

# Conservation Commission



19 WASHINGTON STREET  
SHERBORN, MASSACHUSETTS 01770

November 9, 2011  
Sherborn Town Hall  
5:30 P.M.

Minutes of the Meeting

**Members Present:** Steve Gaskin (Chair arrived at 5:45 PM), Michael Lesser, Kelly McClintock, Andrea Stiller, Susan Tyler, Alex Dowse, Bridget Graziano (Administrator/Agent)

**Guests:** David Tanaka

Mr. Lesser called the meeting to order at 5:35 P.M.

## **Discussions**

### **Discussion #1 – 44 Ivy Lane Order of Conditions (DEP #283-256):**

The property owner was present to discuss the Order of Conditions, dated October 23, 2003, DEP #283-256 for the property of 44 Ivy Lane. The Order includes as yet uncompleted remediation work. The Agent presented the conditions under the Order and the explained that Mr. Tanaka was applying to perform a new project on the property within the jurisdiction of the Commission. It was explained that under the Sherborn Wetlands Regulations, Section 51.1 Submission Requirements, “Any outstanding violations, enforcement orders, remediation activities, or unpaid fines applied to the property under the Massachusetts Wetlands Protection Act its Regulations or the Sherborn Wetlands Bylaw and its Regulations must be resolved to the satisfaction of the Sherborn Conservation Commission prior to submission for Request for Determination of Applicability or work on that same property.” It was noted that the Order was not recorded at the registry. The Agent had contacted DEP to inquire if the Order has to be recorded to be valid. The Agent was told the Order is valid and should be enforced as written. She reminded the Commission it is their decision whether or not to allow Mr. Tanaka to move forward with the new proposed project before he is complaint with the 2003 Order. She read the conditions within the Order that need to satisfied before a Certificate of Compliance may be granted. Mr. Tanaka explained he was not sure what was meant by the condition to seed the area over the septic system with wildflower mix and creating a “meadow”. Mr. Gaskin explained that

the objective was the creation of a meadow and that it would contain a much greater variety of natural plant species than are found in a lawn. Mr. Lesser explained the interest of the Act and how the Commission takes into account those interests when reviewing a project and that is how the conditions were set into place under the 2003 Order, when a forested buffer zone was disturbed for the installation of a septic system. Mr. Tanaka stated his children plan, in part for the large lawn area (in the area to be remediated).. Mr. Lesser mentioned that Mr. Tanaka should work with Agent to figure out how to comply with the Order so the he may move forward with the new project. Mr. Tanaka is proposing new work in the buffer zone, which will be reviewed by the Commission at the November 17<sup>th</sup> meeting.

### **Discussion #2 - Wetlands Filing Fee and Funding**

The Agent explained the opinion recently issued by Town Counsel on the use of the Conservation Fund by the Conservation Commission for land maintenance. Mr. Dowse explained to Mr. Gaskin how the Conservation Fund account came to be, since he was not present at recent meetings. Mr. Lesser wanted to step back to review the major issues with budgeting for FY 13. He discussed what options the Commission has for the FY 13 budget (1) moving the wetland filing fees to the General Fund and requesting the Town budget for the Agent's entire salary or (2) opening a revolving fund for the wetlands bylaw fees to be placed into and have the Town budget for a percentage of the Agents salary and then continue to pay a portion of it out of the wetlands filing fees. The Commission briefly discussed the fact that in past years they had been asked by the BOS and Advisory to raise filing fees. Mr. McClintock asked what the deficit would be for funding the Agent's salary if the Commission did not propose any changes to the filing fees. Mr. Lesser stated it would be approximately \$7,000.

The discussion moved to funding the maintenance of Conservation land. It was agreed the Commission would not request more money at this time (FY13) but begin to draft a long term plan for the maintenance of the land and then present in the following year a more solid estimate of the cost. Mr. McClintock brought up the Forestry Stewardship Plan and how the Commission would pay the difference in cost from the grant. He explained he has contacted Phil Benjamin about possibly reducing the cost to draft the Stewardship plan. He noted that the Commission thought Mr. Benjamin's work is worth the higher cost, however, the Commission has no budget for funding the cost beyond the grant yet it would like to work with him. The Commission agreed with value of the grant and reduction of cost. It may be possible that the Commission could pay the remaining amount and have the plan drafted. The Commission emphasized the importance of having this plan drafted.

Mr. Lesser proposed putting on the agenda a discussion to raise filing fees for this year. Then, Mr. Gaskin asked members to state their opinion on how to structure our department, filing fees, and budgeting. Mr. Dowse advocated for setting up the revolving fund for filing fees and then request the town fund some percentage of the Agent. Mr. Lesser proposed to have the town fund the Agent position and allow filing fees to go into the general fund. Mr. McClintock proposed have some Commission members set up a meeting with Gwen Ortmeyer our representative from Advisory Committee to discuss the alternatives. It was mentioned to ask a member from the Board of Selectmen to attend the discussion as well. The Agent was asked to set up a meeting with George Pucci and Ms. Ortmeyer. Mr. Lesser, Mr. McClintock, and the Agent will participate in the meeting.

