

Conservation Commission



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

March 21, 2013

Sherborn Town Hall

7:00 P.M.

Minutes of the Meeting

Members Present: Michael Lesser (acting Chair), Andrea Stiller, Kelly McClintock, Susan Tyler, Alex Dowse, and Bridget Graziano (Administrator/Agent)

Absent Members: Steve Gaskin and Julia Jacobson

Guests: Kitty Sturgis, Eliot Taylor, Dennis Morgan, Pat Panza, Scott Parker, Lisa Campe , and Alex Hurt

Mr. Lesser called the meeting to order at 7:01 p.m.

Request for Certificate of Compliance:

14 Pleasant Street

The property owner has requested a Certificate of Compliance be granted for an expired Order of Conditions. The Agent presented the original proposed project stating that over a decade ago, the owner constructed a new house, fencing, and installed an in-ground pool. The Agent conducted a recent site visit and determined that a portion of the driveway had been reduced within the buffer zone, but widened in another. Overall, the amount of impervious surface (driveway) in the buffer zone was reduced from the original proposed square footage. She also noted that part of the fencing for pool (originally proposed to run the circumference of the pool now encompasses the entire back yard and outside the buffer) is within the outer buffer zone. Mr. Morgan, the property owner, stated he had every intention to comply with the permit but wanted to be honest and stated he did not realize he needed to file for a Certificate of Compliance as his contractor had been in charge of the project.

Mr. Morgan requested the Commission considered reducing the fee from \$1500 to \$200 and asked they based the fee off the amount of time it took to review and process the application. Ms. Tyler moved to reduce the fee from \$1500 to \$200. Mr. McClintock seconded. Mr. Lesser asked

for discussion. He then stated that the reason for the reduction in fee should be based on the lack of notification to applicant of the pending expiration. The Agent stated that there is no requirement to notify applicants of the expiration, however, this a policy the Commission has been practicing for over 6 years. But this project is over 12 years old, so there was no kept record of the Orders for the Agent to be able to send notification the Order was expired. She also noted that researching this case did not result in significant amount of work, as other cases often do. Therefore, she could understand reducing the fee to \$200 based on the amount of work performed. Mr. Lesser then stated that the reduction would also be based on the amount of time spend by Agent to review and process application. With the motion on the table the Commission voted to approve 5-0.

The Agent recommended issuing a Certificate of Compliance, stating that with the reduction of impervious surface of the driveway in the buffer zone is sufficient to mitigate for allowing for the addition of the fencing and therefore no significant affect on the interests of the Act and/or Bylaw. There was no existing buffer disturbance from the fence. She also noted there is one condition that will remain in perpetuity (as stated in the Order), that no herbicides, pesticides or fungicides may be applied without the authorization of the Commission within the buffer zone.

Mr. Dowse moved to grant the Certificate of Compliance. Ms. Tyler seconded the motion and it was voted to approve 5-0.

Discussions:

Discussion #1 – Reappointment of Andrea Stiller to the Ground Water Protection Committee (GWC)

Mr. Lesser moved to nominate Ms. Stiller to the GWC. Mr. McClintock seconded the motion and it was voted to approve 5-0.

Discussion #2 – 237 Washington Street, Alex Hurt

Alex Hurt introduced himself and the new owner of 237 Washington Street. Mr. Hurt explained what his company does and what his plans are for the property. He stated that he already has removed large amounts of debris and is now seeking the Commission's advice on how to proceed with clean up fill and debris within jurisdictional areas, in accordance with the issued Enforcement Order (EO), dated November 3, 2009. The Commission discussed the long, well-known history of issues with the former owners. The Agent reported that the Commission had issued several Enforcement Orders, beginning in June of 2009, when dumping was first observed. It appears that debris from old construction sites; concrete, asphalt, plywood, roofing materials, etc., had been dumped on the property for years. There are aerial photographs (from Google Earth) dating from 1995-2008 showing changes in the area, which is now overgrown with vegetation. Mr. Hurt and the Commission were concerned about possible contamination in the soil, adjacent surface waters, and groundwater. The Commission stated they would require soil, surface water and groundwater monitoring/testing. Mr. Hurt agreed he would want to do testing to ensure the lot was safe.

The Agent and Ms. Stiller thought performing a Phase I Environmental Assessment would help determine where soil borings would be taken on the site. Once the applicant has developed a testing plan, the Commission can issue an amendment to the Enforcement Order requesting the testing and filing of a Notice of Intent to clean the area within the Commission's jurisdiction. Mr. Lesser asked what would need to be done before the amendment of the EO and what would be required under the amended EO. The Agent stated that before the EO is amended the applicant should delineate the wetlands to determine the exact jurisdictional areas for testing, complete a Phase I Environmental Assessment, complete a site visit with the Agent and Commission, and then draft plan for proposed testing locations. Ms. Tyler asked for erosion controls to be set prior to testing. The testing and remediation will require the filing of a Notice of Intent, and this will be required under the new amended EO. Mr. Hurt noted that he would like to keep the project in motion and wondered if there was any excavation he could do in the fill piles to determine the extent of debris buried. The Commission agreed. The Agent then recommended the applicant also coordinate with the Building Inspector and the Board of Health before doing any work as these Departments may have requirements on testing if the site was to be developed. Mr. Lesser reviewed what Mr. Hurt needed to do prior to the Commission amending the EO: delineate wetlands, set up site visit with Agent and Commission, erect erosion control, complete investigation digging within fill piles only, and draft plan for soil boring locations for Commission to review. The Commission will then review and schedule on next available agenda.

The Commission asked the Agent to consult with Mr. Hurt about the allowed scope of work and the Commission will plan a site visit.

