

## Town of Ayer Conservation Commission

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249 \* 978-772-8208 (fax)  
Minutes for **08/11/11** – Approved 8/25/11

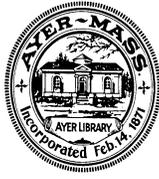
Location: Ayer Town Hall, 1<sup>st</sup> Floor

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

APAC taped: Yes

### 7:07 PM – Open Meeting

- **Pledge of Allegiance**
  
- **Confirmation of Agenda**
  - GB moved to confirm agenda as written; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  
- **Meeting Minutes Approval**
  - GB moved to confirm minutes of 7/28/11 as written; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  
- **Public Meeting (cont'd): RDA: Emily's Way Subdivision, MEMS Realty Trust**
  - Steve Mullaney, of SJ Mullaney Engineering, represented MEMS Realty Trust.
  - CA reported on site visit earlier in the day at the residence of George Hynes, 35 Groton-Harvard Road.
    - The site visit was led by MaryAnn DiPinto of MassDEP in response to an appeal filed by Mr. Hynes questioning ConsCom's issuing a Negative Determination of Applicability with conditions to Ayer DPW for an RDA submitted to perform stormwater upgrades on Groton-Harvard Road.
    - Present at the site visit was Ms. DiPinto, Mika Lassilla of SJ Mullaney Engineering to represent Ayer DPW, Mr. Hynes, and CA and JG for ConsCom.
    - Mr. Mullaney said he had received no information about the site visit from Mr. Lassilla as he wanted the Emily's Way RDA to be handled independently from the DPW's RDA.
    - CA said Ms. DiPinto confirmed CA's finding last fall that the drainage swale running between 35 and 33 Groton-Harvard Road is BVW and thus a resource area falling under ConsCom's jurisdiction.
    - Ms. DiPinto also agreed the two adjacent houses were built on filled-in wetland.
    - CA also reported Ms. DiPinto's on-site recommendation that the Commission issue a Positive Determination of Applicability for the Emily's Way RDA.
      - A Positive Determination requires a full NOI be filed instead of an RDA.
    - Ms. DiPinto took notes from the perspectives of DPW, the resident, and ConsCom.
      - A formal decision from Phil Nadeau, MassDEP Section Chief, would be issued the following week.
  - Mr. Mullaney said he was confused as to why the DPW's RDA received a Negative Determination (with conditions) yet a Positive Determination was being discussed for the Emily's Way RDA given that it proposes no work.
  - BD expressed ConsCom's discomfort with an RDA application that did not clearly delineate potentially affected wetlands, asking ConsCom instead to make that ruling.
    - BD said there were concerns as to Town liability were the Commission to take on this unusual task for an applicant.
  - Mr. Mullaney referred to an 8/13/10 email from CA to the Planning Board that seemed to indicate there were no BVW of concern with regard to the drainage swale.

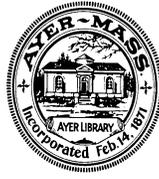


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- CA referred to her email to Mr. Mullaney later that fall, after a site walk, where she determined there were, in fact, BVW.
- Mr. Mullaney said he had not received that email.
- Mr. Mullaney said MEMS Realty had purposely delayed submitting its RDA until after the DPW's RDA for stormwater upgrades on Groton-Harvard Road had been concluded.
  - Mr. Mullaney said the intent was to “piggyback” onto the DPW application, and that he was confused as to why the DPW did not need to perform a formal delineation of wetlands but Emily's Way was being asked to.
  - Mr. Mullaney stressed that the current application proposed no work and asked where the Buffer Zone was to fall.
- Mr. Mullaney said the subdivision would accept whatever ConsCom told them.
  - BD said he still awaited feedback from Town Administrator Robert Pontbriand as to liability to the Town should ConsCom specify the BZ for Emily's Way.
  - Mr. Mullaney said the applicant would not enter, nor ask permission to enter, the drainage swale area due to conflict with the resident at 35 Harvard-Road.
- Mr. Mullaney referred to old plans from the 1970s, when the two houses on either side of the drainage swale were created, the area then deemed ANR (Approval Not Required).
  - MEMS Realty was not proposing work on that side of the road.
- Mr. Mullaney also said that the DPW would be altering the swale by putting in riprap.
  - CA said no, that the addition of riprap was a ConsCom condition added to the Negative Determination.
  - Mr. Mullaney said that constituted an alteration of the wetland.
  - CA said Ms. DiPinto applauded the use of riprap here as it improved the existing conditions; the MassDEP representative did not indicate in any way that this constituted a wetland alteration.
- CA went on to clarify for Mr. Mullaney how ConsCom addressed the DPW RDA.
  - The issues in considering the DPW RDA were whether a resource area was involved and if the work planned would have a negative impact.
  - ConsCom issued a Negative Determination with conditions because the area was determined to be a resource area and thus jurisdictional, but the work planned would not have a negative impact on the resource.
  - Conditions were added to improve the existing state of the resource area by mandating the addition of riprap as well as hand-digging out of sedimentation that has gathered in the swale over the years.
  - Mr. Mullaney again maintained that riprap altered the wetland.
  - BD reiterated that that added condition was for the purpose of improving the existing situation.
- Moving on, Mr. Mullaney again stated that the existing catch basin in the road would be converted to a manhole cover and replaced with two new catch basins.
- Most of the 6.2 acres of the subdivision are hydrologic soil group D, the least pervious and for which no recharge is required, Mr. Mullaney said.
  - One section of the Lucchesi property at 38 Groton-Harvard Road is soil group B.
    - This property will serve as the entrance to the subdivision.
- Following the removal of the current house, shed, and driveway and their replacement with the subdivision entrance road, there will be a net decrease of 524 sf of impervious area, so again no recharge is required, Mr. Mullaney said.
- With regard to the currently flat Lucchesi property, BD asked how much velocity would be added to the flow of stormwater when this property is altered to add a road that is angled uphill.

