

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **8/8/2013** – Approved 8/22/2013

Location: Ayer Town Hall, 2nd Floor

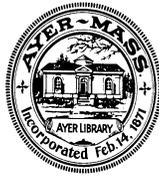
Members present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Takashi Tada (TT), Lee Curtis (LC), Becky DaSilva-Conde (CA, Conservation Administrator), Jessica Gugino (JG, Clerk)

APAC taped: Yes

7:07 PM – Open Meeting

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

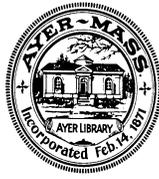
- **Public Meeting: Enforcement Order (EO) – Crabtree Development LLC, Pingry Hill subdivision**
 - Present were: Rick Roper, of Crabtree Development; Lori Scanlan, Project Manager from R. A. Powell Construction, Corp; and Duke Pointer.
 - A heavy rain event took place on 7/23, with heavy sedimentation from recently opened slopes flowing into the stormwater runoff down Hemlock Drive.
 - To a lesser extent, turbid runoff was also observed on Hickory Way.
 - Hemlock is the new road tie-in to Rte. 2A and earlier this summer, ConCom issued 8 OOCs for new house construction at Pingry Hill, all but one on Hemlock Drive.
 - Hickory Way has been the subject of past EOs and was visited by Joe Bellino, of MassDEP, the previous year.
 - Both BD and CA observed the new runoff problems and raised it for discussion at ConCom's 7/25 meeting.
 - On 7/26, CA re-visited the site, took photos for documentation, and issued an EO and a Cease & Desist to Mr. Roper.
 - Further construction work was to halt until the site was stabilized and a go-ahead was given by ConCom and/or Mass DEP.
 - The EO also mandated that an erosion and siltation prevention plan be submitted by a qualified erosion control specialist.
 - Mr. Roper apologized and explained the circumstances leading to problems on Hemlock Drive.
 - The drainage from Hemlock was to be tied into the drainage system on Rte. 2A.
 - It was found, however, that the two nearby catchbasins on 2A maintained by the Mass. Dept. of Transportation (DOT) were clogged.
 - The State was unable to clean them out.
 - In the process, the State discovered they did not have proper easements for this work.
 - The State indicated that the process of securing easements would take months.
 - Related construction in this area had stopped, waiting on the State to fix its catchbasins.
 - As a result, opened slopes were able to shed material in the heavy rain of 7/23.
 - Mr. Roper said a 3-inch lip at the bottom of Hemlock prevented the sedimented runoff from crossing over to the other side of Rte. 2A.
 - Attorneys for Mr. Roper are now in negotiation with attorneys from the Littleton Lyne Apartments (LLA) across the street for permission to establish a new easement and make sewer connections on the LLA side of 2A rather than wait months for Mass DOT.
 - Mr. Roper handed a copy of the new plan to BD.
 - Mr. Roper said Mass DOT is “on board” with this plan and has indicated that they would do the re-paving on 2A after the tie-in was complete.



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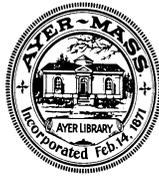
- BD said this was good news but that, from ConCom's perspective, the bigger issue was the amount of soil runoff coming down off the exposed hill slopes.
 - Even if the developer were properly connected to the drainage system, this runoff would still be an issue for ConCom.
 - Such stormwater runoff is required to be controlled on-site during construction.
- Mr. Roper said he did not receive a copy of the EO for a week and that he misunderstood the terms of the Cease & Desist to mean that he could not do any work at all on the site, including addressing the slope problems.
 - Mr. Roper had also not received a hard-copy of the EO until just prior to the meeting
 - He said this delayed his working on the problem for a week.
 - CA said her email of 7/26 to Mr. Roper, which he did receive, indicated that stabilization efforts were to be undertaken prior to ConCom's 8/8 meeting.
 - CA also said she had had phone discussions with both Mr. Roper and Ms. Scanlan the previous week.
 - However, complicating matters, CA has discovered that ConCom emails are not all going out due to problems with the Town Hall system and ConCom's tie-in to that.
 - CA said her initial email of 7/26 tried to make clear that the number one priority in the wake of the Cease & Desist was to stabilize the site.
- Mr. Roper said they have now put dikes across Hemlock Drive.
 - Ms. Scanlan said they have now put straw matting across the open slopes and will use more lines of silt fencing and haybales.
 - CA said again that silt fences and haybales alone are clearly not working as effective erosion control.
- CA has recommended now, as well as multiple times in the past year or so, that Mr. Roper hire a professional erosion control specialist.
 - Joe Bellino, of Mass DEP, had seconded this recommendation when he paid a site visit to Hickory Way last year.
- Meanwhile, CA had received messages from DPW Superintendent Mark Wetzel concerning erosion issues at Pingry Hill prior to the 7/23 rain event and had contacted Ms. Scanlan to alert her to the matter.
- CA said the two primary issues at Hemlock Drive were 1) the uncontrolled runoff and 2) the turbidity contained in the runoff from the open slopes.
- BD said the concern now was in preventing this from happening yet again, putting Bennett's Brook at risk of contamination.
 - While Hickory Way had a straight shot to the brook directly on the other side of 2A, the brook is at least at a greater distance from 2A where Hemlock Drive connects to it.
 - Nevertheless, runoff has to be contained on the construction site.
 - ConCom would like to avoid a repetition of the similar violations encountered previously at Hickory Way.
- BD asked Mr. Roper if he had yet hired an erosion control specialist.
 - Mr. Roper said no.
 - Ms. Scanlan said she would be meeting with someone who sells erosion control products on the following day, to discuss materials and ideas.
- CA said a site walk would be taking place at 1:30 on the following day, Friday 8/9, with Mr. Bellino.
 - BD, unable to make this site walk because of work, made arrangements to meet Ms. Scanlan at the site on Saturday, 8/10, at 7 a.m.
- BD said that Mr. Bellino would be looking for an actual plan for erosion control.