Discussion #3 – Sherborn Wetlands Bylaw Warrant Article Update

The Commission discussed ambiguity in the inclusion of the words "riverfront area" into Section 1 of the Bylaw. Mr. Lesser proposed a change to an amendment voted on by the Commission previously. He proposed moving the words "Riverfront Area" from earlier in Section 1, paragraph 2 to later in the paragraph so it is clear that the Bylaw is referring only to the riverfront area of 200 feet, with no additional 100-foot buffer, as follows:

"No person shall remove, fill, dredge, alter or build upon or within one hundred feet of, any bank, ~~riverfront area~~, fresh water wetland, beach, marsh, meadow, bog, swamp, or on or within one hundred feet of lands bordering on any estuary, creek, river, stream, pond or lake, or any land under said waters or on or within one hundred feet of any land subject to storm flowage, flooding or inundation, or within one hundred feet of the 100-year storm line **OR WITHIN THE RIVERFRONT AREA**, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written application for an order of conditions permit to remove, fill, dredge, alter or build upon, and receiving and complying with a permit issued pursuant to this By-Law."

Mr. Lesser moved to make the change to clarify the language in the article. Ms. Tyler seconded the motion and it voted to pass 4-1. Mr. Dowse opposed.

Administrator/Agent's Report:

- **Land Management Update**

The Land Management Task Force will meet next week. There will be more to report on April 4th.

Mr. McClintock asked how to indicate discussion on the status of our plan for the use of the Conservation Trust Fund. Mr. Lesser stated that he must contact the Commission's Advisory liaison to look into how to proceed with getting the plan titled, "Rejuvenating Sherborn's Forests and Reservations for Public Enjoyment" approved by Advisory and BOS.

- **Whitney Farm, LLC update report**

The Agent reported that the project is up to date with all requirements of the Order of Conditions. The Agent received monitoring well data and reviewed it with Ms. Stiller. Quarterly tests are required for two more years, then if there are no hits for VOC's then the testing will be required annually. Ms. Stiller will contact the DEP about Cadiallac Paints required testing as a Tier 1A. The Agent noted that the required testing for VOC's may not be enough as it does not include testing for metals which are present in paint, such as lead, cadmium, etc. She then stated that Commission at this time could not require this testing unless it reopened the hearing and amended the Order based on new information. It was noted that the representatives of the project will attend the next meeting to give a complete update.

- **Massachusetts Wetlands Regulation Reform**

The Agent suggested the Commission review the proposed regulation reforms for wetlands regulations and the 401 Water Quality Certification. There are changes to buffer zone exemptions, such as with highway maintenance. The reform also fast tracks the process for proponents filing with the DEP for Orders of Conditions and 401 Water Quality Certifications.

- **Letter from BOH to David Parrish dated February 13, 2013**

The Commission was copied on a letter regarding a request for information from the BOH on their Regulations regarding installation of new septic systems near wetland resources.

- **Letter from resident of South Natick to the Commission, dated October 29, 2012**

The Agent presented a letter from a resident of South Natick, who suggested installing "watch out for wildlife" signs along Route 16. The Agent noted that some towns put up similar signs seasonally. Mr. McClintock suggested adding the issue to the agenda of a future meeting.

- **March 23rd Public Hearing with Advisory Committee**

Mr. Lesser and others will attend the hearing. The Commission's budget and warrant article are going before Advisory.

- **FY14 Budget update and FY13 Current Budget Update**

The Commission met Advisory's 1% FY14 budget guideline.

Mr. Lesser sent a request for a reserve fund transfer to cover the additional cost of \$2,464 (minus a \$500 expected savings) for hiring a Temporary Agent during the Agent's maternity leave.

Approval of Minutes of February 7, 2013:

Ms. Tyler moved to approve the minutes as amended. Mr. McClintock seconded the motion and it was voted to approve 5-0.

Adjournment:

There being no other business to attend to, Mr. Dowse moved to adjourn the meeting at 8:41 p.m. Ms. Tyler seconded the motion and it voted to pass 5-0.

Respectfully submitted,

Jessica Pettit
Minutes Clerk

Documents Presented at the March 21, 2013 Public Meeting

All documents shall be kept in the Conservation Commission Office files.

Request for Certificate of Compliance**14 Pleasant Street**

- Request for Certificate of Compliance Form 8A for 14 Pleasant Street, rec'vd by Sherborn Conservation Commission on March 4, 2013
- Letter from Oxbow Associates, titled, " Request for Certificate of Compliance 14 Pleasant Street, Sherborn, MA 01770, dated February 12, 2013
- Plan, titled "As Built Plan of Land in Sherborn, MASS." by Sullivan Surveying Company, LLC, dated June 25, 2012

Discussions:**Discussion 2**

- Letter to Mr. Recine from the Conservation Commission, dated November 3, 2009
- Enforcement Order issued on November 3, 2009
- Attachment to amended Enforcement Order, dated November 3, 2009
- Pictometry pictures from April 2008 of 237 Washington Street
- Pictures submitted to the Conservation Commission in May 2009
- Memo from Groundwater Protection Committee to the Conservation Commission, dated November 1, 2011
- Assessors Map January 31, 2008 with hand drawing of intermittent stream

Discussion 3

- New proposed language for Revision of Section, Paragraph 2 of the Sherborn Wetlands Bylaw

Agent/Administrator's Report

- Public Notice: Wetland/Waterway/Water Quality Regulations
- Email from DEP, dated March 7, 2013 on Regulatory Reform, titled "MassDEP Regulatory Reform: Revisions to Wetlands, Waterways, & Water Quality Regulations
- Letter from Board of Health to David Parrish, dated February 13, 2013
- Letter from South Natick Resident Emma Milford to the Sherborn Conservation Commission

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