

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **04/28/11** – Approved 5/12/11

Location: Ayer Town Hall, 1st Floor

Members present: Bill Daniels (BD, Chair), Dave Bodurtha (DB, Vice-Chair), George Bacon (GB), Takashi Tada (TT), Jessica Gugino (JG, Clerk), Becky DaSilva-Conde (CA, Conservation Administrator)

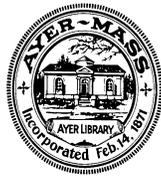
APAC taped: Yes (after the first 15 minutes)

7:05 PM – Open Meeting

- **Pledge of Allegiance**

- **Confirmation of the Agenda**
 - GB moved to confirm the agenda as posted; JG 2nd.
 - Motion approved unanimously.

- **Discussion: Proposed “Stretch Code” – Energy-Efficient Building Code Bylaw Amendment**
 - Selectwoman Carolyn McCreary, member of the Ayer Energy Committee, gave a presentation describing the Stretch Code Bylaw Amendment which appears as Article 33 on the Spring Town Meeting Warrant.
 - Adding support to Ms. McCreary’s explanation was HERS Rater Ted Staples.
 - Ayer has already met 4 out of 5 Green Community requirements:
 - zoning for alternative/renewable energy generation, research and development
 - an expedited permitting process for energy projects
 - a plan to reduce energy use by 20% over 5 years
 - a plan to purchase only fuel-efficient vehicles
 - Passage of the Stretch Code would fulfill the fifth requirement and make Ayer eligible for Green Community grant funds to support energy related municipal projects.
 - Ms. McCreary said the currently-used 2006 base building code is prescriptive, mandating specific energy efficiency ratings for building materials and systems (eg insulation, windows, lighting, heating/cooling systems, etc.).
 - The Stretch Code is instead a performance-based code based on the combined effect of multiple efficiencies.
 - It would apply to new residential and commercial/industrial construction as well as major addition and renovation projects.
 - Using the Stretch Code, each residential construction project is certified by an independent HERS Rater and given a ‘HERS’ number (Home Energy Rating System).
 - The HERS number is produced via a 3-step process in which the HERS Rater reviews proposed building plans and related performance criteria (windows, insulation, etc); insulation inspections are performed to test the air barrier; and finally, tests (eg, blower-door and duct tests) are performed to verify that the planned HERS number has actually been achieved.
 - Ms. McCreary said that while initial costs are raised, overall money is saved through the implementation of energy efficient measures.



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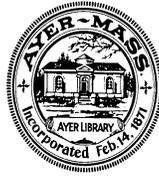
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- Mr. Staples said that the current base energy code will be revised in 2012 regardless of whether the Stretch Code is adopted statewide; the new base code could very well have aggressively stricter new prescriptive codes that lack the greater flexibility of the performance-based HERS rating.
- CA suggested the sooner Ayer adopts the Stretch Code, the sooner it becomes eligible for grant money and, given grant money is competitive, it would be better to do this while the number of competing towns in the pool is smaller.

- **Public Hearing: RDA -- Marc Gautreau, 135 Oak Ridge Drive**
 - Mr. Gautreau, with representative Mike Gould, appeared before the Commission.
 - Mr. Gautreau plans to add a 12 ft. deep x 16 ft. wide deck to the back of his house, work that takes place approximately 49 ft. from Flannagan Pond.
 - Mr. Gould will use a two-man hole digger to dig 9 deck posts, 3 on a beam.
 - DB confirmed that no tree clearing will take place.
 - TT asked what would happen with the soil taken from the post holes.
 - Mr. Gautreau plans to spread the soil to cover up uneven portions of his lawn.
 - CA did a site inspection and confirmed that there is a dip in the land close to the house, where the work will take place, then the land rises up before it again slopes down to the pond. Mr. Gautreau has established lawn up to the last 5 or 6 feet before the pond.
 - BD said the primary concern is to prevent soil from washing down into Flannagan Pond.
 - Mr. Gautreau and Mr. Gould were instructed to install a silt fence and haybale line at the top of the final downward slope, with the silt fence on the pond-side of the barrier and running underneath the haybales.
 - BD said the haybale line should extend an extra haybale on both sides beyond the 16 ft. width of the planned construction; CA added that a horseshoe-curved line would be more efficient at catching soil runoff.
 - GB moved to issue a Negative Determination of Applicability; TT 2nd.
 - DB made a friendly amendment to include the conditions of a haybale/silt fence line along with any temporary soil pile being stored well away from the pond.
 - Motion approved unanimously.
 - Mr. Gautreau gave CA a check for \$54.50 to pay for the legal ad notice.

