

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **11/20/2014** – Approved 12/4/2014

Location: Ayer Town Hall, 2nd Floor

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

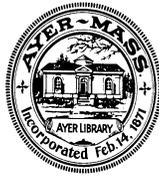
Not present: Becky DaSilva-Conde (CA, Conservation Administrator)

APAC taped: No

7:27 PM – Open Meeting

- **Confirmation of Agenda**
 - LC postponed her discussion of MassDEP Wetland Regulations revisions to another meeting.
 - GB moved to confirm agenda as amended; TT 2nd.
 - Motion approved unanimously.

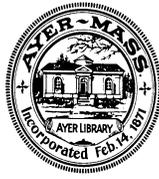
- **Public Hearing: Request for Amended Notice of Intent (NOI) – The Willows Subdivision, Willow Road Development LLC, MassDEP # 100-0288**
 - LC, a resident of The Willows, recused herself and left the room.
 - Developer Mark O’Hagan and Erosion Control Specialist Desheng Wang, of Creative Land & Water Engineering LLC, were present.
 - Also present were numerous concerned residents from the subdivision, including Duncan Brown, head of an ad hoc Homeowners Board at The Willows.
 - Dr. Wang presented the plan for the relocation of the 3-unit building housing units 56-57-58 to the west of existing building unit 95.
 - The plan was initially approved by ConCom as a field change at its 8/28/14 meeting, but the developer was subsequently informed that, due to the extent of the proposed work within the riparian zone to Bennett’s Brook, that approval was rescinded and an Amended NOI would have to be filed instead.
 - In addition, this filing would need proper notification to abutters, including residents of the subdivision.
 - Among Dr. Wang’s points:
 - All proposed work is within the previously approved Limit of Work (LOW);
 - While the new building would be closer to the river, all required performance standards were being met;
 - A drywell was added to the rear of the building to collect clean roof runoff and drain to the riverfront;
 - The driveway would be pitched to the roadway, which in turn will drain to the same detention basin as with the originally planned location of the building further uphill;
 - Improvements would be made to plantings to restore the first 100 feet from the brook (the inner riparian zone) to its natural condition;
 - Given the history of this particular area, putting an alternatives analysis in writing was not felt to be necessary;
 - The purpose of relocating the building was to avoid the softer clay soils uphill which presented safety concerns regarding erosion and the stability of the footings and foundations, and would be costly to address if the original location was retained;
 - The relocation did not increase the amount of paved / impervious surface in the development;



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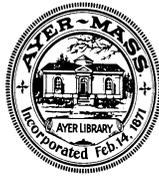
- According to the terms of the Rivers Protection Act (RPA) of 1996, Dr. Wang said the proposed relocation would have no impact on wetlands, but would increase water recharge.
- JG asked about whether an alternative analysis should be required regardless.
- BD said that staking out the area for a site walk was especially important here.
 - **A site walk was scheduled for 8 a.m. on Saturday, December 6, 2014.**
 - BD clarified that residents are not allowed on ConCom site walks because of issues of liability.
- Speaking for residents, Duncan Brown raised a number of points of concern about the plan.
 - Mr. Brown questioned the proposed drywell's contents draining to the riverfront without treatment.
 - Dr. Wang said the drywell would collect only clean roof runoff, no road runoff.
 - Mr. Brown pointed out that the footing drains from the next building over (#95) run to the same location as the planned drywell.
 - Dr. Wang said he would check this out.
 - Mr. Brown said the underdrains intended as a mitigating measure for building 95 will be impacted as the open pipes discharge within the same area as the proposed footprint of the new building.
 - Mr. Brown asked for an accounting of this.
 - Mr. Brown said that the ad hoc homeowners board had no objection to the relocation of buildings 87 and 88 as part of an amendment to the NOI, but that they thought the relocation of 56-57-58 into the outer riparian zone of riverfront should be covered by a separate and new NOI.
 - Mr. Brown said the bulk of the relocated building (56-57-58) is outside the original LOW for this area.
 - BD disagreed, saying that in his recollection, it fell within the accepted LOW when ConCom approved the original NOI in 2005.
 - Mr. Brown said the ad hoc board objected to the idea of a new 3-unit building placed within the 200-ft. riparian zone, and were concerned about future continuing obligations (i.e. flood insurance) that may present a burden the homeowners may not want or be able to accept.
 - TT said he was not aware that the area in question for 56-57-58 is in a flood zone and questioned whether flood insurance would therefore be required.
 - Mr. O'Hagan said in conversations with the Zoning Board of Appeals (ZBA), the area in question was regarded as outside of a flood zone.
 - There is a substantial difference between the elevation of the buildings and the floodzone to the river.
 - He will confirm this with Jesse Johnson, of David E. Ross Associates.
 - BD asked Mr. O'Hagan to get this confirmation from Mr. Johnson in writing for the benefit of ConCom and the ad hoc board.
 - TT added that while there may be high ground water in this area, this does not in itself make an area jurisdictional or a flood zone.
 - Mr. O'Hagan said that the building would of course be set above the high groundwater level.



