DeFant explains the silt fence is about 45-50' at present; septic system goes down to about the 50' line; point is to prevent further damage and maintain a natural native vegetated habitat as a mitigation to the damage that has been done to the property; we are not just thinking about building a house; we are also thinking about the requirements for restoration and mitigation; one mitigation approach is to place area on the current property or another property into a permanent conservation status; a proponent could propose to put a different property into permanent

protection; she assumes this is not an option for him. Salvador states that he owns the property between the current property and the waterway on the side of the septic system. DeFant asks for the next meeting to see a map with all property lines. Stoddard agrees. David comments that the distance between the river and the house should be confirmed to which Stoddard agrees. DeFant: in a Riverfront Area resource, the first 50' is the most sensitive and protected, really the first 100'; can't protect 100' because of the size of the lot; taking 50' seems consistent with the Standards for Riverfront Redevelopment, trying to improve upon existing conditions. It is the applicant's responsibility to demonstrate how they are improving the site. Willson agrees with that interpretation. DeFant: we are not making arbitrary suggestions, are open to a dialogue, but it is ultimately your responsibility to show you are meeting these Standards. We want to help you but we also have a responsibility to protect these resource areas. Wakoluk: want to try to improve vegetation to get back loss of shade trees; likes DeFant's suggestion of a 50' foot zone; could demarcate it with plantings like river birch or white birch; even maples. DeFant likes the idea of some permanent markers such as pins or boulders so no confusion for future surveyors. The SCC has used perpetual no-touch zones as conditions on other sites. Salvador and Stoddard understand these recommendations and clarifications. Agree to the continuation. **Motion: DeFant moves to continue the Public Hearing for 31 Lakeview Road NOI to February 10, 7:30 pm. Second: David Roll Call: David- aye, DeFant- aye, Harrington- aye, Kahan- aye, and Willson- aye.**

Public Comments: DeFant states that they can't accept any comments that will be entered into the public record for the Public Hearing tonight without the applicants' consent and presence. DeFant asks if there are any members of the public that with to make any comments. DeFant asks that people who make comments state their name and address for documentation purposes. Mary Lou Conca of Wendell Rd asks if Commissioners would state who the applicant is. DeFant says yes, the environmental company they are working with is called TRC, which has been hired by the W.D Cowls Company. Kenneth Holt of 75 Montague Rd. asks if he and Carlos Fontes are allowed to make a small 5-minute video presentation. DeFant asks the SCC and wonders how many others wanted to make a comment. The SCC agrees. Holt is unable to share his screen for unknown reasons. Holt does not use the presentation and states that 435 million gallons of rain that fall into that Montague/Carver Rd area a year and that area is a part of the watershed that recharges that water supply for the town; there are streams coming off of the property, down through Roaring Brook, and then into a huge aquifer on southern side of Leverett Road; the ANRAD is only in the boundary of parcel as if the wetlands are isolated and in a vacuum; water feeds several aquifers and recharge area for resident well; not geographiucally isolated; there is a hydrological network connecting this property.

DeFant: must interrupt and pause Public Comments so that we can open the Public Hearing at 8:15 pm. Holt agrees.

Continue Public Hearing for ZD-37 Carver/ Montague ANRAD Updates:
At 8:15 DeFant opens the Public Hearing and informs the public that TRC has requested to continue the meeting due to not being prepared for tonight's meeting. It is to be continued to Thursday, March 10, at 7:30 pm. DeFant introduces Emily Stockman to the public as the wetland scientist they will be working with during this decision process. DeFant suggests not having discussion because the applicant is not present. DeFant asks if it allowable to entertain questions

after the continuation vote. Stockman states that she believes she is allowed to take comments and answer questions before the vote is taken by the commission. DeFant understands but believes the applicant does not wish to have discussion without their being present. DeFant informs the public that she has received emails from abutters and other who have comments about the proposed project and that she has disturbed them to the other commissioners and TRC. TRC stated that after reading these emails they did not believe that had enough time to answer these comments and concerns properly. They are not prepared to have a Hearing tonight. David asks if Stockman will be present at the next meeting. Stockman says yes. Stone asks for clarification about the public comments if the applicant has requested, we do not take any at this time without them present. She is not sure it is correct either inside or outside the Public Hearing. Stockman says that through her experience and her discussion with Mass DEP that any discussion can take place only before the formal vote to continue, and then no discussion afterwards. DeFant asks if comments made before the meeting would not be part of the public hearing. Stockman: once the vote is made there cannot be any more discussion. DeFant tells Holt and Fontes that, due to these rules, the SCC cannot continue any public discussion of the ANRAD tonight. Public comments are welcome, but the SCC will not accept comments about the ANRAD after the continuation vote. After the vote, the SCC will not be accepting any new information tonight. The SCC only receives information when it is in the Public Hearing. Fontes has a question that is not about the ANRAD. **Motion: David moves to continue the Public Hearing for the Montague/Carver Road ANRAD to Thursday, March 10 at 7:30 pm. Harrington seconds. Roll Call: David- aye, DeFant- aye, Harrington- aye, Kahan- aye, and Willson- aye.**