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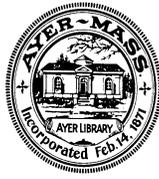
- BD reiterated the developer needed to consult an erosion specialist, not just a product salesman.
- Both DEP and ConCom would be looking for a plan to successfully contain and prevent runoff from getting onto, and crossing, Rte. 2A.
- BD said work on the new easement with LLA, if an agreement is reached between attorneys, would fall under ConCom’s jurisdiction and could be handled as an amendment to the OOC.
- Mr. Roper referred back to past issues on Hickory Way, attributing problems in part to the slow economy and the need therefore to build houses one at a time.
 - Mr. Roper said that, on Hickory Way, he is now finalizing the driveway areas at 5 houses simultaneously, so as to lead to quicker stabilization, loaming and seeding.
 - While there was a cascading effect on Hemlock, Mr. Roper said it wasn’t as bad as the problems on Hickory Way in years past.
- BD recommended that Mr. Roper have clear ideas to present to Mr. Bellino on the 8/9 site walk.
 - CA said that Mr. Bellino would be looking at what’s been done to stabilize the slopes between the issuance of the EO and tomorrow’s site walk.
 - Mr. Bellino would also be looking to see whether Pingry Hill would be left at the local level of ConCom jurisdiction or whether Mass DEP should take on overseeing the site.
- CA said Mr. Bellino had also suggested to her in a phone call that ConCom issue no more than 3 OOCs at a time for large developments, to limit how many lots can be open at once.
 - Both CA and BD said they would prefer other solutions before resorting to this step.
 - Mr. Roper said he respectfully disagreed with such a limitation imposed on developers and asked to whom he would make an appeal.
 - BD said ConCom was not supporting such a measure at this time, and that any appeal would be made to Mr. Bellino, at DEP.
- Ms. Scanlan asked if the Cease & Desist only affected work on lots within the buffer zone and whether work could proceed on the other OOCs.
 - BD said this would be something to discuss with Mr. Bellino on Friday as to where work can proceed or not, based on actual conditions on the site.
 - Ms. Scanlan asked if work on flat areas could re-commence.
 - BD repeated that he could not say yes or not at this time, and that this should be discussed with Mr. Bellino on the following day.
 - Flat areas were not automatically excluded from the Cease & Desist order.
 - A judgment would have to be made based on actual conditions.
- BD asked for a motion to ratify the EO.
 - GB moved to ratify the EO for Mass DEP #s 100-0341, 100-0353, 100-0354, 100-0355, 100-0356, 100-0357, 100-0358, 100-0359, and 100-0360; TT 2nd.
 - These refer to 8 OOCs for building lots, and 1 OOC for the roadwork.
 - Motion approved unanimously.
 - ConCom members signed two copies of the EO, one for Mr. Roper, who then departed.
- Because there was a delay in getting a hard copy of the EO to Mr. Roper, BD said that in the future, hard copies of EOs should be delivered by certified mail so as to have proof of delivery.
 - BD asked CA in the future to copy Steve Mullaney, of SJ Mullaney Engineering, regarding Pingry Hill issues.
- BD also asked that a new condition be added to ConCom’s OOC boilerplate.
 - This condition should specify that OOCs will no longer be sent to P.O. boxes, but will require a real “brick-and-mortar” address to which certified mail deliveries can also be made when necessary.



