

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **10/23/2014** – Approved 11/6/2014

Location: Ayer Town Hall, 1st Floor

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

Not present: Lee Curtis (LC)

APAC taped: No

7:10 PM – Open Meeting

- **Confirmation of the Agenda**

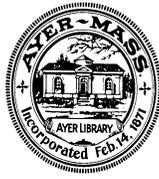
- Discussion of The Willows subdivision (DEP # 100-0288) was removed from the agenda.
 - The developer has requested a Public Hearing on 11/20 to consider a formal amendment to the OOC.
- GB moved to confirm the agenda as amended; TT 2nd.
 - Motion approved unanimously.

- **Announcements**

- One of two potential vernal pools in Ayer, submitted by TT and LC for consideration by the National Heritage and Endangered Species Program (NHESP), has been officially certified.
 - The vernal pool is located near the Science Trail in the Pine Meadow Conservation Area.
 - The other submission is awaiting further review.

- **Discussion: Jeff Thomas, Director, Parks & Recreation**

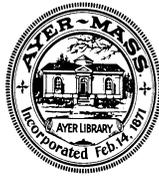
- Eagle Scout Candidates
 - Mr. Thomas appeared before ConCom with three Eagle Scout candidates seeking ConCom support for individual projects that will complete their requirements to be awarded this final achievement in scouting.
 - All three candidates had their projects reviewed and approved by the Parks & Recreation Board meeting on the previous night (10/22).
 - Jason Langlais Jr. described his project to build a picnic, camping, and barbequing area in Pirone Park, approximately 36 ft. from Grove Pond.
 - Jason will set a 74-ft. erosion bar, made from Christmas tree trunks, in a little trench to prevent runoff into the pond.
 - If there are any excess soils, Mr. Thomas will assist with a storage location for the material.
 - GB moved to support Jason's project; TT 2nd.
 - Motion approved unanimously.
 - Tyler Landry described his project to construct a raised set of picnic tables between baseball fields 1 and 5, behind the playground, as a family and team meeting area.
 - Tyler plans on constructing either four 8-ft. long tables or two 16-ft. long tables.
 - GB moved to support Tyler's project; TT 2nd.
 - Motion approved unanimously.
 - Jeff Blood described his project to build a 2-ft. high, 70-ft. long wood fence along the waterline between Jason's picnic area and the water.



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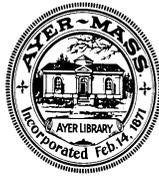
- The purpose of the fence would be to discourage geese from coming up into the picnic area.
- GB moved to support Jeff's project; TT 2nd.
 - Motion approved unanimously.
- ConCom members plan to inspect each of the projects upon their completion.
- Site visit
 - Mr. Thomas asked for a half-hour site visit to Pirone Park from ConCom.
 - The purpose of the visit is to provide guidance as the Parks & Recreation Department considers various projects going forward.
 - A site visit was set for Saturday, 11/8/14, exact time to be determined.
- **Accounts Payable**
 - The Sun: \$75.18, ad for NOI Public Hearing, 5 LedgeWay, for which payment from applicant has been received.
 - GB moved to approve payment of \$75.18; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI, 5 LedgeWay, Ann Loven, MassDEP # 100-0377**
 - J. P. Connolly, of Goldsmith, Prest & Ringwall (GPR), was present.
 - Nick Pauling, from GPR, previously reviewed the draft OOC for this project and made comments.
 - Mr. Pauling was concerned about the inclusion of Special Condition #59, requiring maintenance of drainage systems, because this project, using drip edge for roof runoff, will not have a drainage system.
 - Item 59 was therefore removed without objection from ConCom.
 - CA confirmed that corrections had been made to the OOC regarding the distance of limit of work to the shoreline (22 ft., not 15), and the transfer of ownership to Ms. Loven.
 - GB moved to accept minor changes to the Special Conditions of the OOC and to close the Public Hearing; TT 2nd.
 - Motion approved unanimously.
 - ConCom members signed the OOC.
- **Public Hearing (cont'd.): NOI – Nashua Street Extension , Calvin Moore, MassDEP # 100-0378**
 - J. P. Connolly, of GPR, and Calvin Moore were present to discuss the planned 8-house subdivision.
 - Mr. Connolly asked for a minor change to the draft OOC, Special Condition #61, amended to note that 480 sq. ft of wetland would be disturbed, and 725 sq. ft. of wetland replication planned.
 - CA noted that the draft OOC before ConCom members already reflected this change.
 - BD said that ConCom was willing to move forward without the requirement of an erosion control specialist, but that the applicant should understand that if problems arose during construction, ConCom would change that requirement.
 - BD therefore proposed striking Special Conditions 67-74 that reference an erosion control specialist.
 - TT said he was not in favor of striking those conditions.
 - BD said ConCom has not yet specified detailed criteria regarding whether an erosion control specialist would be required on a project.