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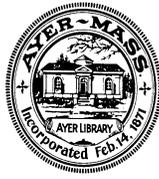
- Mr. Brown said that buildings 95-97 and 92-94 were not allowed to have walkouts constructed in the back because of abutting the 200-ft. riparian zone, and questioned why this new building should be allowed to be located directly within the outer riparian zone.
 - BD disagreed, saying the issue of preventing walkouts because of abutting the riparian zone did not come up in 2005.
 - Another resident suggested the issue had more to do with elevations.
- Mr. Brown said there was an omission in the original 2005 filing for building 95-97.
 - That building was not built until 2012, and at the time of construction, people were told they could not have walkouts because of elevations.
 - Neither Mr. Brown nor Mr. O'Hagan could say who had barred the construction of walkouts.
- Mr. Brown suggested stakes to indicate grading and elevation for ConCom's 12/6 site walk.
- BD asked that as-builts for existing buildings in the area be provided for the site walk, for comparison to proposed plans.
- Sheila, resident of unit 95, asked how a drywell for the new building would provide sufficient mitigation of drainage when the area for the proposed building was already supposed to provide mitigation for drainage from 95-97.
 - Mr. O'Hagan said the mitigation in this area related to invasive species, not stormwater drainage.
 - Mr. O'Hagan added that perimeter drains from 95-97 can be relocated if necessary.
 - BD said ConCom's jurisdiction had to do with protecting resource areas, in this case Bennett's Brook, from changes in conditions that might affect the resource.
 - In this case, the proposed drywell temporarily stores only clean water runoff from the roof.
 - The function of perimeter drains is to redirect groundwater away from foundations, but except for where the pipes may come up, they are not part of ConCom's general discussion.
- Mr. Brown questioned the original calculations for the sizing of the subdivision's detention basins, and questioned in particular the impact of new runoff from the front of 56-57-58 on the nearby existing basin.
 - Mr. Brown said that water coming off the hill through a drainage swale was not supposed to drain directly toward the river.
 - Based on recollections from 2005, BD disagreed.
 - Dr. Wang said that water coming from the hill was, in fact, supposed to bypass the basin and travel directly into the wetlands.
 - In addition, since the proposed building changes did not increase the size of impervious surfaces in the subdivision, there would be no detrimental impact on the basins.
 - The swale was not going to be altered by the proposed building changes.
 - BD asked Dr. Wang to review the stormwater calculations and provide written documentation that the calculations match existing conditions.
 - BD said the swale was intended to only control groundwater and water coming off the hill.
 - Mr. Brown said the swale does drain to the detention basins.