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- **CA Updates**
 - 8/20 ConCom meeting with BOS
 - CA said that BOS Secretary Janet Lewis has confirmed that ConCom is on the BOS agenda for 8/20.
 - ConCom will be discussing the proposals received to the RFQ for a comprehensive study of Ayer ponds.
 - ConCom had thought it was on the BOS agenda for 7/16 but found it was apparently bumped from that agenda without notification.
 - CA said she had received a confusing email from BOS Chairman Pauline Conley, dated 8/4, saying that she had been told ConCom wasn't ready for the 7/16 meeting.
 - CA had received verbal confirmation from Town Administrator Robert Pontbriand about 7/16, but will in future ask for written confirmations.
 - CA will make sure BOS members have copies of the proposal from Geosyntec for the 8/20 meeting.
 - 60 Barnum Road
 - CA received an email from Mr. Wetzel asking if tree-cutting taking place on this lot was jurisdictional to ConCom.
 - Mr. Wetzel said he had noticed a DEP # posted at the site.
 - On consulting maps, it was determined that this address likely falls inside Devens, and therefore under the jurisdiction of the Devens Enterprise Commission.
 - CA will confirm that this is the case tomorrow.
 - Dog Park
 - Mr. Wetzel is pursuing the search for a viable location for an Ayer dog park.
 - He has volunteered DPW to maintain and clean such a site.
 - Victor Drive
 - Mr. Wetzel will be holding at Public Hearing at 7 p.m. on 8/22 to discuss proposed work on the Victor Drive culvert.
 - This meeting will be held at the same time as ConCom's regularly scheduled meeting.
 - CA asked if ConCom members wanted to attend the DPW hearing prior to starting its own meeting.
 - BD questioned why public opinion was being solicited prior to completion of a plan and an application vetted through ConCom.
 - Since ConCom's role is not to be part of the preparation process but rather to respond to completed applications, it was decided that it would be inappropriate for ConCom members to attend the DPW meeting.
 - Plow Shop Pond Remediation
 - CA finally received the report from the Army Corps of Engineering on the wetland flagging, a report that had been promised to ConCom back in June.
 - On looking at the report, it appears that only the pond was delineated, and that no delineation at all was done on Nonacoicus Brook and its associated BVW.
 - In talking with Mr. Bellino about the remediation plan, CA learned that Mass DEP only has an advisory role.
 - The actual enforcement authority for Superfund sites is held by the federal EPA.
 - TT said while ConCom may in theory have jurisdiction over Plow Shop Pond and the brook, its jurisdiction carries no effective weight over the Army or EPA.



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- **Meeting Minutes Approval**
 - GB moved to approve the minutes for 7/25/13 as righteously amended by BD; TT 2nd.
 - Motion approved unanimously.

- **Accounts Payable**
 - Printing Solutions
 - Steve Smith, of the Ayer Greenway Committee, submitted an invoice for the 500-copy print-run of the Greenway Committee's new brochure / trail map.
 - ConCom had previously decided to cover the projected cost of \$290.
 - The invoice was for \$308.13 – 290 plus \$18.03 tax.
 - Mr. Smith asked CA for the Town's tax-exempt number so that he could get the added tax removed.
 - GB moved to approve payment of \$290; TT 2nd.
 - Motion approved unanimously.
 - CA will attach ConCom's signatures to the \$290 proposal to a new invoice, reflecting no tax, when it comes in.

- **Member Updates**
 - JG said that the Community Preservation Committee (CPC) was unable to meet on 8/7 due to lack of a quorum.
 - Mr. Pontbriand had asked to meet with CPC to review the opinion received from Town Counsel over the status of the crossing easement to Kohler Place.
 - Kohler Place is being considered as an Open Space acquisition by the Town.
 - JG said that she was sure a potential acquisition could not be made ready for a Fall Town Meeting vote given all that would need to be done: title search and appraisal, Phase I environmental review (at least), price negotiation, CPC public hearings, and finding an application sponsor.
 - JG said she has made it clear to CPC and Mr. Pontbriand that ConCom was not a sure bet as sponsor.
 - BD reiterated the ConCom position that the crossing easement would need to be satisfactorily secured in writing before the Commission would consider the question of sponsorship.

- **9:35 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.