

Conservation Commission



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

December 17, 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, Carl Shedd

Members Absent: None

Guests: Eliot Taylor, William & Jeannette Slichenmyer, Carol Marple, Howard Fisher, George Pucci, Jonathon Dowse, Dan Merrikin, Chris Sweeney, Louis Recine, Charlie Siegal, Michael Schermerhorn, Margret Powicki

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

Carol Marple, Town Clerk, asked to briefly speak with the Commission while they waited for Mr. Pucci to arrive for his 7:30 pm discussion. The Commission agreed to listen until Mr. Pucci arrived. Ms. Marple stated that a request for all Conservation emails from July 31, 2009 onwards by Dan Keyes should be met in keeping with public records law. She further stated that a person requesting public record emails is not required to give a reason for the request. Noting that Dan Keyes made the request as Town Administrator without reference to public records matters, the Commission was not certain whether the request should be handled as an interdepartmental request rather than as a public records request. Two Commissioners had the impression from speaking with lawyers at the Secretary of States Office Public Records Division that an interdepartmental request was different than a public records request by a private citizen. Furthermore, the Commission has been factoring in advice from lawyers at the Massachusetts Association of Conservation Commissions (MACC) who maintained that a request for all emails

from July 31, 2009 onwards is too vague and global and the Commission has the right to refrain from complying with unreasonable requests. It was noted that the Commission was meanwhile trying to clarify the issue by working with the Board of Selectmen (BOS).

Discussion # 1- George Pucci updating the Commission on Board of Selectmen events and Commission's questions for the Board of Selectmen

George Pucci, Selectman, stated that he wanted to help with working relations between the Commission and the BOS. George said that Steve's request that the email request issue be put on the BOS agenda would make it difficult for his attempts to work out the issue. It was noted that Dan already brought the matter to the Secretary of State, and therefore, unclear what he can do though the Commission was waiting for the outcome of his efforts. Rob expressed concern that Dan's intention might be to exercise supervisory authority over the Commission, an independent board. Rob noted that Dan was free to attend Commission meetings, where substantive issues are discussed. Rob expressed concern about the lack of a town policy on managing email files efficiently. Steve expressed dismay that Dan asked Bridget for the emails, even with the knowledge that Steve is her supervisor and after being previously requested to talk with him about this issue. Steve stated that Dan never made a formal public records request, until recently. George stated that he objects to town finances and/or counsel being used for an internal dispute. Michael stated that he thinks that the email issue is secondary to finding a way to work with the BOS and Town Administrator in a more collegial manner so that such information requests do not appear adversarial. Dan's handling and scope of the request without specific reasons (while maybe not necessary) do not contribute to collegial working atmosphere. He stated that he wants to find a way to discuss any issues in open non-adversarial way. Jonathan Dowse asked why the email request should be directed to Steve, when Bridget holds the office hours. Bridget answered that Steve manages her workload to ensure that town residents are receiving proper attention from her; therefore, it is appropriate for the chair to be notified of large requests that could potentially interfere with her ability perform her daily work. George informed the Commission that the MA Secretary of State has been notified about the email request issue, but that it is his wish that the issue be resolved internally.

On a separate issue, George reported that he is interested in commencing a composting program for Pine Hill School on a town owned parcel. The Recycling Committee is leading the effort, but George indicated that the Commission might be of assistance.

Discussion # 2- CM & D paving- Proposed Amendment to the Order of Conditions and occupancy of the building

Dan Merrikin explained that budgetary constraints stopped CM & D from planning to repave the whole site; however, additional pavement was placed in the area around the salt storage shed over a previously paved area, where new pavement had not been proposed. Mr. Merrikin is asking for an Amendment to the OOC to retroactively allow the repaving. Steve noted that CM & D should have appeared before the Commission before paving such sites, but that the Commission was prepared to approve the retroactive amendment. Dan stated that the repaving constitutes a favorable effect on the environment because the old pavement was worn and was not draining adequately to the pretreatment structures. He noted that cleaning hazardous or non-

hazardous material off of worn pavement is more difficult than on newer pavement. There is no net change of impervious area.

Steve moved that the Commission finds that the proposed amendment constitutes an insignificant or favorable effect on the environment, and that it should be ruled as a minor amendment to the OOC. This was seconded and accepted unanimously. The Commission then discussed the CM & D's use of the salt barn and possible salt runoff. Dan maintained that various protections are in place, such as an effective drainage system and structures. He agreed to let Dan Keyes know of plans to train CM & D personnel on spill cleanup (e.g. kits and valve) and Best Management Practices so that these things can be budgeted for. Asked if funds are left for riprap adjacent to Butler Street, Dan answered yes, and that the riprap will be installed. Bridget discussed items that need to be addressed prior to the CM&D planned move in date of January 13th 2010 and continue to monitor the site through May, 2010. The Commission asked that another site visit be conducted after Bridget's items are addressed.