Fontes requests opportunity to ask a question unrelated to the ANRAD. He is wanting information about how the SCC views the town bylaw. He has a different understanding as a resident. His understanding is that the purpose of the bylaw is to protect wetlands, related water resources, and adjoining land areas, including activities deemed by the SCC likely to have a significant or cumulative effect on wetland values. Keywords for him are wetlands, related water resources, and wetland values. Seems the purpose of the SCC is to enforce the bylaw. What do you think are related water resources? Stone: related water resource could include a number of things, including 100-year flood plain, vernal pools, buffer zones. Holt: has a question about jurisdiction; DEP says towns with bylaws have independent authority to assert jurisdiction to activities in or near resource areas; he believes areas planned for development are resources for drinking supply; reading from the WPA, they don't permit municipalities to engage in the siting of solar except to protect public health, safety and welfare. These passages suggest you have jurisdiction not just over immediate wetlands but over streams and water supplies downstream. DeFant: we have other agenda items to get to and have limited time to discuss this; you are correct that if there are projects proposed near jurisdictional wetlands, covered by the definitions of wetlands in our bylaw or the WPA, then the SCC has authority to review the projects and issue Orders of Conditions; if the proposed work or project is affecting protected resource areas; if no work is proposed or is work is outside of buffer zones, we have limited if any jurisdiction; with the ANRADs, there is no work being proposed at this time; there are not proposed projects before us; an ANRAD could be used for a subdivision; theoretically, an ANRAD is not specific to solar project; we have no solar project before us; the SCC can't comment on this; if the SCC gets a NOI, then it has latitude and authority to review cumulative effects under bylaw and WPA; we don't have authority to impose orders or conditions when there is no permit

application. Willson: questions are getting into our jurisdiction; we should check with Town Counsel; about legality of the bylaw. Holt: can you find out from DEP what the limits of the jurisdiction are? Are we confined to the immediate parcel? DeFant: if there is a NOI, the SCC has the authority to request information about hydrogeology and civil engineering if it believes it needs that information; it can look at cumulative impacts; the SCC is not now reviewing a project; we can't get ahead of our skis. DeFant did talk with DEP and Town Counsel this week and did review the regulations as well as the bylaw; Town Counsel confirmed that it is important that the definitions in the bylaw reference and rely upon the WPA definitions and regulations; the delineation methods in the state regulations are the ones that have to be used for the bylaw; the SCC can't create a new methodology for delineating wetlands; we are constrained to use the definitions in the state law because our bylaw references them. Holt: doesn't the SCC have independent authority? DeFant: when the SCC makes decisions, we issue orders under bylaw and WPA; bylaw has mostly the same definitions as the state laws except for a few areas such as protection for isolated wetlands over 1000 s.f. in area and protection of 100' buffer zones as a resource area. These areas are not protected in the same way in the WPA. The bylaw gives the SCC more jurisdiction; but otherwise, where the jurisdictions are overlapping, we still issue separate decisions under two sets of laws. Stone: we cannot apply conditions or investigate outside of the property boundaries of applicant; even if activity is outside 100' buffer zone, if we didn't have our own bylaw, we couldn't do anything with that, either; bylaw lets us look at the 100' buffer zone; for towns without bylaws, there could a project 101' from a wetland and you can't stop it; you can only wait until the damage is done and then react; that has happened with other solar projects where there were problems on steep slopes; the work was outside the 100' buffer; we will have some more jurisdiction under the bylaw, but are still limited to the property boundaries; can't put conditions or judgments about property outside the boundaries of the proposed project; Holt: does this mean that with what is a huge threat to our water supply and aquifer, including recharge area for our well, we have no control? DeFant: we are getting ahead of ourselves with this discussion. Holt: seems like you are saying we have no power when our water is threatened. DeFant: we need to consider all of this when we have a project that we are reviewing; this discussion is premature to have this discussion in the abstract; anything we say in not relevant until we have an actual project; if the SCC gets an NOI for a large project and the SCC wishes, the SCC can decide what kind of 3rd party review it needs; we can consider if we need multiple disciplines or levels of review; but it's premature to consider right now. Holt expressed appreciation for the work of the SCC. Edelson: live on Pelham Hill Road; many of us here tonight support Holt and Fontes; feel these are crucial questions. DeFant suggests tabling this discussion. Fontes: in the bylaw, would streams be part of related water resources? Wakoluk: one would hope the bylaw goes beyond the WPA; in fact, our bylaw uses the WPA language; we are limited in our interpretation; you're talking about regional landscape; hydrological systems; if you look to the east of Montague Road; waters are protected Quabbin watershed; to the west side, none are protected; except one is a cold water fishery; problem you are presenting is that it goes beyond their jurisdiction; your question is for the state and their interpretation of regional impacts; the town's focus is on the ANRADS and just on boundaries on ANRADS; the SCC can't look at it regionally. DeFant advises that the SCC is closing the public comment period for the night and moving the agenda. Willson: streams are wetlands resource areas; if there is on on the ANRAD site, there are regulations for it; steams may not be obvious; BVW is where the delineation starts but streams go through BVW. DeFant reminds the SCC that it cannot discuss the specifics of the ANRAD outside of the Public Hearing.

