

CONSERVATION COMMISSION

Meeting Minutes

February 27, 2023

7:00 PM

Town Hall – First Floor Meeting Room

Commissioners present: Don Ward, Chairman
Ted Pitman, Vice Chairman
Anya Rosoff
Rene Wood

Others Present: Shep Evans
Martin Mitsoff
Chris Weld

Chairman Ward opened the meeting at 7pm.

Discussion/Possible Action Regarding Scenic Mountain Act Legislation.

Chairman Ward welcomed everyone and requested that M. Mitsoff give an introduction and overview of the proposed Scenic Mountain regulation and how similar towns have adopted such regulations. M. Mitsoff gave some history on the regulations, he indicated that in 1975 Sheffield approved the Act, giving the Conservation Commission the authority to develop Scenic Mountain regulations. M. Mitsoff gave specifics on how to move the regulations forward towards adoption.

The Conservation Commission is responsible for finalizing the regulations and drafts of the proposed boundaries for mountain regions (i.e. the “Map and Text”). The Conservation Commission drafts the regulations, including the Map and Text, while the Select Board then either approves or negotiates only the “Text and Maps” portion. Once this is complete then the Map and Text is submitted to the Board of Health, the Planning Board, and then finally goes to the Select Board. M. Mitsoff indicated after all Boards have had their say on the Map and Text, the final authority to sign off is either the Commissioner or Deputy Commissioner of the Department of Conservation and Recreation (DCR).

The next step is for the Select Board to hold a public hearing in which a two-thirds vote is required on the final map and text. Lastly, the Conservation Commission then has to file the map and text with the Town Clerk, the Commissioner or Deputy Commissioner of the DCR, and at the Registry of Deeds. Based upon this discussion S. Evans made the point that there should be no need to present the Scenic Mountain regulations at a town meeting and suggested that the Commission hold public information meetings on the proposed regulations to give any residents an opportunity to voice their concerns. S. Evens further stated that the Commission should continue to hold public information meetings.

M. Mitsoff informed the board that the intent of the regulation is not to act as an impediment to development, but rather is designed to ensure that the esthetics and natural beauty of the surrounding landscapes is preserved by working with developers and not against them.

A discussion as to regulation protection based on the degree of a slope versus the elevation of the property ensued. R. Wood asserted that it would be wise to have two maps, one which shows the protection based upon the elevation (900 feet and up) and another that is based on the degree of slope (15% along a two hundred foot length). M. Mitsoff responded by saying that we should make the decision to use one or two maps after we see how it looks with all the information included on just one map. R. Wood also requested that new larger maps be created for the next meeting and that they include an easy to use highlighted area that denotes the areas subject to the Scenic Mountain regulations.

R. Wood also suggested that the maps include a text portion describing what the highlighted areas are and their relation/correlation to real world metes and bounds type measurements. This idea was supported by S. Evans and he made the point that property owners should be able to use the map and text to identify real world points so that they can measure their own slopes without having to hire an engineer to survey the property. A. Rosoff asked for an example of what a 15% slope over 200 hundred feet looks like. M. Mitsoff described the slope of rocks under a railroad track as being a 15% grade, anything steeper and the rocks would roll away.

Chairman Ward asked how other towns identify their scenic areas beyond elevation. T. Pitman stated that there was another act on the books that could be used to protect scenic areas, by designating them as a protected "walking paths". R. Wood inquired if the regulations could be shortened by putting some of the requirements into the application. R. Wood wants to limit the scope and length of the regulations by tightening up several sections as she believes the twenty two pages of regulations is too long.

C. Weld asked about using third party peer review as a method to protect the Conservation Commission from going up against big industry developers that could potentially bully them. S. Evans responded that the Commission does have the authority to require an applicant to pay for bringing in third party peer reviewers to make it easier for the Commission.

A discussion regarding the enforcement of the Scenic Mountain regulations ensued. S. Evans wants the Commission to take the enforcement order language from the State Code and add it into the Scenic Mountain regulations. Another method of enforcement that S. Evans suggested is the use of civil citations. R. Wood responded that the Commissioners have that authority to issue tickets for violations but that it is not a method of enforcement that she approves of. M. Mitsoff stated that he believed that the enforcement could be handled through the implementation of the Order of Conditions. M. Mitsoff stated that the Commission could simply not issue a Certificate of Compliance, if after performing a cite inspection, it is determined that the Order of Conditions are not being complied with.

R. Wood asserted that the enabling legislation in the Scenic Mountain regulations is poorly written. S. Evans indicated that when it was being written the legislation was amended to allow for a lot of flexibility for commissions to determine if a property should be included or not. S. Evans gave the example of a pond located in Great Barrington and how the surrounding forest was able to fall under the protection of their Scenic Mountain regulations, even though it was not over 900 hundred feet in elevation.

C. Weld asked the Commission if Sheffield has a master plan with regard to environmental protection goals. Chairman Ward responded that while there is a page in the Town's Master Plan that deals with environmental protection, there is no master plan for just environmental protections in Sheffield. Chairman Ward indicated that there is a wide range of laws on the books that operate to protect Sheffield's natural environment.

R. Wood asked S. Evans which local town has the best version of the Scenic Mountain regulations. S. Evans indicated that Richmond has had their Scenic Mountain regulations tested by the courts and that it was upheld. Chairman Ward noted that the map and text used in Great Barrington appeared to be set up in zones instead of by ridge line and that he thought that could be a better design. Chairman Ward asked the Commissioners how they felt generally about the regulations. The entire Commission felt that adopting the Scenic Mountain regulations was important and that it was just a matter of figuring out the best way to enact and enforce it. R. Wood suggested that the Commission take no action on this matter until after the upcoming the Town Meeting.

A discussion regarding Forest Cutting Plans and how they could come into conflict with the Scenic Mountain regulations ensued.

T. Pitman made a motion to hold another meeting on the Scenic Mountain regulation on March 27th 2023 at 7:00 PM, seconded by A. Rosoff. The motion passed unanimously.

A discussion concerning which properties would be grandfathered ensued. The main concern was determining at what point a property would obtain the grandfathered exemption. For example, was the Scenic Mountain regulations in effect when the building permit was issued. S. Evans informed the Commission that in Great Barrington several property owners who heard about the regulations decided to prep their property for development before it took effect to gain the grandfathered exemption. Chairman Ward stated that he estimates that between 5 and 7 percent of Sheffield properties would will be subject to the Scenic Mountain regulations.

Chairman Ward moved to establish M. Mitsoff as the Citizen Participant for all matters related to the Scenic Mountain regulations, seconded by T. Pitman. The motion passed unanimously.

R. Wood moved to adjourn the meeting, seconded by A. Rosoff. The motion passed unanimously. The meeting adjourned at 8:52PM

Respectfully Submitted by,



Josh Risen, Board Administrator

Documents reviewed at this meeting:

- Model Bylaw – Scenic Mountain Act;
- Berkshire Regional Planning Commission Map;
- Sheffield Scenic Mountain Act Slide show Review of Elements;
- Scenic Mountain Act Forms A through E2;
- Text of Chapter 131, Section 39A and all referenced MGLs. Scenic Mountain Act legislation.