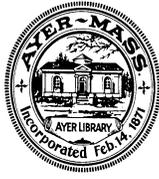


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- Mr. Mullaney said the Town's existing catch basin does not have a sump pump to collect sediment and remove velocity but the proposed new catch basins would have a sump pump and additional safeguards.
- CA returned to the discussion of how ConsCom handled the DPW RDA and the questions being raised by Mr. Mullaney as to whether ConsCom acted appropriately.
  - CA said an RDA does not necessarily require wetland delineation.
  - In the case of the DPW, the planned work is all within the currently paved way.
  - ConsCom acknowledged there was a resource area nearby but determined the work would not adversely affect that area.
  - Given the area across the street and downhill from the subdivision is jurisdictional, CA said that what is of concern with Emily's Way is how its planned work will or will not affect that area.
    - Mr. Mullaney said that even under an NOI, Emily's Way will add a net total of 7 houses – 8 new ones minus the the Lucchesi house.
    - Mr. Mullaney said that subdivisions of 5-9 housing lots are only subject to stormwater standards to the extent practical.
- BD summed things up:
  - ConsCom, with concurrence from MassDEP, has established the area of the drainage swale is a wetland resource area;
  - ConsCom has questions for Mr. Pontbriand as to liability if ConsCom tells the applicant where the wetland in question is delineated;
  - A site walk of Emily's Way was scheduled for 10 a.m. on 8/20, meeting at the top of the hill, by Nashoba Park Assisted Living.
- Questions and comments were entertained from the audience.
  - Liz Bodurtha asked who determines where catch basins will be put.
    - BD said stormwater systems are designed in conjunction with the Planning Board, which in turn relies on either an outside consultant or DPW Superintendent Dan Nason.
  - George Hynes, of 35 Groton-Harvard Road, asked what was the next step after the Meeting if a Positive Determination was being given to MEMS Realty?
    - BD said the Public Meeting was being continued to 8/25, at which point ConsCom would discuss information from the upcoming site walk on 8/20 and then make a ruling.
    - The end of the RDA process for Emily's Way would be either the issuance of a Negative Determination (with or without conditions) or a Positive Determination of Applicability, the latter of which would require the applicant to file an NOI for its project.
    - For Mr. Hynes' benefit, BD reiterated that a Positive Determination meant that the laws of the Wetland Protection Act were applicable, thus requiring the applicant to file an NOI; a Negative Determination meant that the laws do not apply to the applicant; and a Negative Determination with Conditions meant that the laws don't apply only IF the applicant follows the specified conditions.
  - Mr. Hynes asked if the 8/20 site walk would cover the property on the pond-side of the road, i.e., his property; BD said no as it has already now been determined that that area is indeed a resource area.
  - Mr. Hynes expressed confusion over ConsCom's references to MassDEP's MaryAnn DiPinto.