Minutes: **The SCC considered minutes for 11/11/21, 12/09/21, and 12/16/21.**
DeFant: move to approve minutes for 11/11/21. Second: David. Roll Call: approved by unanimous vote, 5/0.
DeFant: move to approve minutes for 12/09/21. Second: Harrington. Roll Call: approved by unanimous vote, 5/0.
DeFant: move to approve minutes for 12/16/21 Open Space Forum. Second: Willson. Roll Call: approved by unanimous vote, 5/0.

Proposed Pearson Land Acquisition with Kestrel Land Trust: Jaques: the CPC has approved the Determination of Eligibility; she is working on the full application with DeFant and Likely of the KLT. Vote is to authorize Jaques, DeFant, and Likely to finalize the application and submit it. Jaques will circulate a draft. **Motion: DeFant moves to authorize Jaques to finalize the full CPC application and submit it on behalf of the SCC. Second: David. Roll Call: approved by unanimous vote, 5/0.**

South Brook Conservation Area Mapping Project: Jaques distributed a document from Liam Cregan, the consultant hired to do the mapping for the CPA Project. Jaques would like to have a discussion with the SCC and Cregan. What does the SCC want to see? DeFant would like to see the GIS mapping and more info about wetlands crossings. Jaques: the map is meant to be a trails map, not a wetlands delineation; there are 11 bog bridges on the site; Cregan has some recommendations for repair. DeFant: the Historical Commission is still interested in the mapping. Jaques would like to finalize Cregan's work. DeFant: no reason to hold up payment for this piece. Jaques: recommends blazing trails in both parcels so that there is an integrated loop system. Stone: DEP layers are not reliable; there are large boggy wetlands; wonders about closing access; might be OK if there are bog bridges; Kahan: don't know what the scope of work is; have all terms been met? Jaques: trails have been mapped and assessed; she does not feel satisfied and wants more information. Harrington: went on a trail hike with Cregan last spring; felt he was very well informed. DeFant: suggests the SCC plan a site visit in the spring and try out the maps. Cregan will attend February meeting.

Annual Report Update: report is not completed.

Discussion of Minor Exempt Activities under WPA and Town Bylaw: Kahan raises issue because he has noticed some site visits fall under the Minor Exempt Activities regulations under the WPA; has been looking at the website; would like to see it revises to reflect those exemptions more clearly; notes that the SCC has conducted site visits for minor projects such as porches and steps; these should be clearly exempt from SCC oversight under the WPA guidelines; would like to clarify the SCC's aims and try to direct people to look at their projects with the exemptions in mind; feels the SCC should direct its actions to those actions within our jurisdiction that need our time and attention; the blurb on our website doesn't have all of the exemptions since 2014 revisions; would like to see it updated; DeFant: there are links to a couple of brochures; one is from 1999 written for landowners; some minor exempt activities are not related to homeowner activities. DeFant is happy to add a link to the regulations on the website. Kahan: the SCC is spending time looking at projects where there is no jurisdiction. DeFant: believes the SCC does have jurisdiction for minor projects listed in the state regulations if they take place in buffer