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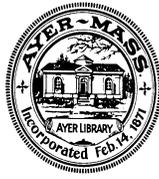
- Mr. Moore, the applicant, would therefore not have known about this requirement at the time of his initial application.
- The wetland replication detail sheet, previously requested by ConCom, was reviewed.
 - Mr. Connolly said the area in question would be excavated to 16 inches below grade, then backfilled with excavation material from the channel crossing in order to provide indigenous seed.
 - A winterseed mix would be planted as well.
- CA confirmed that Mr. Connolly would be advising Mr. Moore on the conditions of the OOC, including sequence of construction details.
- No comments were offered from members of the audience.
- GB moved to approve the final OOC and close the Public Hearing; TT 2nd.
 - Motion approved unanimously.
 - ConCom members signed the OOC.
- In response to Mr. Moore's question, CA confirmed that the OOC must be recorded at the Registry, and proof of recording given to CA, prior to the inspection of erosion controls and commencement of work.
- **Public Hearing (cont'd.): Abbreviated Notice of Resource Area Delineation (ANRAD) – Woodland Way, Pingry Hill Phase IV, Ridge View Realty, Rick Roper, MassDEP # 100-0378**
 - Steve Mullaney, of S. J. Mullaney Engineering, was present and thanked ConCom members (BD, CA, GB, TT, LC) for participating in the 4-hour site walk on 10/18.
 - In all, 211 wetland flags were reviewed.
 - Mr. Mullaney noted that the majority of the wetland flagging was confirmed by ConCom, but a dozen or so flags were shifted on site, and additional flags added in a few areas.
 - In one area, ConCom members requested additional soil borings be taken.
 - Mr. Mullaney said erosion control specialist Desheng Wang did those borings on Monday, 10/20, and he had received Dr. Wang's report earlier today.
 - Dr. Wang's report proposed 3 additional wetland flags for one of the areas in question (F130A, B, and C) where he did find hydric soils.
Mr. Mullaney said he had a surveyor scheduled to go out and exactly located the flags relocated by ConCom or added by Dr. Wang.
 - A revised plan with final flag positions will be submitted to ConCom next week.
 - GB moved to continue the Public Hearing to 11/6, pending receipt of the updated plan; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Rick Roper, previous violations and update on current status**
 - Rick Roper, Steve Mullaney, and Attorney Philip Eliopoulos, of Chelmsford, were present.
 - Attorney Eliopoulos represents the subdivision for all of the transactional work related to property sales and closings.
 - Mr. Mullaney reviewed the outstanding violations on the part of Mr. Roper, as detailed in ConCom's August email.
 - Signed Affidavits
 - At Mr. Roper's request, Attorney Eliopoulos has reached out to 14 property owners asking them to sign affidavits that verify their understanding of the obligations under the OOCs issued for their lots.
 - Attorney Eliopoulos sent these notices on 10/18 by certified mail.