Discussion # 3- 237 Washington Street- Chris Sweeney & Louis Recine

Louis Recine of 237 Washington Street and his representative, Chris Sweeney, appeared before the Commission. Bridget stated that the original violation was brought to her attention in May 2009. She subsequently visited adjacent properties, where she viewed large soil piles in a buffer zone to a wetland resource area and abutting an intermittent stream in a field. In addition, the Building Inspector, Walter Avallone, visited Mr. Recine's property and took pictures of the piled debris, with Mr. Recine's permission. The pictures showed large piles of construction debris. This constitutes a violation of the state and local wetlands bylaws/regulations. Mr. Recine was issued an enforcement order asking him to restore the site, subject to certain conditions set forth by the Commission within 30 days. On July 23, 2009, fines started to incur. On December 8, 2009 Bridget completed a site visit with Mr. Sweeney and Walter Avallone (Building Inspector).

Bridget stated that the buffer zone must be converted back to a field, as it was depicted in aerial photography. Mr. Sweeney argued that composted piles are part of agricultural use. He further stated that the Recine property is a farm, pointing to the firewood Mr. Recine sells. Steve noted that Mr. Recine and Mr. Sweeney would have to prove that land is used to raise and sell an agricultural commodity with farming activity taking place within the last 5 years. Members discussed proof and application of agricultural exemption laws. Mr. Recine and Mr. Sweeney told the Commission that they are willing to move the piles and restore the area back to its original condition. The Commission gave them choices of: 1) have the wetlands at the property delineated by a wetland scientist, clean/maintain the buffer zone, and, with a wetland scientist, develop a remediation plan and proper erosion controls or 2) prove agricultural exemption in order to receive some latitude from the Commission regarding use of land in the buffer zone. Steve suggested that Mr. Recine's first good faith effort if he chooses Option 1 is to contact Bridget before the January meeting. Mr. Recine must find a wetland scientist for delineation/planning and submit a correction plan before the February 18, 2010 meeting for Commission approval. Steve noted that since a wetland delineation may be a quick process, the Commission can approve the delineation at a January 21st Commission meeting. The Commission discussed issuing Mr. Recine a bylaw ticket if he fails to cooperate.

Discussion # 4- Conservation Land Encroachment by 121 Bogastow Brook Road

William and Jeannette Slichenmyer of 121 Bogastow Brook Road appeared before the Commission. The question before the Commission is whether the Slichenmyers can continue to use Conservation land access to their barn. The Slichenmyers stated that they use a gravel driveway, which falls on their property and Conservation land, twice a week to drive a horse trailer and truck in one direction. Steve informed the Slichenmyers that the Town regulations does not allow motorized vehicles on Conservation land and they should refrain from using Conservation Land for their own private use. Mr. & Mrs. Slichenmyer agreed to refrain from using Conservation Land to drive out their horse trailer.

Discussion # 5- 32 Pleasant Street- Silverwood Farm new driveway

Recently, the Commission was made aware of a new/improved access “road” off of Western Avenue. The road is a dirt road that was previously used to access farm land. It was noted that one is allowed to maintain and improve an existing farm access road as long as the road is not extended from its original dimensions and one uses Best Management Practices (See 310 CMR 10.04 Agriculture (1) (d)). Bridget reported that she is conducting a site visit on Tuesday December 22, 2009. Although property owners received Commission approval for other site alterations in September, Rob stated that the owners should file an RDA for the proposed driveway. Bridget explained that the improvements to the farm road were not incorporated in the request for determination for the produce packing barn. Bridget noted that this improvement was required under the Highway Department’s driveway regulations to be improved and was requested by CM&D. She stated that she would speak with Ed Wagner, the Highway Department Director to get more information.

Discussion # 6- Granting of Agricultural Exemptions

Rob opened the discussion by stating that the Commission should have its own standard of proof for determining whether or not a resident can claim the agricultural exemption under the Massachusetts Wetlands Protection Act in order to treat all residents equally. Members discussed keeping a file for each property that claims exemption and monitoring these files periodically to determine whether the farming activity is continuous. The Commission discussed how the Tax Assessor’s office keeps track of the applications for 61A and if this process would help the Commission draft a procedure for knowing what properties in town have active farming operations. It was noted that there are properties in town that do not claim the Tax Assessor’s 61 A and still actively farm their land and therefore may be subject to the agricultural exemption. The Commission asked that Bridget poll other towns to see how they keep track of which properties have active farming operations.