zones or resource areas under the bylaw; if we just emphasize the state regulations, we might confuse or mislead landowners; the SCC should still review projects to determine if there are resource areas under SCC jurisdiction; landowners are often unaware of what constitutes a resource area; there have been cases where site visits resulted in the discovery that an RDA or NOI was required; the SCC has a regulatory responsibility to enforce the bylaw and determine that minor projects are not in the resource areas. Kahan: if the project is outside the buffer zone, the SCC has no jurisdiction; believes that minor exempt activities in the buffer zone can be within 50' of the resource area. DeFant; many exempt activities cannot be located within 50' of the resource area without SCC oversight per the WPA regulations. Jaques questioned how it could be that there are no exemptions; suggests looking at the WPA regulations and accept them under the bylaw. DeFant: some activities under the WPA may be exempt in buffer but not in resource area; the SCC does site visits to confirm the boundaries of the resource areas and buffer. Stone: sometimes people don't know where a wetland is; conversion of lawn must be 50' from wetland boundary; need SCC oversight; the first 50' is not exempt under the WPA and the minor activities are not exempt under the bylaw. Jaques: having been on the Commission for 20+ years, she has appreciated going and seeing projects; while there have been times where the project did not require anything from the SCC, there have been many times when homeowners were surprised to discover they had wetlands near a project area; she does not believe it is reasonable to place the responsibility solely on the landowner to determine if there is SCC oversight; in the past, the SCC did site visits on Sundays on a regular schedule and it worked well; believes Shutesbury has a good system of signing off on building permits; it has prevented many problems in the past. Stone: agrees with Jaques; current practice keeps landowners from getting into trouble by accident. Willson: likes the idea of having a rotating schedule of site visits. DeFant agrees it might make things easy to schedule. Harrington: I like the idea but cannot always commit to a fixed schedule. DeFant: if the system is not broken, let's not fix it. Harrington, David, and DeFant can do weekday visits. Willson is free after 3: 30. DeFant is not inclined to change current practice. There was a recent RDA that was the result of a site visit for a driveway paving; it was a good outcome. Kahan: agrees with proactively letting homeowners know about the bylaw and WPA; has written a draft blurb for *Our Town's* next edition; the WPA is clear about exemptions; the SCC should have this information on its website. DeFant: there is a linked DEP brochure on the website from 2016, but there are not exemptions in the bylaw; it could be very confusing if we overemphasize the WPA exemptions; need a disclaimer that the bylaw does not have the same exemptions. Jaques agrees this is confusing and hard to explain on the website. DeFant agrees to add a link to the WPA regulations. She will add a statement about the local bylaw not having the same definitions and advise the public to contact the SCC with questions. Kahan: the bylaw has wider buffer zones but the same definitions of resource areas. DeFant: the 100' buffer is a resource area under the bylaw; exemptions do not apply under the bylaw; isolated wetlands are defined differently under the bylaw. Kahan: can minor activities be in the resource area? DeFant: no, can't be in resource area and some minor activities cannot be in the 1st 50' of buffer under the WPA regulations. Jaques: suggests the SCC look at changing the bylaw exemptions. DeFant: can this be done as a regulation or does it require a change to the bylaw? Jaques does not know. DeFant: in practice, we are not treating the bylaw as if there are no minor exemptions; the bylaw is being used to protect isolated wetlands and to regulate activities in the buffer zone; might be a way to alter the regulations. Jaques: suggest changing fees for Certificates of Compliance with a fee based on the age of the Order of Conditions as other communities have.

