

Conservation Commission



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

November 17, 2011

Sherborn Town Hall

7:00 P.M.

Minutes of the Meeting

Members Present: Michael Lesser, Steve Gaskin (Chair), Kelly McClintock, Andrea Stiller, Alex Dowse, Bridget Graziano (Administrator/Agent),

Guests: Richard & Peggy Spellman, David Carter, Camy Rachelle Ruck, Russell Waldron, David Tanaka, Mary Beth Fredheim

Mr. Gaskin called the meeting to order at 7:00 p.m.

Determinations

92 Woodland Street-Proposal to construct a portico:

No one was present to represent the applicant. The Agent presented the proposal to the Commission for the construction of a portico onto the existing dwelling. She recommended that this project be approved as a Negative Determination. A wetland resource is present on the property to the west of the existence dwelling and over 200' from the proposed project. Mr. Lesser moved to accept the Agent's recommendation of a Negative Determination. Ms. Stiller seconded and it was voted to approve 5-0.

147 Hunting Lane-Proposal to construct an addition:

Mr. & Mrs. Spellman were present as the applicants/ property owners. The Agent presented the proposal to the Commission for the construction of an addition and new bulkhead. She explained that the project, though within the 0-50' no alteration zone, is in an area that is currently a slate porch consisting of impervious material. She recommended a Negative 3 Determination because the existing area is altered buffer zone and the replacement with an addition would not cause further impacts to the existing wetland resource. Mr. Gaskin stated the

following findings for allowing work within the no-alteration zone, (1) he finds that the no alteration zone shall not change because the impervious surface shall be less than is currently on the lot with the removal of the deck and installation of a smaller addition, (2) all stockpiling and machinery shall reside outside the buffer zone, and (3) the work shall not cause an effect on the wetland resource. Mr. Dowse seconded and it was voted to approve 5-0.

46 South Main Street-Proposal to construct an ice skating rink:

Russell Waldron of Applied Ecological Sciences was present to represent the applicant, Miles Arnone. He presented the proposal to construct an indoor skating rink. The proposed building shall be constructed outside the 100' buffer zone, however, the access route shall be approximately 80'-100' from the wetland resource. The Agent stated she found a Vernal Pool and Bordering Vegetated Wetland (BVW) on the site (the project only falls within the buffer zone to the BVW). She recommended a Negative 3 Determination with special conditions to protect the wetland resource during construction. Mr. Gaskin moved to accept the Agent's recommendation. Mr. Lesser seconded and it was voted to approve 5-0.

144 Woodland Street-Proposal to perform soil testing and install a new septic system:

No one was present to represent the applicant. The Agent presented the proposal to complete soil testing and installation of new septic system. She recommended the Commission issue a Negative Determination because the wetland resource present is Bordering Vegetated Wetlands and is 150' from the limit of work. Mr. Gaskin moved to accept the Agent's recommendation. Mr. Lesser seconded and it was voted to approve 4-0.

Ms. Stiller left the room at 8:12 PM.

101 Farm Road-Proposal to replace the existing distribution box:

No one was present to represent the applicant. The Agent presented the proposal to complete the replacement of a distribution box. She recommended a Negative Determination be issued because there are no wetland resources present. Mr. Dowse moved to accept the Agent's recommendation of a Negative Determination. Mr. McClintock seconded and it was voted to approve 4-0.

218 Farm Road-Proposal to construct an addition to the existing dwelling:

No one was present to represent the applicant. The Agent presented the applicant's proposal to construct a new addition to the existing dwelling. She recommended a Negative Determination be issued because the wetland resource is over 300' from the limit of work. Mr. Gaskin moved to accept the Agent's recommendation of a Negative Determination. Mr. McClintock seconded and it was voted to approve 4-0.

Ms. Stiller returned at 8:20PM.

