

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **10/9/2014** – Approved 10/23/2014

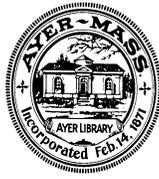
Location: Ayer Town Hall, 1st Floor

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

APAC taped: Yes

7:02 PM – Open Meeting

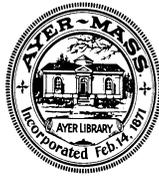
- **Confirmation of Agenda**
 - CA added a Request for a Certificate of Compliance (COC) for 5 LedgeWay.
 - The discussion regarding field changes to The Willows subdivision was postponed to 10/23 so that the developer's representative could be present.
 - GB moved to confirm the agenda as amended; TT 2nd.
 - Motion approved unanimously.
- **Meeting Minutes Approval**
 - JG moved to accept the meeting minutes for 9/25/14 as written; LC 2nd.
 - Motion approved 3-0 (TT and GB abstained as they were not present).
- **Announcement: Community Development Survey**
 - Alicia Hersey, of the Department of Community & Economic Development, encouraged board and resident participation in a survey being conducted for Town application for a Community Development Block Grant.
 - The survey may be done online and hard copies are available as well.
- **Review of Open Meeting Law (OML) Complaint: Jean Hoffman-Anuta, 187 Old Farm Way**
 - Ms. Hoffman-Anuta filed an OML complaint against ConCom for its 8/28/14 meeting.
 - ConCom opened this discussion in order to publicly review the complaint and to authorize Town Counsel to prepare a written response to the complaint.
 - Ms. Hoffman-Anuta and her husband, Michael Anuta, have also questioned ConCom's reissuance of 4 original Orders of Conditions (OOC) for Pingry Hill:
 - MassDEP # 100-0330: Phase II Ridge View Heights (aka Pingry Hill): Hickory Way, Deer Run, Littleton Road, Old Farm Way, and adjacent easements
 - MassDEP # 100-0337: 187 Old Farm Way (Pingry Hill Lot 32)
 - MassDEP # 100-0338: 8 Hickory Way (Pingry Hill Lot 37)
 - MassDEP # 100-0339: 214 Old Farm Way (Pingry Hill Lot 84).
 - Attorney Brian Riley, of Kopelman & Paige (Town Counsel), was present.
 - Mr. Riley noted that OML complaints are required to be acknowledged in open session.



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- BD read Ms. Hoffman-Anuta's complaint into the record.
 - Ms. Hoffman-Anuta claimed the 8/28/14 agenda was posted without enough information for property owners.
 - For the reissued OOCs, the agenda referenced DEP numbers only, not the addresses.
 - After the OOCs were approved and house construction completed, the properties were sold by the developer, Rick Roper, to new owners.
 - The current homeowners would only recognize their properties on an agenda by the addresses, not the DEP file numbers.
- Attorney Riley said the agenda probably should have had more information, but since the reissuing of the original OOCs was largely an administrative issue, he didn't think it constituted a real violation.
 - Nevertheless, he said, the Attorney General's office was likely to agree with the complaint and would probably advise ConCom to be careful to put more complete information on its agendas in the future.
- Ms. Hoffman-Anuta's complaint also questioned ConCom's signed reissuance of the OOCs on 8/28 without discussion or vote.
 - Since the OOCs were originally issued when Mr. Roper owned the lots, the reissuance of the original OOCs to lots under new ownership was questioned.
- Ms. Hoffman-Anuta's complaint also alleged that ConCom members must have discussed the reissuance separate from an open meeting in order to sign the new OOCs without discussion.
 - In response, BD said that since ConCom was only performing an administrative action regarding already existing OOCs, it was not required to hold a new vote.
 - In addition, BD said CA had consulted with MassDEP as to how to handle the situation of unrecorded OOCs, and that the advice received from DEP was the only 'consultation' done outside of ConCom's normal open meeting.
 - ConCom understood the advice it received from MassDEP as simply recommending the reissuance of the original OOCs as discussed, voted on, and approved years earlier.
 - As to the allegation that ConCom members engaged in discussion outside of its open meeting, Mr. Riley said that the OML prohibits a quorum of board members from discussing jurisdictional board matters outside of an open meeting.
 - BD said that CA had had no choice but to reach out to MassDEP for advice outside of ConCom's evening meeting because that was simply when MassDEP had staff available to answer such questions.
 - Mr. Riley concurred that this did not seem to constitute an OML violation.
- Mr. Riley said the next question for ConCom was whether he or BD would prepare a written response to the complainant.
 - The deadline for a response is 14 business days from an OML complaint's receipt.
 - In this case, a written response is required by 10/17/14.