- **Public Hearing: NOI – Epic Enterprises, Inc. (Pepsi Co.), 11 Copeland Drive**
 - David Wittliff and Mark Davies, of the Stahlman Group, and Steve Sears, of David E. Ross Associates, were present.
 - The NOI for Epic Enterprises is for work encompassing a 47,000 sf addition to the east side of the plant; adding a new trailer storage lot by Kaufman Way; paving an existing gravel parking lot; and upgrading a pair of existing stormwater detention basins to a 3-step treatment system that complies with new Mass DEP requirements.
 - Mr. Davies said the larger basin is already oversized and has plenty of capacity.
 - Parking areas are to be regraded and asphalt curbing added, so that no stormwater runoff will bypass the 3-step treatment system.
 - In March 2011, Mr. Sears did wetland delineation and flagging near Day Brook, which runs along the northern side of the plant facility.

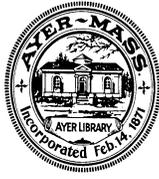


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- BD asked about the status of Day Brook and its classification as an intermittent or perennial stream.
 - Mr. Sears said the NOI was operating under the assumption that Day Brook is an intermittent stream.
 - BD and TT noted that the USGS map of 1986 indicates Day Brook is a perennial stream.
 - Mr. Sears presented documentation from prior ConsCom rulings in 1998 (Grossman Companies) and 2004 (J. F. H. Real Estate Trust) that classified Day Brook as intermittent.
 - As a result of these rulings, Mr. Sears did not do anything further to establish Day Brook as intermittent.
 - BD said that wetlands grow and change over time; TT asked for actual documentation that proves Day Brook is intermittent.
 - Mr. Sears said such documentation would have to run over the course of a year; right now the stream is wet and running as is typical for spring.
 - Mr. Wittliff said the company hopes to begin construction in July and is concurrently going through the Planning Board process.
 - BD noted that, whether the construction area is determined to be riparian or not, it won't make much difference for this particular proposal, especially given that the majority of work is outside of 200 ft. BD added that it would be useful to have this information regardless so that ConsCom can keep track of actual environmental conditions as they evolve over time.
 - CA said she had no real concerns other than the status of the stream (intermittent vs. perennial) but agreed with BD that most of the work planned falls outside of a possible riparian zone designation.
 - The plant manager for Epic Enterprises, John Blood, who joined the meeting late, interjected that the company has a well onsite from which they withdraw water, and as a result the company monitors both rainfall and brookfall from May to October.
 - Monitoring reports are given to Mass DEP in February of each year.
 - Mr. Blood offered to share this documentation with Mr. Sears.
- A site walk was arranged for Saturday, May 14, at 9 a.m., meeting in the employee parking lot off of Copeland Drive.
- CA asked if stormwater calculations had been submitted to DPW Superintendent Dan Nason.
 - Mr. Davies said they had been submitted earlier in the day.
 - BD asked CA to invite Mr. Nason to the site walk on the 14th.
- GB moved to continue the Public Hearing to 5/26; DB 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd): NOI – Kohler Place, Wright Road, Sandy Pond Investment Trust**
 - CA is still working on finalizing the draft OOC.

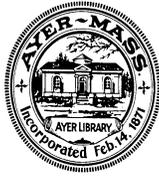


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- TT asked a procedural question: if the NOI is still under MEPA review (Mass. Environmental Policy Act), should the Commission issue an OOC before this process is complete?
 - GB mentioned Sandy Pond III, where the MEPA review decision was incorporated into the OOC.
 - CA will add a phrase to the OOC where the MEPA permit number is to be inserted; the OOC can then be issued immediately after the permit number is added so that the builder will not be held up by the Commission's meeting schedule.
- GB moved to continue the Public Hearing to 5/12/11; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd): Draft OOC for Stratton Hill subdivision**
 - CA has sent a copy of the draft OOC to Attorney Bob Collins, representing Moulton Construction, for review.
 - GB moved to continue the Public Hearing to 5/12/11; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Friends of Flannagan Pond (FOFP)**
 - Chuck Miller spoke on behalf of FOFP, which has placed a citizen's petition, Article 38, onto the Town Warrant for Spring Town Meeting on 5/9/11.
 - Article 38 asks for \$35,000 in funding for pond weed control exclusively on Flannagan Pond.
 - Neither Mr. Miller nor any other representative from FOFP, nor the BOS, has appeared before ConsCom prior to this meeting to discuss this issue.
 - Mr. Miller said that FOFP's concern is single-focused: weed control and dam management to maintain the health of the flooded wet meadow that is Flannagan Pond.
 - Mr. Miller said FOFP had set out to obtain funding for weed control in the following fiscal year, however the BOS's unexpected granting of \$35,000 in UDAG funds on 4/19 now makes it possible to perform weed treatment this spring instead.
 - The BOS, through Town Administrator Pontbriand, has said it wants this treatment done ASAP.
 - Mr. Miller explained that FOFP has been forming alliances with various Town boards and commissions.
 - FOFP has appeared before the BOS and FinCom asking for their support.
 - Mr. Miller acknowledged that his appearance at this very, very late date before ConsCom was 'after the fact' but expressed his opinion that ConsCom now has what it needs to move forward.
 - The purpose of this meeting was for ConsCom to approve an RFP for Flannagan Pond weed treatment.
 - Mr. Pontbriand's email to ConsCom, dated 4/28/11, offered two scenarios for moving forward.