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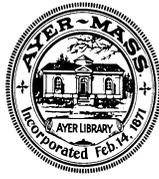
- Mr. Brown said he had talked to Ben Horner, of Hoyle & Tanner, a consultant for the DPW hired to review Phase I and II construction.
 - Mr. Brown said Mr. Horner said that the drainage system as built did not match the proposed plan.
 - BD took Mr. Horner's phone number and said he would try to talk to him.
- Sheila referred to inadequate parking in the area, which will be worsened with the addition of a new building, but agreed that this issue was not jurisdictional to ConCom.
- She asked, however, if the proposed new building could be moved an additional 4 ft. away from her building, making the distance between buildings 17 ft. rather than 13 ft.
 - Mr. O'Hagan said that he had no objections to do this if it met setback requirements and was approved by the ZBA.
 - BD asked that the property line therefore also be staked for the 12/6 site walk.
- Mr. Brown returned to the question of whether an alternatives analysis should be required, in accordance with the RPA.
 - The RPA is specific, he said, in requiring a developer to provide a clear economic reason as to why a building can only be located in one area and not another.
 - Mr. Brown noted that other buildings further uphill, already constructed, wound up having costlier foundations than planned.
 - He did not think the cost of the foundations for 56-57-58 in their original location up the hill would be any higher than some of these other costly foundations, even with the addition of structural fill to stabilize the soils.
 - Something like this was required by the Building Inspector, and the effort to avoid this additional cost led to the developer's proposal to relocate this building downhill.
 - The cost issue did not, therefore, in Mr. Brown's view, justify the relocation of 56-57-58 into a protected riverfront area.
 - BD asked that numbers be put to the developer's claim of higher costs in the original location.
- Dr. Wang said the relocated building met the performance standards required by the RPA, as the relocated 56-57-58 would alter less than 10% of the riverfront area.
- For the 12/6 site walk, BD summarized ConCom's requirements:
 - Building to be staked;
 - Property line to be staked;
 - Detail provided (i.e., as-builts) showing elevations in existing nearby structures so than informed comparisons can be made to the proposed new building in the area;
 - A written accounting of the difference in the construction cost of building up hill, as originally planned, and in the proposed new location.
 - BD said ConCom would also walk the swale to study how it connects to the wetlands versus the basin.
- GB moved to continue the Public Hearing to 12/18; TT 2nd.
 - Motion approved unanimously (4-0).
- On reflection, JG recalled that CA had asked that ConCom formally vote to rescind its 8/28/14 vote to approve field changes that included the relocation of building units 56-57-58 to the new location next to building unit 95.
- BD re-opened the Public Hearing for 100-0288.
 - GB moved, for administrative purposes, to rescind ConCom's previous approval of field changes (8/28/14); TT 2nd.



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- Motion approved unanimously (4-0).
- GB moved to continue the Public Hearing to 12/18/14; TT 2nd.
 - Motion approved unanimously (4-0).
- **Public Meeting: Request for Determination of Applicability (RDA) (cont'd.) – CAINS Foods, Inc., 114 East Main Street**
 - LC rejoined the ConCom meeting.
 - John Mabon, Project Management Consultant for Cains, was present.
 - ConCom performed a site walk on 11/8 and made a number of requests which were now addressed by Mr. Mabon.
 - Mr. Mabon has provided CA with a revised plan showing the changes required.
 - Check dams in the drainage swale
 - ConCom requested the inclusion of check dams in the 60-ft. stormwater management swale in order to slow water velocity and provide time for the settling out of sediments.
 - Mr. Mabon presented a letter from an engineer who revised the plan to include the addition of a single 3-in. high check dam.
 - The engineer said the use of any additional check dams would likely back water up too much in the 60 ft. swale and wind up causing new flooding in the paved area at the back of the building.
 - BD said that, given the existence of a letter from an engineer, ConCom was comfortable with this assessment and did not require it to be vetted by DPW Superintendent Mark Wetzel.
 - Erosion controls
 - The revised plan shows the new location of haybales in a 10-ft. gradient from the headwall near the catchbasin in the front parking lot.
 - Other erosion controls, placed in an area where the existing slope would render them ineffective and unnecessary, have been removed from the plan.
 - Operations & Maintenance Plan
 - As requested, hard copies of an OMP were delivered to CA's desk.
 - These were inaccessible to ConCom at the time of this meeting because of CA's absence due to a medical emergency.
 - Tree Clearing
 - At the site walk, ConCom suggested that trees growing on the west side slope of the swale could be removed.
 - On discussion with the owners, Mr. Mabon said they decided they would like to remove these trees.
 - This is the only detail not included on the revised plan submitted to CA.
 - Mr. Mabon concluded by asking ConCom to issue a Negative Determination of Applicability.
 - The proposed work will result in a maintained swale that will serve as a big improvement in stormwater management over existing conditions.
 - GB moved to issue a Negative Determination of Applicability; LC 2nd.
 - BD noted that any special conditions required by ConCom have been addressed in the revised drawing.
 - Motion approved unanimously and the signature sheet was signed.
 - BD told Mr. Mabon that it is now on record that ConCom has approved the project.
 - Bearing in mind the 10-day appeal period, work may commence.