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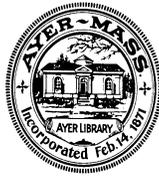
- Going forward, Attorney Eliopoulos said that a specific “Rider to Purchase & Sale Agreement” will be attached to all P & S agreements where applicable to the conditions of the OOC.
 - If prospective new owners won’t sign future affidavits, the property will not be sold to them.
- Regarding the 14 current property owners for whom Mr. Roper did not secure the required affidavits before sale, Attorney Eliopoulos has heard from 3 of them.
 - If an owner refuses to sign an affidavit now, Attorney Eliopoulos said he is not sure what can be done.
 - Attorney Eliopoulos did say that at the closing for each of these 14 properties, a copy of the OOC had been provided to the buyers’ attorneys.
 - Therefore, even if the owners won’t sign the affidavits now, they are still legally bound by the continuing conditions of the OOC.
- Attorney Eliopoulos will keep CA updated on his progress in securing signed affidavits.
- Recording of OOCs
 - Mr. Mullaney confirmed that the OOCs for MassDEP #s 100-0337 (187 Old Farm Way), 100-0338 (8 Hickory Way), 100-0339 (214 Old Farm Way), and 100-0330 (Phase II infrastructure) have all been recorded at the Registry of Deeds.
 - COCs will be applied for in order to clean up the deeds.
- Siltation problem noted on 10/18 site walk
 - Concern was expressed on 10/18 over an expansive area (approximately 100 feet) of silt covering leaves in the vicinity of Old Farm Way and Deer Run, near lot 79A.
 - Subsequent to the site walk, Mr. Roper, a representative from Powell Construction, and erosion control specialist Desheng Wang went to the area to try to determine the origin of the silt.
 - The best working theory is that some of the catchbasins for Phase V are connected to that drainage system, so that some of the silt from construction on Holly Ridge has made its way over.
 - Additional floc logs at the catchbasins have been placed to address this.
- Certificates of Completion (COC)
 - Mr. Mullaney said that requests for COCs for the above OOCs, as well as others, are being worked on.
 - Some require as-built surveys, some require signed affidavits from homeowners, and some don’t have either of those requirements.
 - Three OOCs are older and do not have requirements for as-builts:
 - 100-0262 (50 Dear Run, lot 87)
 - 100-0267 (58 Hemlock, lot 56)
 - 100-0268 (45 Partridge Run, lot 35)
 - Of these, lot 56 was walked on 10/18.
 - Mr. Mullaney said the siltation problem observed did not have anything to do with lot 87, so applying for a COC for this lot should not be a problem.
 - The third lot, lot 35 (45 Partridge Run), will require a longer site walk due to issues between property owner Nick Mancini and developer Rick Roper.