Mr. McClintock presented information and issues that were discussed at the Land Management Task Force Team meeting. The members asked that Advisory's representative attend the next meeting of December 5<sup>th</sup> to discuss the importance of land management. The Agent was asked to contact Ms. Ortmeier to see if she would be able to attend.

Alex left briefly for 6:16 PM and returned at 6:21PM

### **Discussion #3 – Forest Street, Map 16, Lot 4-R Amendment to Order of Conditions**

The Agent stated that at the October 20<sup>th</sup> Commission meeting, the conditions to be amended were not discussed in sufficient detail due to time constraints. In order to properly complete the voted amendment to the Order of Conditions, the Agent needed to have the Commission review the Order and clearly state which specific conditions were included in the amendment. Mr. Dowse moved that conditions of the Order discussed in the letter are to be considered minor amendments to the Order of Conditions. Mr. Tyler seconded. Mr. Gaskin asked for discussion. The Agent reiterated her concern that in fact the O'Briens' request should not be considered a minor amendment because of the types of requested changes invalid the findings under the Order to meet performance standards and no new evidence was presented to allow the conditions discussed in the letter to be amended. The conditions which were being requested for an amendment were the replacement of the hydric soil, application of seed, wetlands plantings, and buffer zone plantings. All were requested to be removed from the Order. Mr. Lesser stated that no evidence was presented to show whether the pits, where hydric soils were removed from within the Bordering Vegetated Wetland, still need soil replacement. He also stated that, since no planting would be done until the Spring, he wanted to wait until then to see if the plantings were still warranted to meet the findings and goals in the OOC and therefore whether a minor change. Therefore, he cannot determine at this time whether or not the conditions are minor or even should be amended. Other commissioners stated that the overall site improvements from the clean up and the current vegetation made the requested changes minor. Mr. Gaskin and Mr. Lesser dissenting.

Mr. McClintock and Mr. Dowse left at 7:07 PM.

The other members continued to review the conditions and which conditions apply to the vote of 10/20/11 and 11/9/11. The Commission agreed to (1) drop portions of Condition #46 where it states the interest of the act, remove numbers 3, 4, 8; (2) change conditions #47 to reflect the Commission's request to replace all previous requirements for mitigation and meeting performance standards with four native plantings; (3) remove condition # 49; (4) amend the language of condition #50 to discuss the restoration requirements of the four plantings; and (5) remove conditions #51 & #52.

All amendments discussed above are based on the votes of 10/20/11 and vote of 11/9/11.

### **Approval of Minutes of October 20 & 25<sup>th</sup>**

Mr. Lesser moved to approve the minutes of October 20, 2011, as amended at the meeting. Mr. McClintock seconded and it was voted to approve 4-0-1. Mr. Gaskin abstained, since he did not attend the meeting in question.

**Administrator/Agent Report**

- **93 Goulding Street West Enforcement Compliance-** the Agent updated the Commission on the progress of the restoration requirements under the Enforcement Order.
- **237 Washington Street-** the Agent discussed issuing a new Enforcement Order on the property for wetlands violations before the current Enforcement Order expires.
- **Land Management Meeting update** -this matter was discussed under Discussion #2.
- **Conservation Land Management-** the Agent stated that Hidden Meadow has not been mowed this season due to weather conditions. It will, if possible, be mowed in November.
- **FY 13 Budget & Warrant Articles-** this matter was discussed under Discussion #2.

**Adjournment:** There being no other business to attend to, Mr. Gaskin moved to adjourn at 7:35 p.m., Ms. Stiller seconded and it was voted to approve 4-0.

Respectfully submitted,

Bridget R. Graziano  
Conservation Administrator/Agent

Documents Presented at the November 9, 2011 Public Meeting

All documents shall be kept in the Conservation Commission Office files

**Discussions****Discussion #1 – 44 Ivy Lane Order of Conditions**

- Order of Conditions DEP #283-256 issued October 23, 2003

**Discussion #2 - Wetlands Filing Fee and Funding**

- Memo from Kelly, Michael, and Steve titled, “Budget and Town Meeting Issues for Wednesday October 26 meeting”, dated October 25, 2011
- MACC Handbook-Chapter 9 “Funding Land Protection”
- Conservation Trust Fund Transactions
- MACC Newsletter September/October 2009 “Conservation Commissions’ Authority to Collect Fees and Spend Funds” , Volume XXXIX, Number 5
- M.G.L Chapter 40 Section 8c Conservation Commission; establishment; powers and duties
- M.G.L Chapter 44 Section 53E1/2 Revolving Funds
- Bureau of Accounts Information Guideline Release (IGR) No. 98-101 Wetlands Protection Fund
- Bureau of Accounts Information Guideline Release (IGR) No. 03-208 Special Revolving Funds for Hiring Outside Consultants

**Discussion #3 – Forest Street, Map 16, Lot 4-R Amendment to Order of Conditions**

- Letter from the O’Brien’s sent via email September 29, 2011
- Order of Conditions DEP 283-0333, issued by the Sherborn Conservation Commission June 30, 2011
- Letter from EcoTec, Inc. “Revised Wetlands and Buffer Zone Restoration Protocol with Planting Options, 193 Forest Street & 210 Farm Road, Sherborn, MA”, dated March 17, 2011

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