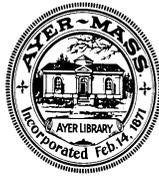


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- BD asked Mr. Riley to prepare a response, have BD review it, and then have it out by the 17th.

- **Public Hearing: Abbreviated Notice of Resource Area Delineation (ANRAD) – New Woodland Way, Pingry Hill Phase IV, Ridge View Realty, Rick Roper, MassDEP # 100-0378**
 - Steve Mullaney, of SJ Mullaney Engineering, and Rick Roper, of Ridge View Realty Trust, were present.
 - Mr. Mullaney provided CA with written proof of the notification of 29 abutters.
 - The ANRAD application seeks ConCom confirmation of delineated wetland resource areas before a site plan and NOI are submitted.
 - Mr. Mullaney reviewed the history of this portion of the Pingry Hill subdivision development.
 - Woodland Way was laid out in 1999 as part of the former “Ridge View Heights” subdivision.
 - The original plan called for 35 house lots on an approximately 50-acre parcel that contains a series of 8 wetland areas.
 - This portion of the subdivision is also intended as the future location of a million-gallon Town water tank, per a 2003 settlement agreement between the Town and the developer.
 - Mr. Mullaney said a Superceding OOC was issued by MassDEP in 2004 for this area, but construction never took place.
 - Since then, discrepancies have been noted between the original wetland delineation and actual conditions, with some wetland areas having been missed.
 - In 2009, GB and members of the U.S. Army Corps of Engineers walked the delineation line to confirm the wetland line at that time.
 - Mr. Mullaney said the area covered by the ANRAD includes the 35 planned house lots, 5 acres of parcel C where a stormwater basin will be located, and 5 acres of parcel D2.
 - None of this area is within an aquifer protection area, floodplain, endangered species habitat, or area of critical environmental concern (ACEC).
 - Unlike previous phases of the project, Mr. Mullaney said this one is more cumbersome, having large areas of roadway and housing lots that would be affected by corrected delineation.
 - Because of stricter DEP standards regarding stormwater and discharge, Mr. Mullaney said the original plan is no longer viable.
 - The developer now intends to come before ConCom and the Planning Board with a revised subdivision plan for this area.
 - The planned revision to Woodland Way will avoid a large wetland area and include roughly 200 feet more of roadway, but is still planned to have 35 house lots.
 - Mr. Mullaney said wetland alteration would be kept to under 5000 square feet.
 - A site walk was scheduled for 8 a.m., on 10/18, meeting at the intersection of Hemlock and Hickory Way.



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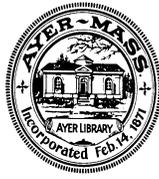
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- GB moved to continue the Public Hearing to 10/23/14; TT 2nd.
 - Motion approved unanimously.