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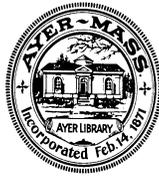
- BD asked CA to try to schedule a site walk at Mr. Mancini's for 11/8.
- Mr. Mullaney said a request for COC is also being prepared for the Phase II infrastructure (100-0330).
 - An article on the warrant for Fall Town Meeting (10/27) is requesting street acceptance for portions of Old Farm Way, Deer Run, Partridge Run, and Hickory Way.
 - DPW Superintendent Mark Wetzel has indicated that ConCom signoff on a COC is not a condition for street acceptance by the Town.
- Mr. Mullaney also asked that two older requests for COCs again be considered by ConCom.
 - The COC requested for 26 Fox Run Drive (lot 113, MassDEP # 100-0265) was not granted because of the property owner having thrown used Christmas trees and trash into a restricted area and not having cleaned the area up.
 - The COC requested for 32 Deer Run (lot 88, MassDEP # 100-0263) was held up because of the issuance of an Enforcement Order in July 2012 against property owner Lillie Wilson.
 - Mr. Roper said that Ms. Wilson has now repaired the area in question.
- Contact Information
 - Mr. Mullaney said contact information for parties now working on Phase III and Phase V has been updated and provided to CA.
- Construction Schedule Sequence
 - CA distributed a chart, received earlier in the day, showing a timeline of currently planned work for Phase V through 2015.
- Weekly Status reports
 - CA is satisfied with the reports she has been receiving from Mr. Roper and Dr. Wang.
- Water Tank Rumors
 - Mr. Roper asked for a moment to dispel rumors circulating that he skipped from working on Phase III to Phase V in order to walk away from his agreement with the Town to construct a large-capacity water tank in Phase IV.
 - Mr. Roper said the last thing he would do is to walk away from this requirement.
- Lots 29 and 30, OOCs
 - In light of the above progress made on the list of violations, Mr. Mullaney asked ConCom to consider releasing the OOCs for lots 29 and 30.
 - Lot 30, in particular, already has a buyer lined up.
 - Given progress, ConCom members did not object to releasing Lot 30 at this time.
 - BD indicated agreement and said that if more progress is made, ConCom would consider also releasing Lot 29 at its 11/6 meeting.
- **Public Hearing (cont'd.): NOI – 113 Holly Ridge Road, Lot 30, Crabtree Development/Rick Roper, Pingry Hill, MassDEP # 100-0376**
 - The draft OOC for this lot has been on hold pending compliance with the developer's violations.
 - Reviewing previous meeting notes, ConCom initially asked for both signs and boulders to demarcate the backyard area from the wetland resource area.
 - At its 7/24/14 meeting, the developer received field change approval to relocate a stormwater basin onto this lot, and lot 29, in between the backyards and the resource area.



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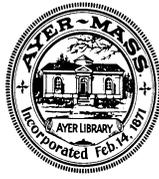
- Because of this, ConCom changed its requirement to just signs.
 - On advice from DPW, the three signs on Lot 30 should be on steel posts set in 1 ft. of concrete.
- TT will provide a sample of the Town of Groton's signage to CA.
- Other than this site specific special condition, the OOC would be ConCom's standard boilerplate.
- CA will prepare the draft OOC for completion at ConCom's 11/6 meeting.
- Resident Michael Anuta, of 187 Old Farm Way, asked ConCom to reconsider its decision to only release Lot 30, and asked that ConCom include Lot 29 as well.
 - Mr. Anuta said stormwater drainage from these lots has run down to the silt fence and barriers, overflowing them.
 - For the protection of the stormwater basin, Mr. Anuta asked that both lots be released so that work can commence to address this situation.
- Mr. Mullaney explained that ConCom had, over the summer, already approved a field change allowing work on that basin.
 - That work is thus already authorized and not being held up by ConCom.
- BD also clarified for Mr. Anuta that the OOCs for lots 29 and 30 only have to do with the house lots, not work on the basin.
- CA asked Mr. Roper if work on that basin, which straddles both lots 29 and 30, would be complete before construction of the houses begins.
 - Mr. Roper said it would, but that he hasn't dared touch the basin recently given the ongoing discussion over his multiple violations.
- GB moved to issue a draft OOC for 100-0376 and continue the Public Hearing to 11/6; TT 2nd.
 - Motion approved unanimously.
- **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 11/6; TT 2nd.
 - Motion approved unanimously.
- **Discussion: The Willows Subdivision, MassDEP # 100-0288**
 - Duncan Brown, and other residents from The Willows, were present in the audience for this portion of the posted agenda.
 - BD updated them that, at the beginning of the meeting, this item had been removed from the agenda.
 - ConCom has rescinded its prior approval, made on 8/28/14, of field changes.
 - The applicant will therefore be filing an amendment to the OOC and this will require a Public Hearing, currently anticipated to be held on 11/20.
 - The applicant therefore asked that substantive discussion of The Willows not take place without representation.
 - BD emphasized that the developer cannot go forward with work to relocate a building until this process has been completed.
 - An amendment to an OOC requires notification of abutters.
 - CA said she made clear that this notification should include not only abutters within 100-feet of the property line, but also all unit owners within the subdivision itself.
 - One resident asked who Desheng Wang is.