Discussion # 7- Barber Reservation Management

The Commission discussed cost-efficient field management and drafting a Land Management plan for this property. In addition, Bridget was asked to submit her soils sample from the one of the fields to the Massachusetts Co-op Soil Extension for testing to evaluate quality for growing

hay. Bridget and Michael reported that lime was applied to the larger open field and the small adjacent fields at the Barber as part of an experiment to see if/how hay yields are affected.

Discussion #8 - Request for Conservation emails by the Town Administrator and the Commission seeking legal counsel

A question facing the Commission is whether Dan Keyes' request for Conservation emails constitutes a public records request. Steve stated that based on his research, it is an interdepartmental request since Mr. Keyes is Town Administrator. Steve further stated that such a request should be dealt with at the Town level. Bridget reported that MACC lawyers advised the Commission that it can abstain from giving the emails and let the situation be resolved in a court given that the request is large (it is not limited to a specific topic or short time-frame). The Commission discussed getting additional legal opinions. It was noted that the matter had been referred to the Secretary of State's Office, who will most likely respond quickly with an answer of whether or not the request qualifies as a public records request.

Approval of Minutes November 2009

Steve moved that the Commission approve the November 19, 2009 minutes as amended. This was seconded and accepted unanimously. Carl abstained as he had not been present for the meeting.

Administrator's Report

- Mayo Farm and riding ring –Will be discussed at next meeting.
- Annual Report is due January 22, 2010 - please look for Bridget to send out a draft for the Commission to edit and approve at the January 21, 2010 meeting.
- 73 Prospect Street tree removal in a wetland – Bridget and Susan met with the homeowners' daughter to explain how to remove the tree from the wetland without causing adverse effects. The Agent noted to the owners that an Request for Determination must be filed with the Commission for approval to remove a tree from a wetland resource area.
- Dowse Orchard site visit – Bridget reported about her site visit with Alex Dowse. Mr. Dowse drove Bridget around the property discussing the composting leaf piles and soil piles that were of concern to the Commission. Bridget could not see any issues, but did not get to view the wetlands to see if any sediment had entered the wetlands. Bridget asked that the Dowse operation follow Best Management Practices as they reclaim the orchards to plant new apple trees.
- New website Feb 1, 2009 – The town has scheduled the unveiling of the new website. If the Commission would like to have new items added to the website, please let Bridget know so she may have these items added for better public outreach.
- Annual MACC Conference in February 2010 – Please sign up.
- Michael & Bridget FY2011 Budget update -In the budget proposed to the BOS, Bridget is to be given a raise and increased hours, in accordance with the plan approved by Advisory some years ago. The BOS approved this staffing change.

- Lake Street soccer field cleaned – Bridget asked a resident on Lake Street to clean up some soccer equipment that was placed on town land.
- Sewell Brook Beaver Update – Rob and Michael did a wonderful job removing the dam under the emergency permit. There was no damage to the wetlands resource area during the removal. The water returned to its normal level and flow within 10 days.
- Groundwater Protection appointment – Bridget reminded the Commission that they need to appoint a member to the committee. Andrea had attended a meeting in November to determine if she would have time to volunteer for this committee.
- Sherborn Garden Club-Healthy Lawn Seminar 1-12-10, Sherborn Library @ 9:30pm

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>
45 Greenwood Street	Soil Testing	NEGATIVE
16 Kendall Ave	New anchor foundations, fencing for tower bracing	NEGATIVE
14 Everett	Installation of a in-ground pool	POSITIVE
17 Unity Lane	Construction of barn	POSITIVE
159 Washington Street	Installation of new well	NEGATIVE
23 Mill Street	Construction of Septic System	NEGATIVE
26 North Main Street	Proposed addition to building	NEGATIVE
34 Forest Street	Installation of Replacement Septic System	NEGATIVE
Lake Street	Installation of Guard Rail- Emergency Cert.	RATIFIED

Goulding Street East	Emergency Cert. for dam removal	RATIFIED
84 Coolidge Street	Enforcement Order	RATIFIED
21 North Main Street	Certificate of Compliance	NOT GRANTED
66 Hunting Lane	Certificate of Compliance	GRANTED
167 Lake Street	Certificate of Compliance	GRANTED

Adjournment: Steve moved to adjourn the meeting at 12:16 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