

# Conservation Commission



19 WASHINGTON STREET  
SHERBORN, MASSACHUSETTS 01770

October 21, 2010  
Sherborn Town Hall  
7:30 P.M.  
Minutes of the Meeting

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

Members Absent: None

Guests: Kelly McClintock, Laura Kennedy, Brian Bigalow, Joyce Hastings, Alex Dowse, Mark Beaudry, Warren Wheelright, Susan O'Brien

Call to Order: Mr. Gaskin called the meeting to order at 7:32 P.M.

Ms. Graziano requested the following agenda amendments: a vote to determine the new chair and a discussion of the RDA process. Mr. Gaskin moved to amend the agenda. Ms. Tyler seconded and it was voted to approve 5-0. Mr. Lesser moved that Steve Gaskin be the next chair. Ms. Stiller seconded and it was voted to approve 4-1. Ms. Tyler voted against the motion, stating that Mr. Lesser should be the next chair.

## **Requests for Determination**

16 Prospect Street- (Proposal to demolish existing shed, rebuild, and build a second shed)- Brian Bigalow was present as the applicant's representative. Ms. Graziano presented the project and the location of the two proposed barns, which are in the 0-50' no alteration zone of a wetland resource. The Commission discussed the location of the two barns requesting that information be presented to show that there are no other possible locations on the property to place the barns in the outer 50 -100' buffer zone or outside the buffer zone. In addition, the applicant will see if the property owner wishes to propose mitigation for buffer zone loss. The applicant agreed to continue the discussion until the November 4<sup>th</sup> meeting to provide the Commission with the requested

information. Mr. Bigleow as the applicant will submit a 21-day waiver notification for the continuance.

45 Spywood Road- (Proposal to replace distribution box)- No one was present to represent the applicant. Ms. Graziano recommended a negative determination since the wetlands are located 105' from the project site and access. Mr. Lesser moved to accept the Agent's recommendation. Mr. Willis seconded and it was voted to approve 5-0.

5 Old Orchard Road- (Proposal to remove existing patio and replace with kitchen addition)- No one was present to represent the applicant. Ms. Graziano recommended a negative determination stating that the only wetland resource present was a pond, over 100' from the limit of work. Mr. Gaskin moved to accept the Agent's recommendation of a negative determination. Mr. Lesser seconded and it was voted to approve 5-0.

80 Old Orchard Road- (Proposal to perform soil testing and install a septic system)- No one was present to represent the applicant. Ms. Graziano recommended a negative determination, stating that this project is not within the jurisdiction of the Conservation Commission. Mr. Lesser moved to accept a negative determination. Mr. Gaskin seconded and it was voted to approve 5-0.

65 Old Orchard Road- (Proposal to construct a deck)- Laura Kennedy, property owner, was present. Ms. Graziano reported that the deck location is outside of the Commission's jurisdiction, but that the home owner had erected a horse paddock consisting of a stone dust surface and wood post fencing, which was found to be partially in buffer zone. Ms. Graziano recommended adding the horse paddock project to the Determination, noting the loss of approximately 50 square feet of outer buffer will have negligible impact on the wetland and recommended a Negative 3 determination. It was noted that the buffer zone loss was previously altered buffer in the form of lawn. Mr. Gaskin moved to accept the Agent's recommendation of a negative 3. Mr. Lesser seconded and it was voted to approve 5-0.

21 Curve Street- (Proposal to construct a barn and fencing)- No one was present to represent the applicant. Ms. Graziano recommended a negative determination, stating that the only wetland resource present is over 100' from the limit of work on the northern corner of the property. Ms. Stiller moved that we accept the Agent's recommendation for a negative determination. Mr. Willis seconded and it was voted to approve 5-0.

41 Old Orchard Road- (Proposal to perform soil testing- continued from September 2, 2010 meeting - Property owner called Agent to request a continuance of the discussion to the November 4<sup>th</sup> meeting, due to her illness.

### **Certificates of Compliance**

151 Maple Street- No one was present to represent the applicant. Ms. Graziano stated that she recommends issuance but would like to note changes from original plan dated February 7, 2008, by GLM Engineering. The distance from the wetland to the leaching

field has changed from 84 to 82 feet on one side and 24 to 25 feet on the other, respectively. It was noted that the changes increased the encroachment of alterations in the buffer zone were very minor. The Septic As-Built plan, dates June 6, 2008 reflects these changes completed in the field during construction. Ms. Tyler moved to take the recommendation of the Agent with the stated changes. Mr. Willis seconded and it was voted to approve 5-0.