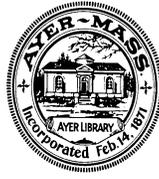


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- The first scenario was to issue an independent RFP for the work on Flannagan, separate from the RFP issued by ConsCom earlier in the month for the treatment of Sandy Pond and Pine Meadow Pond.
- The second scenario was to add the Flannagan Pond work onto the ConsCom's RFP as an addendum.
 - Mr. Pontbriand is currently awaiting a ruling from Town Counsel (Kopelman & Paige) as to whether the FOFP RFP must be issued independently or can be added as an addendum to ConsCom's RFP.
 - CA noted the process is not as easy as FOFP and the BOS thought, given there are legal requirements for how to produce legal notices versus addendums, and that specific time periods are required for the public notice process.
- Mr. Miller asked about the issues affecting the removal of boards in Balch Dam to lower pond levels for weed treatment.
 - BD explained that there are state guidelines regulated under Mass DEP.
 - ConsCom is allowed to remove the Balch Dam boards for winter lowering no earlier than Nov. 1; boards are to be replaced after April 1 as conditions permit.
 - Mr. Miller asked what DEP's objections would be to the removal of boards during spring/summer for weed treatment.
 - BD said the state has an interest in preventing local communities from artificially controlling water levels in the ponds; he added that the Fire Chief has concerns for emergency pumping access as well.
- BD suggested ConsCom move forward with approving RFP supplied by FOFP and approved by the Town Administrator.
- GB moved to accept the RFP as written; after a pause, TT 2nd the motion for discussion.
- Lengthy discussion followed.
 - JG asked about FOFP's interest, as stated in other forums, to deploy and use hydroraking as part of the weed treatment for Flannagan.
 - ConsCom has concerns with this as its understanding is that this could make things worse given than certain invasive weeds, such as milfoil, re-root and proliferate when broken into fragments.
 - Mr. Miller said hydroraking was not part of this RFP.
 - JG asked about public access to Flannagan Pond.
 - Mr. Miller said there are points of access across from Ayer Moving & Storage and on Oakridge Drive near the sewage pumping station.
 - It was acknowledged that these points of access are not readily apparent to the public.
 - JG raised the issue of the CA's limited time in the office and how ConsCom would handle the rush to issue the Flannagan RFP given the already-heavy burden of work on the CA and ConsCom.
 - BD said that the Town Administrator's email indicated the Town would cover extra expenses.
 - GB pointed out the need to correct dates in the FOFP RFP, correct a reference to 'Sandy Pond' to "Flannagan Pond", and correct contact information.

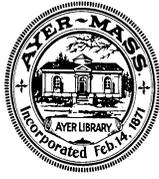


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- TT said that when he'd attended the 4/5/11 BOS meeting at which FOFP made a presentation, a point had been raised about what FOFP as a group was prepared to do as longterm stewardship in educating local residents about fertilizer use and other landscaping practices.
 - TT said his impression at that meeting was that Mr. Miller was dismissive of this request.
 - TT said he'd like to hear more of a commitment from FOFP as to doing what they can in their own practices to minimize the need for weed control treatment.
 - Mr. Miller said he had not been dismissive but frustrated that, he claimed, this was always the first thing their group was told, and that this did not change the fact that Flannagan Pond needed to be maintained.
 - Mr. Miller added that FOFP's issue with Flannagan Pond is not solely one of environment but includes recreation and residential property values as well as providing a resource for the Town to enjoy.
- TT added that it would be helpful to have yearly photographic recording of the conditions on Flannagan Pond; photos taken in 2010, a major drought year, were good but not fully representative.
- DB said most of his issues had already been raised, but expressed concern that ConsCom had been blindsided by BOS, given that no one from either BOS or FOFP had talked to the Commission prior to this meeting.
 - Mr. Miller has privately addressed occasional questions to CA, and referred to a visit to ConsCom a year earlier by former resident Martha Craft, expressing concern at that time about water levels during an exceptional drought year.
 - DB expressed frustration that ConsCom time is already over-extended and that the BOS needs to fund any extra costs and not just pass this issue off onto ConsCom.
 - Other Commissioners were seen to nod their heads in vigorous agreement.
 - DB added that ConsCom has been told in recent years by the BOS and former Town Administrator to not even ask for additional funds because of the difficult economic conditions faced by the Town.
 - DB reiterated the onus has to be put back onto the BOS.
- Speaking from the audience, Selectman Gary Luca said he thought the Commission was looking for more ways not to do weed treatment than to do it.
 - BD disagreed, as did the rest of the Commission, saying that it had taken ConsCom several months to get its own RFP out and that there were legal timeframes having to do with the issuance of RFPs.
 - With great forbearance, BD again explained the RFP process to the audience.
- BD noted that, in response to Town pressure, ConsCom has had to reduce every aspect of its funding over the past several years -- with the exception of the very limited time, 10 hours weekly, allowed for its CA.