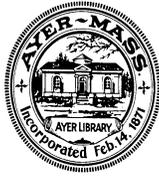


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- BD reiterated Ms. DiPinto had recommended ConsCom issue a Positive Determination to the Emily's Way RDA.
- JG clarified for Mr. Hynes that ConsCom was not yet voting to make that issuance; that vote would take place on 8/25 following the 8/20 site walk.
- Mr. Hynes asked why, if Mr. Mullaney had initially said that the DPW and Emily's Way RDAs were to be considered independently from one another, Mr. Mullaney had subsequently appeared to have free rein to draw comparisons between the two projects nevertheless.
  - BD said the two RDAs were different in scope: the DPW had applied to do specific work in a specific area whereas the Emily's Way RDA applicants were asking ConsCom to tell them where the Commission's jurisdiction with respect to the resource area fell.
- GB moved to continue the Public Meeting to 8/25; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Hearing (cont'd): NOI – 138 Snake Hill Road**
  - The site visit was scheduled for 9 a.m. on 8/20.
- **Public Hearing (cont'd): NOI – Phase III Ridge View Heights/Pingry Hill subdivision**
  - BD read an email from Stephanie Tarves of Tata & Howard, in response to a request for the status of their 3<sup>rd</sup>-party review of stormwater calculations for Phase III.
  - Ms. Tarves wrote that Jeff Murawski, who has done this work in the past, had left Tata & Howard.
  - Ms. Tarves wrote she would track down the status of the review project and contact BD later.
- **Public Hearing (cont'd): NOI – Kohler Place, Sandy Pond Investment /Oxbow Associates**
  - The permit number from NHESP has yet to be received by the applicant.
- **Discussion: Conservation Commission Vacancy**
  - BD thanked the two applicants, Warren Ball and David Bodurtha, for attending the meeting.
  - Mr. Bodurtha asked for a few minutes to address the Commission.
    - Mr. Bodurtha said he had taken a real beating from the BOS since their decision to not reappoint him on 6/28.
    - Mr. Bodurtha expressed dismay over feeling maligned by his own Town government, with its actions taken on the basis of anonymous complaints based allegedly on the fear of retribution from ConsCom.
    - Mr. Bodurtha asked for feedback from ConsCom as to whether it was worthwhile for him to continue to seek reappointment, knowing that the majority of the BOS was set against him.
    - BD said he was unhappy the BOS chose to use anonymous complaints and that the BOS had owed Mr. Bodurtha much fairer feedback.
      - Nevertheless BD said Mr. Bodurtha faced an uphill battle and he did not think it worthwhile for Mr. Bodurtha to subject himself to further ridicule or undocumented allusions by pursuing reappointment at this time.
      - BD said there were other ways Mr. Bodurtha could contribute to the work of ConsCom, noting that citizens can raise issues of environmental concern directly with MassDEP.

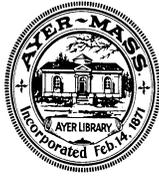


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- Mr. Bodurtha expressed his opinion that the Commission acted with little support from the Town.
- Mr. Bodurtha said he was not sure if he could ask ConsCom to summarize what had been discussed, but expressed his willingness to consider withdrawing his application to ConsCom.
  - Mr. Bodurtha said he did not want to put the Commission in a quandary with the BOS by asking it to recommend him when the outcome of the BOS vote was known.
  - Mr. Bodurtha said he preferred BD to write up a summary of the issues raised and present it to the BOS.
  - BD agreed and thanked Mr. Bodurtha for all of his hard work on behalf of the Commission.
- Mr. Bodurtha said that, as time passed, he would like to help the Commission in the future, but for now, with a heavy heart, he was formally withdrawing his application for reappointment.
- BD said he would ask Mr. Pontbriand about attending the BOS meeting on 9/6.
- BD said the Commission was happy that Warren Ball had expressed interest in serving.
  - GB moved to submit a recommendation to the BOS for the appointment of Warren Ball; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- BD said he regretted he would be out of town and unable to attend the BOS meeting of 8/16, at which Mr. Ball's appointment would be considered.
  - BD reiterated his intent to meet with the BOS on 9/6 to discuss various issues.
- TT raised the issue of Mr. Bodurtha possibly serving the Commission in a nonvoting capacity as an Associate Member.
  - BD said ConsCom does not need BOS permission for this.
  - GB said the BOS does not acknowledge the category of 'Associate Member'.
  - Mr. Bodurtha said he appreciated TT's suggestion but at this point wouldn't consider coming on as an Associate Member until several months had passed.
- JG asked about Mr. Ball's status if he chose to attend the site visits on 8/20.
  - BD said Mr. Ball could attend the site visits, but following his anticipated appointment on 8/16, he would still need to be sworn in by the Town Clerk. Even so, following his appointment and swearing-in, Mr. Ball would not be able to vote on these applications as he had not heard prior testimony from the applicants as a sitting member of the Commission.
- **Member Updates & Continued Discussions**
  - JG brought up questions raised in an email from Flannagan Pond resident Ed Ouelette asking about what things individual residents could do with regard to weed control, given the cancellation of weed treatment on Flannagan this year.
    - Chemical treatment: Individual residents may not apply weed treatment chemicals in ponds themselves; the state of Massachusetts requires these be applied by licensed professionals only.
    - Hydroraking: CA said hydroraking was part of the Town's original NOI for weed treatment.
      - However, it is known that hydroraking is effective on water chestnut, but not on milfoil and lily pads, both of which are the problem weeds on Flannagan.
    - Handpulling: BD said this was probably okay.