120 Farm Road (DEP# 283-214)- No one was present to represent the applicant. Ms. Graziano stated that the project never took place under this Order and should be closed out as an invalid Order of Conditions. In addition, the owner may not move forward with any other projects on her property until the Commission issues a Certificate of Compliance. Mr. Lesser moved to issue the Certificate of Compliance as an invalid Order of Conditions for DEP # 283-214, since no work was ever completed under this order and it has since expired. Ms. Tyler seconded and it was voted to approve 5-0.

120 Farm Road (DEP #283-284)- Ms. Graziano presented the project to the Commission indicating this Notice of Intent was filed to complete the project discussed under 283-214, because the Order of Conditions had expired. The applicant completed the project under the new Order. She recommended the issuance of Certificate of Compliance based on the project being completed as depicted on approved plans. She noted two minor changes, which involved the boathouse deck's has an expanded foot print, indicating that the minor deck expansion is pervious and the beach area had an extra set of stone steps added. Mr. Willis moved to accept the Agent's recommendation to grant a Certificate of Compliance to DEP # 283-284, based on the findings that, (1) the addition of small deck on the boathouse was pervious still allowing groundwater to recharge, (2) the increase in project size and addition of steps did not adversely affect the wetland, and (3) the slope was properly stabilized with grass and leaves. Ms. Stiller seconded and it was voted to approve 5-0.

#### Public Hearing 1- 39 Maple Street presentation by GLM Engineering Consultants

Mr. Gaskin opened the hearing, noting that all the green cards for abutter notifications were present. Joyce Hastings of GLM Engineering was present to represent the applicant. She presented the project, proposing the expansion of an existing septic system's leaching field within the 50-100 foot buffer zone of a Bordering Vegetated Wetland. Ms. Hastings stated that the homeowner is adding an additional bedroom, which requires an upgrade of the existing system. Ms. Graziano noted that (i) a request for replacement of the distribution box was made to our office and should be added to this proposal, (ii) erosion controls should be extended to keep limit of work restricted to outer buffer zone, and (iii) landscaping debris should be removed from the buffer zone. Ms. Hastings agreed to add these requests to the amended plan. Mr. Gaskin moved to close the hearing. Ms. Tyler seconded and it was voted to approve 5-0. Mr. Gaskin moved to approve the project, stating the following findings: (1) that because the part of the added septic trench in the buffer zone is in an altered lawn area and will be returned to lawn and is in the outer buffer zone, there would be no net negative impacts to the wetland resource and (2) the project meets performance standards under the Sherborn

Wetlands Bylaw. He moved to approve the project subject to the special conditions and changes discussed. Ms. Hastings shall submit a plan reflecting the following, (1) extension of erosion controls line, (2) the proposed replacement of the distribution box, and (3) removal of landscaping debris from wetland buffer zone. Ms. Tyler seconded and it was voted to approve 5-0.

#### Public Hearing 2- 120 Farm Road presentation by GLM Engineering

Mr. Gaskin opened the hearing noting that all green cards for abutter notification were present. Joyce Hastings presented a proposal for the repair and replacement of a driveway culvert within a Bordering Vegetated Wetland (BVW). Ms. Graziano presented comments from DEP and herself on the proposed project and the Commission discussed the comments. Ms. Graziano stated she believed the project would alter BVW and there should be mitigation for these alterations to include: extras straw bales should be kept on site and any disturbance to vegetation in buffer zone or wetland should be mitigated through replication or restoration. Ms. Hastings was asked to provide a new detail sheet describing the construction sequence and the dewatering plan. Mr. Gaskin moved to close the hearing. Ms. Stiller seconded and it was voted to approve 5-0. Mr. Lesser stated the following findings: (1) that there is essentially no change in any BVW or the hydrology of the site, (2) the erosion control plan as written will protect the wetland resources, resulting in no significant impact on the wetland, and (3) Ms. Stiller added that the project does not involve a new structure; it is merely a repair of an existing driveway over an existing culvert. Given the discussed added data that Ms. Hastings will provide, Mr. Gaskin moved to approve the project with the following special conditions: replacement straw bales are to be kept on site, a dewatering plan and a construction sequence will be submitted with the NOI, if any vegetation or BVW is altered permanently it shall be mitigated through replication, work should continue in an uninterrupted manner, work shall take place during low-flow conditions only. He noted that should the area of the work expanding into the Bordering Vegetated Wetland, the applicant must request an amendment to the project. Ms. Stiller seconded and it was voted to approve 5-0.