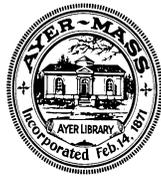


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- BD noted that the ConsCom had not previously been informed of UDAG fund availability.
 - BD asked Selectman Luca if he believed that funding should be made available for the other ponds.
 - Mr. Luca said it was his intent to create/provide a management plan for all the ponds as well as for Balch Dam.
 - Selectwoman Carolyn McCreary, from the audience, said that Article 31, to set up a stormwater management enterprise fund, could help solve longterm issues as its revenue could help fund things like the cost of pond weed treatment; Article 31 would need to be passed at Spring Town Meeting.
 - The initial motion to approve the RFP for use as either a stand-alone or an addendum was repeated.
 - Motion approved unanimously.
- **Meeting Minutes Approval**
 - GB moved to approve the minutes from 8/12/10 as written; DB 2nd.
 - Motion approved unanimously.
 - GB moved to approve the minutes from 3/10/11 as written ‘spot-on’; TT 2nd.
 - Motion approved 3-0. (DB and TT abstained, not having been present)
 - GB moved to approve the minutes from 3/24/11 as written; TT 2nd.
 - Referring to an issue discussed at that meeting, BD asked CA to put Mr. Phil Berry onto one of ConsCom’s upcoming agendas.
 - Motion approved unanimously.
 - GB moved to approve the minutes from 3/29 as written; JG 2nd.
 - Motion approved unanimously.
 - GB moved to approve the minutes from 4/14/11 with one minor correction; TT 2nd.
 - Motion approved unanimously.
 - DB moved to approve the minutes from 4/21/11 with one minor correction; GB 2nd.
 - Motion approved 4-0 (TT abstained, not having been present)
 - **CA Updates**
 - Citizen Complaint for 54 East Main Street
 - The Board of Health contacted CA over a citizen complaint that a rental apartment resident has been throwing trash down a nearby bank into the wetlands.
 - BD said he had a problem with ConsCom being charged with litter enforcement and told CA to take a peek at the situation, then turn it over to the police department.
 - GB noted ConsCom has little enforcement power beyond issuing an Enforcement Order (EO).
 - Upcoming Agenda
 - Several RDAs – for Pan Am Railway, the MBCR, and Horizon Milling – will be before ConsCom at its 5/12/11 meeting.
 - CA has asked Chris Miller, of 5 Wagon Road, to appear to discuss unauthorized tree cutting in wetlands.



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- Mr. Miller has told CA there was a miscommunication.
- CA noted that, with respect to gravel also having been plowed into Spectacle Pond, two parties are pointing the finger at each other: the DPW, which provided the gravel, Mr. Hillman, who spread it, and the DPW, which then inadvertently plowed it into the pond during the winter.

- **Member Updates**
 - GB has observed from his commuter train that Bennett's Brook is looking noticeably dirty again, with runoff from The Willows development.
 - DB having done the last one, BD said he would send another EO.
 - GB suggested calling the EPA on this.
 - CA said she would call Joe Bellino of Mass DEP.
 - GB said ConsCom should at some point walk through the new property (parcel H2) acquired from Pingry Hill/Crabtree Development's settlement with the EPA.
 - GB asked BD to update the Commission on his meeting with the Planning Board over the winter.
 - BD said he had been there in support of Pingry Hill developer Rick Roper.
 - BD expressed support that Mr. Roper did not need to cut down the trees on parcel H1 to make way for soccer fields (as originally required by the Planning Board).
 - Parks & Recreation has no interest in using this land for soccer fields and ConsCom therefore supports the elimination of soccer field plans.
 - GB said ConsCom needs to do a follow-up on the Park Street Condos.
 - ConsCom will address this at another meeting.
 - CA and JG simultaneously updated TT that he needed to review FMC Corporation's COC application as soon as possible.
 - TT enthusiastically accepted the task.
 - TT said that on his recent jogs on the rail trail, he has observed the illegally drained wetland near Rosewood as filling up again; beavers are active in restoring their dam and TT described the situation now as "beaverific."

- **10:34 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.