

Conservation Commission



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

November 19, 2009
Sherborn Town Hall
7:30 P.M.

Minutes of the Meeting

Members Present: Susan Tyler, Will Willis, Michael Lesser, Bridget Graziano (Agent/Administrator), Steve Gaskin (Chair), Rob Eckert, Andrea Stiller

Members Absent: Carl Shedd

Guests: David Parrish, Gregory Todd & Georgia Gates Derr, Paul Saulnier (Civilized Solutions), Scott Myers (Oxbow Associates), Eliot Taylor, Julia Jacobson, Endre Hollosi, Howard Fischer, Stephen Bonder, Alexander Makkas

Call to Order: The meeting was called to order at 7:30 P.M.

Discussion #1 – David Parrish, 34 Greenwood Street

Mr. Parrish's Order of Condition (OOC) expired in July 11, 2008. Bridget explained that the Commission cannot extend an expired OOC, but could issue a non-punitive Enforcement Order, to allow Mr. Parrish to complete the OOC requirements that only pertain to plantings issues, in order to file for a Certificate of Compliance. Steve moved that the Commission write an Enforcement Order for David Parrish requiring him to comply with the original OOC. In addition, he moved that the Commission switch the required Hawthorne plantings to Serviceberry and to allow the small boulders to remain over the septic instead of the required large size boulders. The smaller boulder size was required by the Board of Health, due to septic system requirements. He further moved that that after two growing seasons, if 75 percent of the

plants survive, Mr. Parrish may obtain a Certificate of Compliance. This was seconded and accepted unanimously.

Discussion #2 - Extension to the Order of Conditions for 11 Jackson Road

Alexander Makkas appeared before the Commission. He explained that his OOC required shrubs to be planted in the mitigation area. He planted the shrubs, but they were choked out by other species. Mr. Makkis stated that he is working with Bridget to eventually amend the OOC with more suitable vegetation, but that the Commission needs to extend the OOC in the meantime. Steve moved that the Commission waive the fee for the Extension of the OOC due to the finding that the some of the shrubs and herbaceous vegetation was planted and maintained in a good faith effort. It was noted that not all the plantings required were completed, but the ones that were did not survive even with the appropriate care. This was seconded and accepted unanimously. Steve then moved that the Commission extend the OOC. This was seconded and accepted unanimously.

Public Hearing #1 – 34 McGregor Drive presented by Oxbow Associates and Civilized Solutions

Rob recused himself from the hearing. Two green cards (Wheelright, Phippes residents) were missing. Steve moved that the Commission hold the hearing because the applicant provided the white certified mail cards and are sufficient proof the mailing was completed, and there was good reason to believe that the people with missing green cards had or have been out of town for an extended period of time. This complies with 310 CMR 10,05 Procedures (4) Notice of Intent (a). This was seconded and accepted unanimously.

The proposal includes installing a geoflow septic system and a brick walkway and landscaping (restoring an area to lawn) within the 50 to 100' butter zone of a Bordering Vegetated Wetland and the 50 to 100 buffer zone of an isolated freshwater wetland. Scott Myers (Oxbow Associates), Paul Saulnier (Civilized Solutions), Gregory Todd & Georgia Gates Derr (applicants) were present. The proposed erosion control barrier is comprised of silt fence and straw waddle. Presently, there is a concrete and brick walkway in the buffer zone and the project includes relocating it and changing it to all brick pavers (a pervious surface). If the project is accepted, one condition will be that the Commission must approve any planting plans to make sure the plants are native. Paul emphasized that a geo flow septic system is better for the environment and the grade of the area will not be impacted significantly. Steve moved that the Commission close the hearing. This was seconded and accepted unanimously. Steve noted that the plan is well thought out and that an improved septic system will have a positive effect on the two wetland resources areas. He further noted that the disturbance that will be created by the project is in an altered buffer area - a flat lawn. The Commission also found that the proposed walkway will not be constructed of impervious surface, therefore, will still offer some treatment of storm water. Based on these findings, Steve moved to accept the plan. Bridget added that the new plan should be updated with discussed square foot calculations. Paul explained he had in fact accounted for all of the project area that is located in one or both of the buffer zones, therefore, the noted square footage is correct. This was seconded and accepted unanimously.