#### Discussion 1- Discussion and Vote to recommend candidates for the Commission to BOS for appointment

- Kelly McClintock (for interview see September 15, 2010 minutes)
  - Alex Dowse
  - Andy Lauderback (personally withdrew application)
  - Warren Wheelright
- (1) Alex Dowse explained that he originally served on the Commission when its bylaws were created. He is interested in open space, agriculture, and protection of natural resources.
  - (2) Warren Wheelright explained that he also has served on the Commission before and is interested in preserving the quantity and quantity of the water in town by protecting wetlands.

Ms. Graziano asked the Commission if they would like to re-interview Mr. McClintock for the opening or they are satisfied with his interview on September 15, 2010. The Commission was satisfied with his previous interview and had no further questions.

Discussion 2- 193 Forest Street Susan O'Brien request to waive the filing fee for Submission on NOI

Susan O'Brien, the property owner, requested that the Commission waive the filing fee for an already costly cleanup of a hazardous site located on a single family property. She had no role in creating the hazardous conditions at the site; it is possibly a dump from roughly 150 years ago. Members noted that although they would not waive a fee for a commercial entity that was responsible for the waste, Ms. O'Brien's situation is different. Mr. Gaskin noted that the site cleanup will benefit the wetland resource. It was noted that Ms. O'Brien did not reap any benefits from the dumping. Mr. Gaskin moved that based on the age of the violation, the fact that it was accepted practice at the time of occurrence and not against the law, that it is a contained area under 1000 square feet, that it is a benefit to the wetlands, and that it is on a residential single family lot as opposed to an industrial site, the Category 3 fee under town filing regulations shall be waived. Ms. Tyler seconded and it was voted to approve 5-0.

Discussion 3- Request for Extension to Order of Conditions from Rising Tide

Mark Beaudry from Meridian Associates, representing the owner, appeared before the Commission to request an extension to the open Order of Conditions DEP #283-264. Mr. Beaudry and the project's attorneys believe that the Permit Extension Act applies to Rising Tide, and therefore the OOC is automatically extended to October 2012. The OOC would otherwise expire October 23, 2010. The Commission has not received any guidelines from DEP or Town Counsel and therefore will not make a determination as to whether or not the Permit Extension Act applies to this project. The Commission stated that Town Counsel could be asked to give an opinion on this, if Mr. Beaudry wished. Mr. Beaudry indicated that, instead, the Rising Tide applicants will apply for a three year extension via the Wetlands Protection Act Regulations. The Conservation Commission discussed the requirement for an extension to the Order. Ms. Graziano noted that some of the wetland flags were down and are required to be re-established, the wetlands should be checked to make sure all resources are correctly delineated, and that Stormwater Regulations have changed since 2004, when the project was originally proposed. Mr. Beaudry agreed to continue the discussion to the next meeting in order to allow time to complete a wetlands delineation, re-establish the wetland flags, have the Conservation Agent check the line, and submit a narrative stating how the project still conforms with the new stormwater regulations. It was noted that by pursuing a request for a three year extension, the applicant is not giving up its position that the project qualifies for the Permit Extension Act for a two year extension. Mr. Beaudry handed the Agent a letter from Peter Freeman of Freeman Law Group to the Commission, dated October 18, 2010 and some supporting data on the Permit Extension Act, opinion from other law firms.

Discussion 4- Rising Tide response letter sent from Alan Rubenstein (unauthorized by the commission)

Members expressed that Mr. Rubenstein's letter to the Freeman Law Group regarding the Permit Extension Act did not correctly represent the Commission views on the matter. Mr. Rubenstein was asked to give an opinion on the Permit Extension Act and how it applies to Conservation Commission and the permitting process of Rising Tide, LLC. The Commission received a draft letter by Alan Rubenstein, emailed from Dan Keyes, the Town Administrator to the Agent for review by Mr. Eckert, the Chair. Both the Agent and the Chair nor the Commission members approved the letter before it was sent to Peter Freeman of the Freeman Law Group. The Commission agreed to have Ms. Graziano send the Board of Selectmen a letter stating that no further work by Town Counsel or Alan Rubenstein is necessary to determine whether the Permit Extension Act applies to Rising Tides Order of Conditions, because Rising Tide LLC has agreed to formally request the extension to the Order through the normal permitting process.

Discussion 5- Hidden Meadow Management Funding and Other Conservation Lands

The Commission discussed costs associated with land management for FY 11 and previous years

Approval of Minutes September 15, 2010

Mr. Gaskin moved to accept minutes as amended. Ms. Tyler seconded and it was voted to approve 5-0.