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- BD explained that, because ConCom had had numerous major enforcement issues with the developer, MassDEP finally stepped in.
- MassDEP required the developer to bring in an erosion control specialist and this is the role being performed by Desheng Wang.
- A biologist, Mary Trudeau, works under Dr. Wang's supervision and makes weekly reports to the State and ConCom.
- Mr. Brown asked if ConCom would be setting up a site walk.
 - BD said yes, and that the developer would have to have the potential building location staked in advance.
 - BD added that ConCom site walks are not open to the public, in part because of liability issues.
 - Issues raised on a site walk are later reviewed in open meeting at ConCom's continuation of the Public Hearing.
- Another resident asked if there are specific requirements, such as environmental studies, for amendments to an OOC.
 - BD said that ConCom considers what is allowed under the law and that this includes consideration of:
 - the amount of impervious surface introduced;
 - the amount of disturbance and the limit of work, especially critical in a riverfront area;
 - impact on stormwater for the overall development.
- Mr. Brown said the Riverfront Protection Act limits work to under 5000 square feet.
- BD said that ConCom would undoubtedly be asking Desheng Wang to provide updated stormwater calculations at its meeting following the site walk, and that any calculations would also be sent to DPW Superintendent Wetzel for his review as well.
- Mr. Brown cited CMR (Code of Massachusetts Regulations) 310, 10.58, and said the developer should have to show the economic feasibility of why the building has to be relocated where planned.
 - Mr. Brown also said that the law as written allows certain criteria by which work within the riverfront zone can be done, but that this excludes multifamily dwellings.
 - BD said that ConCom would be looking into this.
- CA said that it was ConCom's understanding that the Zoning Board of Appeals (ZBA) would be holding its next meeting on 11/3 at the Fire Station to also consider the developer's plan to relocate a building.
- **Committee Updates**
 - Pond & Dam Committee
 - TT can no longer attend meetings of the Pond & Dam Committee.
 - BD offered to take his place.
 - TT nominated BD as ConCom representative on the Pond & Dam Committee; GB 2nd.
 - Motion approved unanimously.
- Open Space & Recreation Plan (OSRP) Update Committee
 - CA said the Board of Selectmen would shortly be creating this new committee and that ConCom will be asked to appoint a representative.
 - Selecting a ConCom rep was tabled until more information about when meetings would be held is received.