Discussion #3 – CM & D Garage Repaving

It was moved that the Commission vote to retroactively authorize the repaving of the existing paved areas of CM & D Garage, on the basis that it was discussed at previous public meetings and seen by the Commission, the BOS and the CMD Building Committee as a favorable improvement in that it would improve stormwater drainage and impede road salt from migrating down into the soil. This was seconded and the motion was then revised to designate the repaving as a minor change to an OOC because the project has not increased the amount of impervious surface significantly. A countermotion was raised to ask Dan Merrikin to submit a retroactive amendment to the OOC application, and then at the next meeting vote to change the OOC as a minor amendment. This was seconded and accepted unanimously.

Discussion #4 – Hidden Meadow Management

George Morgan has altered the Hidden Meadow trail, a Conservation owned land with wetlands. He used logs to separate pedestrian and horse usage of the trail. Bridget contacted him to cease and desist such work, but Mr. Morgan has continued to manage the area. The Commission discussed remedial actions. The Commission instructed Bridget to speak with Dan Keyes about contacting Town Counsel to advise on the next proper legal step, since the Commission cannot issue an enforcement order on their own land or to a individual person.

Discussion #5 – Dudley Willis donated land (adjacent to 65 Farm Road) to Conservation Commission and how to manage land back to “natural state”

In January 2007, the Commission voted that specific encroachments on the newly acquired Town Land should be removed so that the land reverts to its “natural condition”. The encroachments include a pasture fence, a shed (which should be returned to a normal setback from the property), and a dressage ring (which should be covered with soil for replanting and removal of the fence) as described in a 2/8/07 letter to Mr. and Mrs. Elias of 137 Lake Street (property abutters). The Commission discussed plans to properly finish removing the encroachments. The Commission asked that Bridget write a letter to Mrs. Elias asking her to remove the fencing along Farm Road, so that the public can use the land. In its current state, it appears to be private property. In addition, she was asked to contact CM&D to see if they need sand, and if so to take it in an environmentally acceptable way from the dressage ring. Bridget explained she did not know how deep the sand was and if removed it may be expensive to replace with soils and seed. She suggested any other proposed changes beyond the removal of the fence would have to be clearly planned and implemented in a manner that protects the public and the environment.

Discussion #6 – 237 Washington Street ratify the Amended EO and issue “bylaw ticket”

Michael and Bridget reported that the MACC and DEP official position is not to record an Enforcement Order because it may present liability to the town, where it may state the EO was not based on one-sided information. Bridget spoke with the DEP Circuit Rider, Pam Merrill, who suggested the Amended Enforcement Order be sent. Bridget sent an Amended EO and received no response. Bridget had contacted Town Counsel who advised her that recording the EO is legal under the Massachusetts Wetlands Protection Act and agreed the supporting affidavit

by her was sufficient to accompany the recording as an attachment. The Commission then has to ratify the Amended EO sent by Bridget. The Commission discussed what the best next step, is since neither the Commission nor Bridget has heard from Mr. Recine. After the Commission was notified of MACC and DEP's instruction not to record the EO, they did not record the EO in order to enter into a deeper discussion about potential liability. The Commission discussed potential options that could be set into a plan to be implemented in phases. The first option was to post a hearing so that any objections regarding the EO or a bylaw ticket could be properly voiced (only discussions have taken place so far). Second, obtain a memo from a Certified Wetland Scientist, that wetland violations have taken place was discussed. Steve moved that the Commission write a bylaw ticket and issue it subject to agreement by Town Counsel. This was seconded and accepted unanimously. Steve moved to ratify the amended Enforcement Order. This was seconded and accepted unanimously.

Discussion # 7- Michael and the Budget

Michael presented budget scenarios for next year (FY2011) to the Commission. They included hour and salary increases for the Administrator/Agent. He will develop a final proposal for the BOS in concert with Steve and Bridget.

Approval of Minutes- October 15, 2009

The Commission discussed modifications to the minutes. Steve moved that the Commission accept the minutes as amended. This was seconded and accepted unanimously.