Administrator/Agent Report:

- Eagle Scout projects (Peter Brockway and Agent)- Ms. Graziano presented projects she believes might be suitable for Eagle Scout projects, such as the restoration of Old Orchard kiosk roof and fencing on the Barber Reservation. Ms. Tyler stated she believed the fencing at Barber was an excellent project, one she had brought before the Commission in 2009. The Commission asked that Ms. Graziano contact the Scout Master to see if he has scouts for these projects.
- 21 South Main Street- Ms. Tyler reported on her research regarding this site and its stormwater drainage. It was decided to see if the Town can clean out the existing catch basins as soon as possible.
- 78 Harrington Ridge Road- At the September 15, 2010 meeting, Ms. Graziano reported that trees had been removed from an area that potentially could be a wetland resource. She had not been on the property, but drove by noticing wetland vegetation. The Commission asked that she contact the resident. Ms. Graziano stated that she completed a site visit, where she determined that the drainage area, which was thought to be a wetland, does not meet the WPA Regulations for a wetland resource. Therefore, no further action shall be taken on this particular matter.
- 36 Farm Road- Ms. Graziano explained to the Commission that the property owner, Barry O'Donovan, had never responded to her phone calls or letters

regarding the violations on his property. The Commission agreed to take no action at this time, but to wait until November 4<sup>th</sup> meeting to see if Mr. O'Donovan comes to the meeting as requested by Agent in the Violation Notice, dated October 14, 2010.

- Minutes clerk for next year: The Commission will advertise for a temporary minutes clerk to fill in when Ms. Trainor is abroad.
- Agricultural Commission: A member from each board or commission has been asked to attend the agricultural commission meeting on October 25. Mr. Lesser, Mr. Willis and Ms. Tyler agreed to attend.
- Rob Eckert's resignation from the Commission leaves another seat open - Ms. Graziano noted that both Carl Shedd's and Robert Eckert's open seats expire June 15, 2012, and that so far the Commission has only advertised for one open seat (because Mr. Eckert had only recently resigned.) Ms. Graziano suggested that since there was no time to vote before due to time constraints of the agenda that the Commission should vote now on the replacements for Carl Shedd and Rob Eckert.

Discussion # 1: (continued, due to agenda time) The Commission discussed the candidates for appointment to the Commission. Ms. Tyler stated she would like to vote tonight for one seat and give the opportunity for other residents to submit applications for Mr. Eckert's seat, since his resignation was so recent that there has been no time to properly advertise for the position. The Commission agreed that though there are viable candidates for both seats, it is the Commission's duty to exercise due diligence by posting the new opening for the customary amount of time before choosing a second candidate. Mr. Gaskin moved to nominate Kelly McClintock for Carl Shedd's open seat and go ahead with advertising for the second seat left by Rob Eckert. Mr. Willis seconded and it was voted to approve 4-1. Ms. Tyler voted against the motion, noting that she would recommend Alex Dowse for the Carl Shedd's seat. The Commission noted that Alex Dowse and Warren Wheelright will be in the pool for the second open seat. All candidates will be asked to attend the November 18<sup>th</sup> meeting.

- Thank-you notes for Rob Eckert and Carl Shedd: All members and staff signed.

Adjournment: There being no other business to attend to, Mr. Gaskin moved to adjourn at 11:32 P.M. Mr. Lesser seconded and it was voted to approve 5-0.

Respectfully submitted,

Suzanne Trainor  
Minutes Clerk

Documents Presented at the October 21, 2010 Public Meeting

All documents shall be kept in the Conservation Commission Office files

Request for Determination of Applicability

- 16 Prospect Street- Titled Plan “Plot Plan of Land in Sherborn, MA” by Schofield Brothers of New England, Inc., dated August 31, 2009 (with hand drawing) and Titles Plan “Plot Plan of Land in Sherborn, MA” by Schofield Brothers of New England, Inc. dated September 28, 2010
- 45 Spywood Road- Titled Plan “45 Spywood Rd. Hand Drawing”, dated August 12, 2010
- 5 Old Orchard Road- Titled Plan “Hartley Residence” by FDN Associates, stamped by Commission on September 13, 2010
- 80 Old Orchard Road- Titles Plan “Application for Soil Testing & Evaluation” by CIVILized Solutions, dated September 20, 2010
- 65 Old Orchard Road- Titled Plan “Architectural Site Plan” by Richard M. Shatzman, AIA, dated August 30, 2010
- 21 Curve Street- Titled Plan “Mortgage Inspection Plot Plan” by The Decelle Group, dated June 9, 2005