- **Discussion: Rick Roper, Ridge View Realty Trust, Pingry Hill subdivision**
 - The purpose of this discussion was to follow up on previous violations discussions.
 - Mr. Roper is continuing to seek signed affidavits from new homeowners, as required in ConCom's newer OOCs.
 - Mr. Roper said there have been some delays in redressing this violation because some homeowners, being asked to sign an affidavit after the fact of purchase, want to consult an attorney first.
 - Mr. Roper said an affidavit form has been developed for use in all future sales.
 - Regarding the reissued OOCs (DEP #s 100-0330, 100-0337, 100-0338, and 100-0339), Mr. Roper said these were recorded at the Registry of Deeds on 9/26/14.
 - Mr. Roper said that he would be seeking a COC for 100-0330, which also requires an as-built plan.
 - He was hoping ConCom could review this area as well when it has its site walk at Pingry Hill on 10/18.
 - BD said that the scheduled ANRAD walk was in itself going to be a lengthy one.
 - CA could perform this site walk at a different time.
 - Mr. Mullaney said that requests for COCs are being worked on for 13 lots, but that 3 of them are older OOCs that do not require as-builts, unlike ConCom's more recent ones.
 - These three are:
 - 100-0262 (50 Deer Run, lot 87)
 - 100-0267 (58 Hemlock, lot 56)
 - 100-0268 (45 Partridge Run, lot 35)
 - Mr. Mullaney said that both Mr. Roper and erosion specialist Desheng Wang have been more consistent in their reporting of construction activities to CA.
 - CA confirmed that she was now satisfied with the construction updates she has been receiving.
 - BD asked ConCom members if the developer's efforts to comply with previous violations was sufficient to justify releasing the pending OOCs for lots 29 and 30.
 - ConCom members responded that they would prefer to wait until more of the violations had been satisfactorily addressed.

- **Public Hearing (cont'd.): NOI – 97 Holly Ridge Road, Lot 29, Crabtree Development/Rick Roper, Pingry Hill, MassDEP # 100-0375**
 - GB moved to continue the Public Hearing to 10/23/14; TT 2nd.
 - Motion approved unanimously.

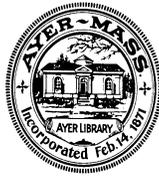
- **Public Hearing (cont'd.): NOI – 113 Holly Ridge Road, Lot 30, Crabtree Development/Rick Roper, Pingry Hill, MassDEP # 100-0376**
 - GB moved to continue the Public Hearing to 10/23/14; TT 2nd.



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- Motion approved unanimously.
- **Public Hearing (cont'd.): NOI: 5 Ledge way, Ann Loven, MassDEP # 100-0377**
 - J.P. Connelly, of Goldsmith, Prest & Ringwall (GPR), was present.
 - Ms. Loven seeks to tear down an existing house and build a new single-family house.
 - A site walk was conducted on 10/4/14 by GB and JG and no issues of concern were noted.
 - The issue of a previous OOC (MassDEP # 100-0367) for 5 Ledge way issued to a different applicant was raised and addressed in the following agenda item, added at the beginning of the meeting.
 - GB moved to approve and issue an OOC for 100-0377; LC 2nd.
 - Motion approved 4-0 (TT abstained).
 - Mr. Connelly requested expedited release of the OOC as time is of the essence if construction is to begin this fall.
 - In reviewing the previous OOC, CA said it had no site-specific conditions and that CA was therefore comfortable with using the same OOC template for Ms. Loven's application.
 - BD said that since the previous OOC was appealed by neighbors, he preferred that ConCom adhere to its general standard of voting on an OOC at one meeting, then reviewing and signing the Order at a subsequent meeting.
 - In the meantime, the applicant can begin to have erosion controls installed and have CA inspect them.
 - GB moved to continue the Public Hearing for 100-0377 to 10/23/14; LC 2nd.
 - Motion approved unanimously.
- **Public Meeting: Request for COC, 5 Ledge way, Ann Loven, MassDEP # 100-0367**
 - Previously, an OOC for 5 Ledge way was issued for an NOI application made by Debra Turner.
 - The OOC for 100-0367 was recorded at the Registry but was appealed by abutters.
 - MassDEP then issued a Superceding OOC supporting ConCom's previous decision.
 - The Superceding OOC was never recorded at the Registry.
 - A subsequent court appeal resulted in Ms. Turner withdrawing from the purchase of 5 Ledge way.
 - Since the original OOC is attached to the deed for 5 Ledge way, it needs to be closed out.
 - CA was advised by Maryann DiPinto that MassDEP regards its unrecorded Superceding OOC as null and void.
 - ConCom should therefore issue a COC for OOC # 100-0367 based on work never having been performed, and check off "invalid OOC" on the form.
 - Mr. Connelly will then record the COC on Ms. Loven's behalf.
 - Since the previous OOC was not closed out prior to Ms. Loven's purchase of 5 Ledge way, it falls to her to secure the COC in order to keep her deed clear.