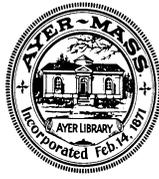


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- **CA Updates**

- Comprehensive Pond Survey
 - CA will place an item on Geosyntec’s progress onto ConCom’s next agenda.
 - Bob Hartzel, of Geosyntec, recently circulated a draft ‘Grove Pond Human Health Recreational Risk Assessment’ report to ConCom members for review.
- Beaver management
 - Beaver deceivers, installed by Mike Callahan of Beaver Solutions, are now in place at Long Pond and Rock Meadow Pond.
 - The installation at Long Pond proved more challenging because the spillway is built over an old boulder dam, making it difficult to drive in support posts.
 - If the device installed at Rock Meadow Pond needs to have the water level adjusted, Mr. Callahan will come back and do so.
 - The water level at the time of installation was on the low side.
- DPW
 - Superintendent Wetzel has set up a pre-construction meeting for the Victor Drive culvert replacement on Wednesday, 11/29, at 3 p.m.
- Cains
 - Cains is filing a Request for Determination of Applicability (RDA) for work to repair and repave a current docking area.
 - Most of the area is outside of the buffer zone.
 - Since the work is maintenance of an existing area, CA advised Cains that an RDA was more appropriate than an NOI.
 - However, a larger project, to be filed over the winter, will require an NOI submission.
 - In addition, Jack Mabon, of Cains, heard back from Steve Sears, of David E. Ross Associates, that the property wasn’t surveyed properly.
 - An area thought to be an ‘isolated wetland not subject to jurisdiction’ is not, and the area in question is jurisdictional to the Wetland Protection Act.
 - BD asked CA to let Mr. Mabon know in advance that ConCom will be holding a place for Cains for a site walk on 11/8.
- Kohler Place
 - NHESP approved a request by the landowners to take lot B, part of lot X, out of Conservation Restriction.
 - CA responded to an inquiry from Town Administrator Robert Pontbriand that the CR for this property, while discussed, was never completed.
- Erosion Control Specialist OOC Requirement
 - BD asked CA to add to the next agenda discussion of how ConCom can quantify the conditions under which an OOC would require a developer to use the services of an erosion control specialist.
 - In this way, a developer would know at the point of application what was going to be required.
- Pingry Hill stormwater runoff issues
 - Driving through Pingry Hill, at the corner of Hemlock and Route 2A (lot 59), CA observed flooding over the silt fence into the wetland and getting close to the roadway.



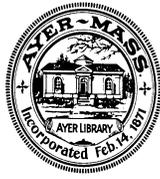
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- Desheng Wang thinks a catchbasin was accidentally covered over when hydroseeding was done.
- This will be addressed along with another area of excessive siltation runoff on Haymeadow, where the road makes a 90 degree turn.

- **Meeting Minutes Approval**
 - The minutes for 10/9/14 were reviewed.
 - BD noted that he had met with Rosalie Bucci, of 8 Hickory Way (Pingry Hill, Lot 37, 100-0338), on 10/18.
 - Reviewing plans provided by CA, BD observed that the drainage easement on this property is extensive.
 - BD advised Ms. Bucci to write developer Rick Roper a letter formally asking that notification be given her when work is being done within the easement on her property.
 - BD also advised that she copy the DPW on this so that they, too, know of her concerns.
 - As to Ms. Bucci's interest in constructing a fence, BD told her that any such work within the drainage easement must be coordinated with the people who would need access to the easement, such as the DPW.
 - If Ms. Bucci wishes to remove some trees, BD told her to flag them and then ConCom would review on a site walk.
 - GB moved to approve the meeting minutes for 10/9/14 as written; TT 2nd.
 - Motion approved unanimously.

- **Citizen Concerns**
 - Michael Anuta, of 187 Old Farm Way, asked to address ConCom.
 - Mr. Anuta asked that ConCom meeting minutes be made available more quickly.
 - CA told Mr. Anuta that even if minutes are not posted to the Town website, a request can be made to CA for a copy of the minutes and CA could quickly then pass them on.
 - Mr. Anuta expressed his opinion that there was a conflict between the Open Meeting Law (OML) and the kind of discussion he was hearing took place during ConCom site walks.
 - To Mr. Anuta, these discussions sounded like deliberations were being made in the field.
 - CA said that this has been an issue for ConComs across the state and that the OML as written doesn't take into account the specific work that ConCom's must do during site walks.
 - BD said that ConCom members must be able to ask questions when on site walks in the field in order to be able to adequately assess applications before the Commission.
 - BD underscored that discussions and observations made in the field are reiterated in open meeting at ConCom's continuance of Public Hearings.
 - He pointed to the earlier Public Hearing on the ANRAD for Pingry Hill as an example.
 - CA added that Ayer ConCom had previously solicited opinions from the DEP Circuit Rider and from Town Counsel for clarification.
 - ConCom must be able to do ask questions in the field in order to do its work, but understands that formal decisions (i.e. approvals or denials) cannot be made in the field but must be made during an open meeting.



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- Mr. Anuta also questioned why members of the public cannot attend site walks because of liability issues.
- **10:01 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.