214 Farm Road -Proposal to install replacement septic system:

No one was present to represent the applicant. The Agent presented the applicant's proposal to construct a new septic system. The Agent noted that there are three wetland resources present abutting the property, Farm Pond and two Bordering Vegetated Wetlands. All work proposed would be outside the associated 100' buffer zones. However, the Agent stated the applicant shall erect a silt fence to ensure the work does not enter the 100' buffer zone. She recommended a Negative Determination be issued. Mr. Dowse moved to accept the Agent's recommendation of a Negative Determination. Mr. Gaskin seconded and it was voted to approve 5-0.

100 Prospect Street-Proposal to perform Soil Testing Only:

No one was present to represent the applicant. The Agent presented the applicant's proposal to perform soil testing. The Agent noted the property is surrounded by a shallow marsh wetland and the testing and access shall take place outside the 100' buffer zone. Therefore, the Agent recommended a Negative Determination. Mr. Gaskin moved to accept the Agent's recommendation of a Negative. Mr. McClintock seconded and it was voted to approve 5-0.

77 Harrington Ridge Road-Proposal to construct a replacement deck:

No one was present to represent the applicant. The Agent presented the applicant's proposal to construct a new wooden deck. She explained that during the site visit the limit of work was found to be 202' from a Vernal Pool. Therefore, she recommended a Negative Determination. Mr. Gaskin moved to accept the Agent's recommendation of a Negative Determination. Mr. Dowse seconded and it was voted to approve 5-0.

41 Kendall Ave-Proposal to install solar array:

No one was present to represent the applicant. The Agent presented the applicant's proposal to erect solar arrays for farming operations. At the site visit it was found by the Agent that the wetland resource is over 500' from the limit of work. Therefore, she recommended a Negative Determination. Mr. Gaskin moved to accept the Agent's recommendation of a Negative Determination. Mr. Lesser seconded and it was voted to approve 5-0.

47 South Main Street-Proposal to install Septic System:

No one was present to represent the applicant. The Agent presented the applicant's proposal to install a new septic system. She explained the Bordering Vegetated Wetlands is 125' from the limit of work. Therefore she recommended a Negative Determination. Mr. Gaskin moved to accept the Agent's recommendation of a Negative Determination. Mr. Dowse seconded and it was voted to approve 5-0.

56 Green Lane-Proposal to replace existing Distribution Box:

No one was present to represent the applicant. The Agent presented the applicant's proposal to replace the existing distribution box. She explained the Bordering Vegetated Wetland is 300' from the limit of work. Therefore she recommended a Negative Determination. Mr. Gaskin

moved to accept the Agent's recommendation of a Negative Determination. Ms. Stiller seconded and it was voted to approve 5-0.

44 Ivy Lane-Proposal to construct an addition and bulkhead:

The applicants/property owners were present to represent themselves. The Agent explained prior to the discussion of the Request for Determination the Commission must review the expired Order of Conditions, which has not received a Certificate of Compliance.

Expired Order of Conditions (DEP #283-256)-

The Agent explained that Mr. Tanaka and Ms. Fredheim submitted a RDA for the construction of an addition to their home. She stated during her site visit it was found that the project was within the jurisdiction of the Commission. It was also found that there is an expired Order of Conditions (OOC) for work done by the previous owners, which has never received a Certificate of Compliance from the Commission before it expired. Currently, there is one condition within the Order that the property owners have not complied with. This is condition #30, that requires the septic leaching field to be maintained as a wildflower meadow. It is currently lawn. It was noted that because of the outstanding Order that has not been complied with, that this constitutes a violation. The Commission under Section 5.1.1 Submission Requirements has the ability to not accept the RDA if there are outstanding violations, enforcements, etc. The Commission began discussion on the Order of Conditions. The Agent provided recommendations for compliance with the Order and asked if the Commission would like to issue a non-punitive Enforcement Order requiring the property owners to complete specific work under condition #30.. The Commission discussed the old Order and the conditions. Mr. Dowse wanted to record it. Mr. Lesser stated that he does not believe it needs to be recorded and would find it acceptable if the owners complied with some level of mitigation comparable to that of condition #30. Mr. Gaskin would like to see the mitigation equal that of the required 2100 square feet of wildflower meadow. It was noted that the Commission does not want to set a precedent for reducing the mitigation required in an Order once it is expired. It was also noted that some flexibility was possibly warranted as the OOC mistakenly had not been recorded by the previous owners and therefore was more difficult to uncover. Mr. Gaskin moved to issue a Enforcement Order requiring the property owners complete some level of remediation equivalent in quality and quantity and agreed to allow the consideration of the RDA proposal for a new addition because they will be required to complete the mitigation under the enforcement order. Ms. Stiller seconded and it was voted to approve 5-0.