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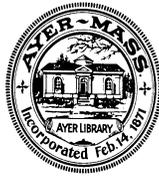
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- TT moved to issue a COC for # 100-0367 based on the OOC having lapsed, no longer being valid, and no work having been performed; GB 2nd.
 - Motion approved unanimously.

- **Public Hearing (cont'd.): NOI – Nashua Street Extension, Calvin Moore, MassDEP # 100-0363**
 - Developer Calvin Moore, and J.P. Connelly, of GPR, were present.
 - BD read a comment letter from DPW Superintendent Mark Wetzel, dated 10/9/14, into the record.
 - Mr. Connelly said they are aware of Mr. Wetzel's request for granite curbing, but they may ask the Planning Board to grant a waiver.
 - Whether granite curbing or a Cape Cod berm are used, Mr. Connelly said the profile and cross-section would be the same.
 - BD noted that the current plan before ConCom shows the entire cul-de-sac using granite curbing, with the rest Cape Cod berm.
 - A change in plan could be handled as a field change.
 - BD said that DPW / ConCom concerns (detention basin, storm pipe, curbing) now appeared to have been adequately addressed.
 - CA said the stream crossing for lot 7 still requires a detailed wetland replication plan.
 - CA noted that ConCom had required such a detailed plan for Stratton Hill before its OOC would become valid.
 - Mr. Connelly said he had no update on a replication plan at this time.
 - BD said ConCom would want to see a detailed planting pattern and list of shrubs before it reviews and signs an OOC at its 10/23 meeting.
 - MassDEP has a list of acceptable plantings, which includes red maple and high bush blueberry.
 - GB moved to issue an OOC for MassDEP # 100-0363, pending receipt of a satisfactory wetland replication plan; TT 2nd.
 - Motion approved unanimously.
 - GB moved to continue the Public Hearing, for review and finalization of the OOC, to 10/23; TT 2nd.
 - Motion approved unanimously.

- **Public Meeting (cont'd.): Request for COC – MBTA, Fitchburg Line improvements, Willow Road to Littleton Town line, MassDEP # 100-0334**
 - A site walk was conducted by JG, GB, and LC on 10/4 and no issues of concern were found.
 - GB moved to issue a COC for 100-0334; LC 2nd.
 - Motion approved unanimously.

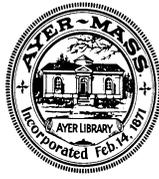
- **Public Meeting: Request for COC – Patriot Way (formerly 103 Sandy Pond Road), MassDEP # 100-0296**
 - The COC request is for the actual roadway.