Draft blurb text for Our Town Spring Edition: The SCC considered a draft blurb about the SCC activities prepare by Kahan. The editor advised DeFant to keep the blurb short. The SCC discussed how to describe minor exempt activities under the WPA. Stone: minor activites are not exempt if less than 50' and not exempt under the bylaw. DeFant: the paragraph about exemptions is problematic. Kahan: the SCC needs some clarification; can we get feedback from Town Counsel or DEP? DeFant: as a matter of policy, DEP will not comment on municipal bylaws; why do we need this paragraph if we are directing people to the website? The language is confusing in the blurb as written. Stone: we still need SCC review under the bylaw. DeFant: people don't know where their buffers are; we don't want to give wrong information; you could be adding a porch that is in a resource area; that is why we are revieing building permits. Willson: our bylaw is more restrictive than the WPA; this text is adding confusion and should not be included. Kahan: there is a brochure on the website; don't we already allow it? DeFant: the SCC does not say that it won't review projects; some minor activities could require an RDA or NOI either under the WPA (if within 50' of the wetland) or the bylaw. Stone advises removing the paragraph from the blurb. Willson: we can talk about adding minor buffer zone exemptions under the bylaw. DeFant: even if we did add those exemptions, we must still have review of projects; otherwise, we are setting up landowners for an unpleasant experience if they were to discover they had a wetlands violation. Kahan: I'm struggling with the language; we have this brochure on our website and it indicates we don't review minor projects; what do other towns do? DeFant: the minor exempt activities brochure deals solely with activities in the buffer zone; those are exempt from WPA review if outside of 50' but they may not be exempt under the bylaw; the brochure indicates that towns with bylaws may have different regulations. Kahan: notes that the brochure indicates that there is no SCC review for minor exempt activities; doesn' want to steer landowners the wrong way; recognizes we are a volunteer board; we could benefit from focusing our attention on projects that have the biggest problems; there are other things we don't get to such as conservation land; how can we focus our attention on where our jurisdiction lies? Stone: maybe this could be addressed with a new regulation under the bylaw or a policy; policies are legally flimsy but are easier to enact. DeFant suggested the SCC table discussion until the spring with a goal of setting up a meeting before June to review the bylaw. The SCC reviewed the bylaw in January 2021. DeFant asked the SCC to consider the blurb for the newsletter. Stone: the blurb should say if you are not sure, contact the SCC. Kahan agrees.

Site Visits:

375 Locks Pond Road/Building Permit: DeFant visited the site. It is a conversion of a patio/mudroom to an addition. It would be a minor exempt activity under the WPA, but there is a stormwater drain downhill from the site that drains into the lake. DeFant asked the landowner to use erosion controls. Recommend signing off on the permit.

Highway Complaint Montague Road: DeFant and Willson visited the site. Willson: there was a puddle that was drained into a wetland by the Highway Department; it had dried out by the time we viewed it; we need to advise the Highway Department how to prevent these situations; it would not be advisable to dig out the detention area at this point, but they should know this kind of activity is not appropriate.

Draft Letter to Highway Department: Kahan and DeFant developed a draft letter. Kahan: want to work cooperatively with the highway department but they need to work with us; SCC wants to move forward with the NOI; want to emphasize that we are trying to help the town. SCC discussed whether to create a map of resource areas. The highway department is probably relaying on the DEP maps which are not accurate. Willson: we could update a GIS map for them; she offers to assist. SCC approves the letter as written. DeFant will send it. **Motion: DeFant moved to approve the draft letter. Willson seconded. Roll Call: unanimous vote, 5/0.**

Updates:

DeFant spoke with Tom Gruszko of DEP; he will be reaching out to the Town Administrator about a NOI and the complaint.

DeFant spoke with Town Counsel about whether the SCC can approve a portion of an ANRAD map. This information is being shared as general information, not specific to the ANRADS before the SCC. McNicol advised against partial approvals tentatively, but she will do some further research and get back to the SCC. Gruszko was also hesitant about it; said it was clearer to continue a Public Hearing so that a complete ORAD could be issued. Stone noted that the DEP forms allow for identification of wetlands that are not approved; don't have to give a reason for not approving but could add a reason in an attachment. DeFant: Stockman advised that you don't approve a wetland if it has been insufficiently delineated; but by not approving it, you are saying the wetland doesn't exist. Wakoluk: according to the MACC Handbook, Commissions should not approve an ORAD if the ANRAD doesn't meet the conditions for a vote. There is no appeal for the decision and the ANRAD is dismissed. DeFant: McNicol was cautioning against parsing out a portion to approve and not approve. Stockman thought by doing so, the SCC could require a better delineation if there is an NOI.

Next meeting: 2/10 at 7 pm.

Motion: Willson moved to adjourn. Harrington seconded. Roll Call: unanimous vote, 5/0. Adjourned at 9: 56 pm.

Documents Used:

- Agenda
- Minutes: 11/11/21, 12/9/21, 12/16/21
- Draft Public Comment Policy
- Draft Blurb for *Our Town*
- Draft letter to Highway Department, TA, and SB about road maintenance
- 12/29/21 MassDEP Highway Dept maintenance complaint near 437 Montague Rd
- Town website documents
- NOI site plan and planting plan, 31 Lakeview Road
- Draft Enforcement Letter for 31 Lakeview Road
- Emails from Kenneth Holt (1/7/21) and Michael Hootstein (1/3/21)

Respectfully submitted by Miriam DeFant, Chair