Town of SHELBURNE

Conservation Commission

MINUTES

Regular Meeting ~ September 10, 2019

Present: Norman Davenport, Ellen Jenkins, Steve McCormick, Allan Smith, John Richardson

Absent: None

Administrative Assistant: Faye Whitney

Guests: Mark Cadran, Richard Cadran, William Mazanec

Chair Norm Davenport opened the meeting at 7:04 p.m. A quorum was present.

**Minutes**

A motion was made by Steve, seconded by Allan, to approve the minutes of August 13, 2019.

Voting in favor: Norm, Ellen, Steve, Allan

Opposed: None

Abstentions: John

**Possible Wetland Violation – Cadran/Ormond**

As he is an abutter to the property under discussion, and a relative of Richard Ormond, Norm recused himself from all votes and/or decisions on this matter.

A motion was made by Steve, seconded by John, to appoint Allan Smith as Chair for this meeting.

Voting in favor: Norm, Ellen, Steve, Allan, John

Opposed: None

Abstentions: None

A letter of complaint, dated August 14,2019 had been received from Mark Cadran. This letter referred to chicken manure from the Ormond property that may be polluting Dragon Brook. Mr. Cadran asked the Commission to look into the matter with regard to the wetlands and aquifer.

A site visit had been conducted earlier in the evening, with Norm, Ellen, Allan, and Steve in attendance.

Mark Cadran read the following statement:

“My name is Mark Cadran, property owner of 25 Tower Road Shelburne Ma.  
The reason why I am here is because of my neighbor Richard Ormond of 15 Tower Road has and continues to deposit chicken feces, and urine soaked bedding (fill) on a documented wetland.

This area is documented as a state recognized wetland. This has been determined by the following, the MassDEP Wetland Map, the Town of Shelburne Municipal Map, the MassGIS mapping system of Western Mass and by researching MGL Chapter 131, wetlands protection act. Based on these maps, this area has been verified as a wetland by the government agencies.

I also spoke with the section Chief of MassDEP Mr. Cameron and agent Mr. McKenna and based on the aforementioned information and documentation, they both have concurred that the location of the manure pile is in an area in violation of the wet lands protection act.

Based on the location of the pile, it is in violation by law, because it needs to be 100' from the wetland limit, known as the buffer zone. The pile also has to be beyond 200' from the edge of a perennial stream or brook, in this case, Dragon Brook. The 200 foot limit described by the wetlands protection act, was also brought to my attention by Commission Member Al Smith, which he stated "it could be well over 200'". This was also verified by both members of MASSDEP.

The estimated 500 pounds of chicken feces, and urine soaked bedding is not only directly or indirectly leaking nutrients (violation) into the purifying characteristics of the wetlands, but by definition constitutes fill, which under the wetland act, "no one may “remove, fill, dredge, or alter” any wetland, floodplain, bank, land under a water body, land within 100 feet of a wetland, or land within 200 feet of a perennial stream or river" (MGL 140). Also, verified by both MASSDEP members. MassDEP Chief Camera also stated, an easy characteristic of a wetland is any saturated ground near or around a brook to include vegetation in the surrounding area.

The consensus of the commission was the area is a wetland and member Mr. McCormick stated "this is clearly a wetland". The preliminary inspection by chair Norman Davenport stated the pile is located outside of the wetland buffer zone, which it is not correct because the buffer zone is measured from the outer limit of the wetlands perimeter. This is secondary to the 200' from the bank of a perennial brook (Dragon).”

Added information received after the meeting:

“During the meeting, a question was brought forward by me, has the edge of the wetland been established? This has been clearly established by the 3 maps. Commission member Smith stated, the only way the outside perimeter can be determined is by a botanist. A botanist by definition is "an expert in or student of the scientific study of plants". Nowhere does it say a botanist determines the outer perimeter of a wetland.

I reached out to the University of Massachusetts Amherst, MassDEP and researched through the US Army Corp of Engineers and a professional environment consulting company that performs wetland delineation. The term wetland “delineation” is usually used to refer to determination of precise boundaries on the ground through field surveys. A wetland delineator uses the wetland regulatory definition and any supplementary criteria.

In conclusion based on the site visit, all the information forwarded to you, to include maps, it has been determined that the area in question is a wetland and has well defined boundaries. Plus, the pile of chicken feces (fill) being piled in the wetlands, is a violation of the Wetlands Protection Act.”

In response, Allan explained that the Ormond’s chickens did not qualify as an agricultural enterprise, but if it did qualify as agricultural, manure could be spread right to the water’s edge and some times of year. Allan said he thought Mr. Ormond could be more judicious in where he stores his manure and the Commission will issue some sort of finding on the matter. However, Allan explained that litter and bedding was not the same as manure, and in fact the shavings sequester the nitrogen in the manure. Allan said he had observed the manure pile and saw no reason for concern. Allan is a crop consultant and has been dealing with nitrogen for 35 years. While he felt that the pile was not a substantial threat to the water supply, he did think the pile should be relocated. Steve agreed that Mr. Ormond has alternate areas where the pile could be relocated and agreed that the pile should be moved.

Richard Cadran said he had come to the Commission for conflict resolution and had heard a positive response. He asked how the extent of wetlands could be determined and was told by Allan that a wetlands scientist would need to be hired to do a delineation of the wetlands and buffer zone.

Allan said the question was whether there was enough manure to qualify as “dumping.” Steve said there was little doubt that the manure pile was in the buffer zone. Allan noted that both the Ormond and Cadran properties were jurisdictional and the Commission needed to be fair to both sides.

Ellen asked whether the Cadrans had had a water sample tested and was told they were first waiting for the Commission to make a decision.

Norm explained that when the Commission receives a letter it is typical procedure to take a measurement as the first step. By receiving the letter from Mark Cadran, he assumed be had the authority to take a measurement. He had sent an email to the Commission after taking the measurement for informational purposes, but there had been no discussion.

**RDA Meeting for William Mazanec**

As an abutter to the property in question, Steve recused himself from this portion of the meeting.

Bill Mazanec explained that he had purchased a piece of land from James Stacy, who had kept it mowed but did not use it as a pasture. Bill would now like to pasture cows on the property. This pasture is four acres in size, with one acre being on the far side of Great Brook. Bill wanted to be able to access the far side of the brook with fencing materials. He did not want to drive through the brook, but wanted to construct a bridge using telephone poles and planks. The proposed bridge would be 20 feet in length in order to keep it away from the stream banks. He also plans to remove an existing culvert which no longer serves a purpose. There had been a bridge over the stream in the past. The bridge and culvert are insufficient for times of high water.

A motion was made by John, seconded by Ellen, to authorize William Mazanec to replace his bridge, as described in an RDA application dated August 5,2019, and finds a Negative 2 Determination.

Voting in favor: Norm, Ellen, Allan, John

Opposed: None

Abstentions: Steve

It was agreed that Allan would draft a letter to Richard Ormond asking that his manure pile be moved. He will also ask Mark Cadran to remove debris from the wetlands on his property. The Commission will discuss the letter at its next meeting in October.

The next meeting was scheduled for October 8.

At 8:15 p.m. Steve, seconded by Norm, made a motion to adjourn the meeting. The vote in favor was unanimous.

Respectfully submitted,

Faye Whitney

Administrative Assistant