The Agent presented the applicant's proposal to construct a new addition and bulkhead. She recommended a Negative 3 Determination with conditions, (1) erosion controls consisting of silt fencing on the south eastern side of the dwelling for the bulkhead construction and along the western side of the dwelling for the construction of the addition, (2) machinery only to be allowed in designated locations, (3) stockpiling within the area protected by erosion controls only, and (4) placement of native shrubs within the 0-50' no alteration zone for a natural buffer zone of approximately 100 sqft. Mr. Gaskin moved to accept the Agent's recommendation of a Negative three with conditions. Mr. McClintock seconded and it was voted to approve 5-0.

Emergency Certification**Goulding Street West Culvert- Replacement of Culvert under Emergency Certification**

The Agent presented Ed Wagner, the CM&D Directors request for an Emergency Certification for the replacement of a collapsed culvert that has begun to undermine the roadway and is affecting an adjacent septic system and well, resulting from the impounded water. Mr. Wagner presented how he proposed to abate the emergency. The Commission discussed the area and the work. Mr. Gaskin stated the following findings:

1. The collapsed culvert has caused water to become impounded and it is now threatening the flooding of the adjacent properties well and septic system, of which is an immediate public health issue;
2. The proposed replacement culvert shall be replaced in-kind and all work permitted shall be only that required to abate the emergency; and
3. Weather conditions are cause for immediate replacement of culvert to allow the safe passage of the public along town roads.

Then moved issue the emergency certification based on the findings. Mr. Dowse seconded and it was voted to approve 5-0.

Discussions**Discussion #1- David Carter River Farm Forestry**

David Carter was present for the discussion that he requested. The property owners were not present for the discussion. Mr. Gaskin asked him to explain what he would like to discuss with the Commission. Mr. Carter explained that he wants the Commission to rescind the letter written by the Commission in 2010 after the review of the Forestry Cutting Plan for River Farm, 262 South Main Street. He believes the letter to be redundant with the State requirements and intrusive. Mr. Lesser commented that the letter states conditions that are either required by the State or relays the Commission recommendation to the State Forester who is reviewing the proposed project. He reiterated the letter reflects the Commission's right to offer comments to the State Forester who reviews the Forestry Stewardship Plan. The Agent stated that she does not understand why this is a concern if the comments made by the Commission in the letter are required for compliance under the State laws. Mr. Carter stated he is requesting the letter be revoked and that he is not hiding work and would not violate the State laws. Mr. Gaskin stated he understands what Mr. Carter is asking, but does not believe there is a reason to revoke the letter, as it calls for no additional requirements beyond those of Massachusetts law except for requesting that the Agent have the right to inspect the work given its proximity to wetland resources. Mr. Lesser said that the issue of any Agent inspections is one that the property owners should directly comment on. Mr. Carter asked if he could call the State Regional Forester to come and inspect more often and if so would this satisfy the Commission. Mr. Lesser

and Mr. Dowse discussed if Guy LaChance, State Regional Forester completing more site visits would change the recommendation under the letter. Mr. McClintock asked if anyone wanted to reconsider the letter. The present Conservation Commission members declined to reconsider. Mr. Gaskin explained to Mr. Carter that it was the Commission's understanding that no one was willing to reconsider the contents of the letter, but that Mr. Carter's opinion has been duly noted.

Discussion # 2 - Camy Ruck for Minutes Clerk Position

Camy Ruck was present for an interview for the Minute Clerk position. Mr. Lesser suggested having Ms. Ruck work on a consultant basis, until the Commission reviews a few drafts of her meeting minutes. The Agent asked Ms. Ruck to attend the December 1st meeting and to arrive at 6:30 PM.