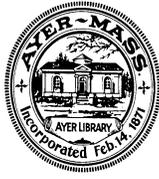


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- Mr. Ball suggested a combination of chemical treatment followed by hydrotanking might be most effective in the future.
  - BD said timing would be tricky as killed weeds that sink to the bottom would not be reached by hydrotanking.
  - Mr. Bodurtha said it was unproductive to cut or hydrotank weeds after chemical treatment as the chemicals need to be absorbed into the root system in order to provide an effective kill-off of weeds.
    - In addition, broken fragments will often grow a whole new root system, adding to the problem rather than lessening it.
- JG summarized the recent Community Preservation Committee (CPC) meeting.
  - CPC will hold a Public Hearing on 9/7 to consider a proposal submitted by Selectman Gary Luca asking for CPA funding to commission a long-term pond weed control management study and to fund Article 38, for weed treatment of Flannagan Pond, as passed at Spring Town Meeting 2011.
    - BD said that dams needed to be included in discussions of weed control management given that without the presence of Balch Dam, there would be no such thing as ‘Flannagan Pond.’
- Ms. Bodurtha asked if any resident can install a beaver deceiver on their own?
  - BD said problems with beavers should be addressed to the Board of Health and to Mass Fish & Wildlife.
  - JG said it is against state law to disturb a beaver dam without a state permit.
  - Ms. Bodurtha said people with beaver dams on their property often don’t know to contact the Commission or Fish & Wildlife for information.
- Agenda for upcoming discussion with BOS
  - BD reviewed previous discussion items, including:
    - disposition of the two buildings on the former Tooker property, now part of Town conservation land;
    - the trespassing issue of an adjacent resident storing property and dumping lawn refuse in the same location;
    - the issue of how the BOS operates with the Commission.
- Mr. Bodurtha addressed the Commission about The Willows:
  - Mr. Bodurtha has talked with Mass DEP’s Joe Bellino and Phil Nadeau, who have both expressed openness for accepting input from residents.
  - With regard to The Willows, Mr. Bodurtha recently circulated photos, pre- and post-construction, of conditions in a small pond at the base of the hill in the subdivision.
    - Post-construction, this pond is clearly brown and covered with algae.
  - BD said this is not a natural pond but was created by a prior project in that area.
  - Mr. Bodurtha said the real concern is that this pond has a direct outlet through an outflow pipe into Bennett’s Brook, where GB has previously noted the appearance of fresh siltation this past spring.
    - It is unknown if this pond ever rises to a level where the water is high enough to reach the outflow pipe.
  - BD did not remember the existence of this pipe when The Willows went through the application process.
    - Mr. Bodurtha agreed ConsCom had not been told of the pipe prior to construction; it had been pointed out to him by a worker at a later time.
  - Mr. Bodurtha said it is possible Mass DEP could get more straightforward answers from the developer.



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- BD said ConsCom needs to check to see whether the developer has a valid OOC.
  - A discussion of extending the OOC should include a request to see if the pipe appears on the developer's drawings.
  - CA and/or the Commission should make a site visit to check on the pipe.
- Mr. Bodurtha suggested installing a beaver deceiver in vicinity of Rosewood Drive:
  - Mr. Bodurtha described the human destruction of a beaver dam in this area in 2010 that resulted in draining of the multiacre wetlands near the rail trail.
  - The beavers have since rebuilt and the wetland is filling in.
  - Mr. Bodurtha suggested ConsCom consider using its beaver funds to install a beaver deceiver to protect property owners in the area.
    - Mr. Bodurtha also expressed an interest in working with Mass Fish & Wildlife to maintain a defined water height for the wetland.
    - It would be easier to install a beaver deceiver soon before the beavers raise their headwall further.
  - BD said the Commission needs to contact Town Accountant Lisa Gabree to find out what is required in order to spend this money, which would likely require the BOS to sign off.
    - GB said the wording of the warrant article needed to be checked to see if it refers specifically to beaver damage on Town property, thereby limiting the use of the funds.
- JG circulated photos of the property of a Flannagan Pond resident, at the corner of Snake Hill Road and Calvin Street, who has pulled down and uprooted a large number of pine trees within the Buffer Zone without authorization from the Commission.
  - A Violation Notice will need to be sent.
- **9:36 PM – Adjourn Meeting**
  - GB moved to adjourn; TT 2<sup>nd</sup>.
    - Motion approved unanimously.