Administrator's Report

- 12 Wild Meadow Lane – Rob said that he would like the Commission to discuss what level of due diligence regarding the basis for an agricultural exemption should the Commission pursue and what the legal issues are if the Commission made a decision based on incorrect information. Steve proposed that the Commission research and discuss what sort of information and proof are sufficient for an Agricultural Exemption, so that the Commission can work from a solidly dependable basis of information in the future.
- 121 Bogastow Brook Road encroachment on town land. The Commission discussed prohibiting owners from using a grass and gravel driveway located on Town property and conservation land after consultation with Town Counsel.
- 38 Bullard Street and the Bogastow Brook dredging that will continue. - Every five years the U.S. Army Corps of Engineers maintains a field in this area. Bridget is investigating whether the U.S. Army Corps can place silt on the fields during dredging activity.
- NPDES permit for 2009 and Storm Water Management Plan- Bridget reported that the Town has not filed the permit and will set up an appointment to discuss the Town's progress with Dan Keyes, the Town Administrator.
- 30 McGregor Drive update on restoration project- Bridget stated that the White Pine plantings were completed and the Highbush Blueberry shrubs will be planted in Spring 2010. In addition, it was reported that all wood piles in the wetland resource area and associated buffer zone were removed.

- Goulding Street East and 91 South Main Street Beaver issue - Bridget reported that beaver activity created flooding. The owner of 91 South Main Street may obtain a permit from the Board of Health that a public health or safety threat exists from beaver activity to allow a limited breach of the dam to alleviate the threat and CM & D may obtain a permit from the Board of Health due to public safety if roadway is threatened by flooding due to the creation of a dam. The Commission discussed their potential role in this matter.
- Dowse Orchard – Green Lane: The Commission is concerned that piles of composted leaves and soil materials are leaching into the wetlands. Bridget stated that she will do a site visit and ask the Dowses to come to a meeting.
- Conservation Restriction for Humphries property with Land Trust.- The Commission discussed a joint ownership of the Humphries property.
- State Ethics requirements- The Commission discussed recent updates and was provided with documents for the seminar that Bridget attended at the Town Hall
- Groundwater Protection Committee appointment: Andrea wanted to still pursue possibly joining this committee.
- Letter from Don & Sue Wetherill regarding 111 Coolidge Street
- Administration looking to change wetland permitting process at state and local level
- Annual Maintenance for Arc GIS 9.3 application- The Commission discussed adding this item to the budget in the future
- Land Management Task Force Team Update- Bridget updated the Commission on her meeting so that the Commission could offer comments and suggestions for her next meeting.

Approval of Determinations of Applicability

The following Determinations were reviewed. Based on the recommendations of the Agent, the determinations were signed and approved by the Commission:

| <u>Address</u> | <u>Description of Work</u> | <u>Findings</u> |
|---------------------|--|-----------------|
| 44 Brush Hill Road | Proposes to replace the d-box and septic tank | NEGATIVE |
| 12 Wild Meadow Lane | Pave existing driveway | NEGATIVE 3 |
| 46 Greenwood Street | Demolish existing dwelling and construct a new dwelling | NEGATIVE 3 |
| 20 Great Rock Road | Soil Testing | NEGATIVE |
| 37 Woodland Street | Remove two Hazardous Trees | NEGATIVE 3 |
| 16 Prospect Street | Proposed Addition | NEGATIVE 3 |

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| 175 Maple Street | Soil Testing | NEGATIVE |
| 32 Old Orchard Road | Removal of one hazardous tree | NEGATIVE 3 |
| 7 North Main Street | Installation of Septic System | NEGATIVE 3 |
| 64 Page Farm Road | Construct a stone paver deck and wooded stairway | NEGATIVE 3 |
| 5 Old Orchard Road | Soil Testing, construct a new two car garage, conversion of garage to living space, alteration of deck | NEGATIVE |
| 237 Washington Street | Ratify Amended Enforcement Order | RATIFIED |
| 43 Kendall Ave | Ratify Enforcement Order | RATIFIED |
| 1 Knollcrest Lane | Extension to Order of Conditions | GRANTED |
| 11 Jackson Road | Extension to Order of Conditions | GRANTED |
| 11 Farm Road | Certificate of compliance | GRANTED |

Adjournment: Steve moved to adjourn the meeting at 12:06 P.M. This was seconded and accepted unanimously.

Respectfully submitted,

Suzanne Trainor
Minutes Clerk

Cc: Board of Selectmen, Board of Health, Planning Board, Building Dept., Town Clerk, Town Forest, Town Counsel, Sherborn Library, Advisory Committee, D/S Press, Zoning Board of Appeals, Sherborn Garden Club, Forest & Trail Assoc., Assessor, Groundwater Protection Committee, Farm Pond Advisory Committee