Discussion #3 - Sherborn Wetlands Bylaw – Section 7.7 Warrant Article

Mr. Gaskin explained the background behind asking Town Counsel for an opinion, which was that Section 7.7 should be stricken from the Bylaw. Mr. McClintock explained the Commission can rely on the Massachusetts Wetlands Protection Act for defining Agricultural Exemptions. Mr. Gaskin asked that Section 7.8 on Forestry be considered by Town Counsel as well for the same reason.

Public Hearings

Public Hearing #1- CM&D GNOI (continued from 10/4/11, 10/20/11, 10/26/11):

Mr. Gaskin opened the hearing at 8:33pm. The Commission began the discussion with the questions for Mr. Wagner from the 10/26/11 meeting. The Commission had reviewed the list of bullet points for activities permitted under the Notice of Intent and had questions as to whether #8 or #9 were necessary. Mr. Wagner and the Commission discussed removing bullet points #8 & 9. It was decided to keep similar language but add to bullet points #1 and #5 and remove the bullet points #8 and #9.

Mr. Gaskin left the meeting at 8:45PM.

The Commission discussed adding the word "repair" to Section 4.7 for culvert and outfall work, so repairs to culvert and outfalls may be permitted under the General Notice of Intent. The Commission added the word "repair" to the title of Section 4.7 for culvert and outfall work and removed it from 5.1.

The Agent was asked to make the corrections discussed.

Mr. Lesser moved to continue the hearing to December 15th at 7:30PM. Mr. McClintock seconded and it was voted to approve 4-0.

Public Hearing # 2 - 18 Wildwood Street Proposal to install Septic System (continued from 11/2/11):

Ministerial opening and continuing only, after meeting adjourned because of a lack of quorum.

Mr. McClintock opened the hearing at 9:15pm and moved to continue it to December 1st at 8:15pm. Mr. Dowse seconded and it was voted to approve 3-0.

Approval of Minutes of October 26, 2011:

The Commission discussed amendments to the minutes. Mr. Kelly moved to approve the minutes as amended. Mr. Lesser seconded and it was voted to approve 4-0.

Approval of Minutes of November 9, 2011

The Commission discussed amendments to the minutes. Mr. Kelly moved to approve the minutes as amended. Mr. Dowse seconded and it was voted to approve 4-0.

Adjournment: There being no other business to attend to, Mr. Lesser moved to adjourn at 9:05 P.M., Mr. McClintock 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

Determinations147 Hunting Lane

- “Topographic Plan of Land 147 Hunting Lane, Sherborn, MA” by R.E. Cameron & Associates, dated October 1, 1999 with new hand drawing (received by Commission on October 5, 2011)
- New hand drawing received by Commission on October 31, 2011

46 South Main Street

- Site Plan 46 South Main Street, Sherborn, MA” by Paul Robinson dated September 30, 2011 and revised 10/6/11 and 10/25/11
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44 Ivy Lane

- “44 Ivy Lane, Sherborn, MA” received by Commission on November 3, 2011
- “Plan of Land in Sherborn, MA” dated December 15, 1966 with new hand drawing

Public HearingsPublic Hearing #1 – CM&D GNOI Routine Town-Wide Maintenance

- Application for General Notice of Intent “Routine Sherborn Community Maintenance & Development Department Operations and Maintenance”, dated October 21, 2010, revised September 8, 2011.

DiscussionsDiscussion #1- David Carter River Farm Forestry

- Letter from David Carter dated October 13, 2011 received by Commission October 18, 2011
- Letter from the Commission to Joe Perry Service Forester, dated September 8, 2010
- Forestry Cutting Plan for 262 South Main Street River Farm, dated August 18, 2010
- “Farming in Wetlands Resources Areas” issued by the Commonwealth of Massachusetts, DEP, DEM and DFA Revised 1996, pg 5-13 through 5-14
- MACC handbook, pages 388-390
- Massachusetts General Laws Chapter 132- Massachusetts Forestry Cutting Practices Act

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