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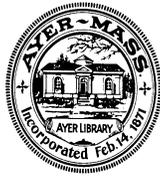
- CA performed a site walk and said everything looked fine.
- An as-built plan has been provided.
- GB moved to issue a COC for 100-0296; TT 2nd.
 - Motion approved unanimously.
- **Committee Updates**
 - Greenway Committee
 - TT said the Greenway Committee performed trail maintenance on Saturday, 10/4.
 - Progress was made in cleaning up the Science Trail and the Habitat Trail.
 - This is the last committee event for 2014.
 - Acting head of the Greenway Committee, Steve Smith, is looking for someone else to step in and take over.
- **CA Updates**
 - Comprehensive pond survey
 - CA has not received any recent updates from Geosyntec.
 - Beaver deceivers
 - CA has received written consents from all abutting landowners to the Rock Meadow Pond beaver dam.
 - Bridget, from the Board of Health, needs to perform a site visit before issuing a BOH permit.
 - Mike Callahan, of Beaver Solutions, is tentatively scheduled to install beaver deceivers at Rock Meadow Pond on 10/20, and at Long Pond Dam on 10/21, pending permits.
 - Ch. 61 Demand Letter
 - Town Counsel Kopelman & Paige has issued a demand letter to the Moore family concerning the Ch. 61 status of the parcel at the end of Pleasant Street (114 Pleasant Street / Riley Jayne Farm).
 - CA asked Town Administrator Robert Pontbriand to seek advice as to how ConCom should proceed in its Public Hearing process for this parcel.
 - Currently, 114 Pleasant Street is still before the Planning Board and a definitive subdivision plan is not yet ready.
 - Town Counsel has advised that ConCom should proceed as usual.
 - The demand letter does not affect ConCom moving forward with its permitting process, which is a separate issue.
 - CA said the demand letter also potentially affects the parcel for the Nashua Street Extension.
 - General business
 - CA met with a representative from Cains to discuss an RDA for maintenance work on a detention basin.
 - An area is being considered for excavation to improve drainage.



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- At issue is whether this area is a jurisdictional wetland or a non-jurisdictional ‘isolated land subject to flooding’.
- More detail is required.
- Approval Not Required (ANR) lot on Sandy Pond Road
 - Ed Cornelier told CA that the Callahan Family Trust has requested permission from the Natural Heritage and Endangered Species Program (NHESP) to cut a parcel B from larger lot X.
 - NHESP gave approval.
 - This lot would be considered an ANR with regard to the Planning Board.
 - It would still be jurisdictional to ConCom with nearby wetlands.
- **Member Updates**
 - TT said Beth Suedmeyer is urging Town Administrator Pontbriand to move forward on renewing the Town’s Open Space and Recreation Plan (OSRP).
 - It is therefore possible that Mr. Pontbriand will be forming a subcommittee in the near future to take action.
 - TT noted that volunteer students from the Conway School of Landscape Design assisted the Town of Shirley with its OSRP.
- **Unscheduled Discussion: Rosalie Bucci, 8 Hickory Way, Pingry Hill, Lot 37, MassDEP # 100-0338**
 - Resident Rosalie Bucci was in the audience and requested to speak with ConCom.
 - Her property is one of the 4 reissued OOCs previously discussed, and is located at the corner of Hickory Way and Rte. 2A.
 - Ms. Bucci asked if she could see the OOC and CA said she would provide a copy.
 - She also asked if she would have to sign an affidavit.
 - BD explained that the affidavit in question was a requirement of the developer, Rick Roper, to prove that he has made buyers aware of conditions attached to their lots.
 - BD explained the OOC process which establishes conditions that a developer has to abide by in order to do proposed work in proximity to wetland resource areas.
 - CA said that a COC would be issued for her property after ConCom receives the required as-built from Mr. Roper, along with a formal request.
 - The responsibility for removing the erosion controls will be Mr. Roper’s, although BD agreed with Ms. Bucci that permission from the property owner should be secured before entering her property.
 - Ms. Bucci complained about trucks coming up on her lawn without permission.
 - Ms. Bucci asked about the possibility of putting a fence up along 2A.
 - She said she had first been told that she could, but that later she was told she could not do anything within 35 feet of the road because of ‘line of vision’ requirements on a State road.
 - Ms. Bucci also asked about the possibility of thinning trees on her lot.



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- BD said he would be happy to walk the property with her on Saturday, 10/18, if she was available at 7:30 a.m., prior to the ANRAD walk at Pingry Hill at 8 a.m.
- Ms. Bucci agreed.

- **9:15 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.