Certificate of Compliance

- 151 Maple Street (DEP # 283-312)- Order of Conditions approved titled plan “Proposed Sewage Disposal System” by GLM Engineering Consultants, dated February 7, 2008 and As-Built Plan titled “Septic As-Built Plan 151 Maple Street, Sherborn, MA” by GLM Engineering Consultants, dated June 6, 2008
- 120 Farm Road (DEP # 283-284)- Order of Conditions approved titled plan “Hill Residence”, by Eco Terra, dated February 24, 2006 and titled plan “As-Built Plan 120 Farm Road, Sherborn, MA” by GLM Engineering Consultants, dated September 30, 2010

Public Hearing #1: 39 Maple Street-Michael Toner

- “Notice of Intent to Upgrade an Existing Septic System”
- Titled Plan “Proposed Sewage Disposal System, 39 Maple Street, Sherborn, MA”, dated September 2, 2010  
(all submissions by GLM Engineering Consultants Inc.)

Public Hearing #2:

- “Notice of Intent to Repair a Failed Culvert Crossing”
- Titled Plan “Proposed Culvert Repair, 120 Farm Road, Sherborn, MA”, dated September 30, 2010  
(all submissions by GLM Engineering Consultants, Inc.)

Discussion #1: Interview of Candidates for Commission Seat

- Alex P. Dowse- Letter of Interest and Resume, stamped received by Commission September 9, 2010.

- Kelly McClintock-Letter of Interest and Resume, dated September 3, 2010.
- Warren Wheelwright- resume, received October 21, 2010 at meeting

Discussion #3: Rising Tide of 59 Whitney Street request to extend Order of Conditions (DEP #283-264)

- Letter from Median Associates, dated September 21, 2010 to the Agent, Ms. Graziano requesting extension to the Order of Conditions
- Massachusetts Wetlands Protection Act Regulations 310 CMR 10.00, May 2008, pgs. 31-34
- Email from Pam Merrill, DEP, dated September 1, 2010
- Received at meeting from Meridian Associates, letter from Freeman Law Group to Ms. Graziano and Commission Members, “Whitney Farm-Rising Tide Development, LLC, 59 Whitney Street, Sherborn, MA, DEP #283-264 Order of Conditions and Permit Extension Act”, dated October 18, 2010
- Received at meeting from Meridian Associates, an article from REBA news, titled “New Environmental Laws and Regulations Affect Your Real Estate Practice” by Gregor J. McGregor, dated Fall 2010
- Received at meeting from Meridian Associates, (email) an law opinion from Peter J. Feuerbach, Esquire, titled “Legislature Passes “Permit Extension Act” for Economic Development” dated, August 2010

Discussion #4: Commission discussion to letter send from Alan Rubenstein to Freeman Law Group, Attorney for Rising Tide, LLC

- Letter from Alan Rubenstein to Freeman Law Group, titled “Whitney Farm-Rising Tide Development, LLC, 59 Whitney Street, Sherborn, MA, DEP #283-264 Order of Conditions and Permit Extension Act”, dated September 9, 2010
- Letter from Freeman Law Group to Alan Rubenstein, titled ““Whitney Farm-Rising Tide Development, LLC, 59 Whitney Street, Sherborn, MA, DEP #283-264 Order of Conditions and Permit Extension Act”, dated September 16, 2010
- Letter from Freeman Law Group to Ms. Graziano (Conservation Admin./Agent), titled “Whitney Farm-Rising Tide Development, LLC, 59 Whitney Street, Sherborn, MA, DEP #283-264 Order of Conditions and Permit Extension Act”, dated August 31, 2010

Discussion #5: Hidden Meadow Land Management Funding

- Memo titled “ Hidden Meadow and Conservation Land” by Conservation Admin/Agent, dated October 21, 2010

21 South Main Street (Admin/Agent Report)- All information shall be kept in a file under

21 South Main Street titled History

- Notice of Intent, dated March 23, 2007
- Town Clerk Letter, dated May 8, 1969
- Quitclaim Deed, dated May 5, 1993
- Property Report, dated 1993
- Assessor Report, dated September 1, 1933

- Board of Selectmen Meeting Minutes of December 9, 1969
- Board of Selectment Meeting Minutes of May 5, 1970
- Misc. Maps of Sherborn from 1900's to present
- Misc. photographs of Sherborn from 1900's to present

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