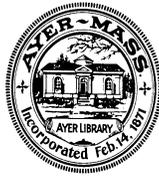
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- Mr. Mabon said they would first just be setting up erosion controls and repaving the back parking area.
 - Nothing that could be impacted by the 10-day appeal period would be started.
- As soon as CA returns, ConCom will provide a copy of the final DOA.

- **Discussion: Pingry Hill development, Rick Roper, Crabtree Development, follow-up to previous discussions on outstanding violations to OOCs**
 - Steve Mullaney, of S. J. Mullaney Engineering, was present.
 - Mr. Mullaney provided a spreadsheet on the status of affidavits from Attorney Philip Eliopoulos.
 - Two additional signed affidavits have been received.
 - In addition, Mr. Mullaney noted that 3 addresses on the list have OOCs that did not require signed affidavits.
 - BD asked Mr. Mullaney to update the spreadsheet to indicate ‘NA’ (not applicable) for those addresses.
 - Mr. Mullaney said the recently issued OOC for lot 30 (113 Holly Ridge Road, MassDEP # 100-0376) and the ORAD for Woodland Way (Phase IV, MassDEP # 100-0378) have been recorded at the Registry of Deeds and proof provided to CA.
 - Mr. Mullaney asked whether a signed affidavit was really required for MassDEP # 100-0330, for Phase II infrastructure, and if so, who would sign it – the BOS? DPW?
 - BD said an affidavit for this OOC was neither necessary nor applicable, especially considering that DPW Superintendent Wetzel successfully put the infrastructure up for acceptance at Fall Town Meeting this year.

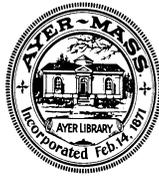
- **Public Meeting: Request for Certificates of Compliance (COC) – Pingry Hill (aka Ridge View Heights), Rick Roper, Crabtree Development, LLC**
 - Mr. Mullaney noted that he had accompanied ConCom on its site walk to inspect 15 lots on 11/8/14.
 - JG said that CA had indicated by phone that ConCom could issue the COCs if it stipulated that those OOCs with Special Conditions lasting in perpetuity would have this detail added later by CA on her return.
 - BD asked Mr. Mullaney if the later addition of a sheet indicating such Special Conditions to the COC was acceptable and Mr. Mullaney said yes, it was.
 - 50 Deer Run, Lot 87 (MassDEP # 100-0262)
 - No issues were found at this site.
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
 - 26 Fox Run Drive, Lot 113 (MassDEP # 100-0265)
 - BD noted that the owner, who was present at the site walk, had a pile of soil at the top of the embankment and had agreed to rake it out and reseed it.
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
 - 58 Hemlock Drive, Lot 56 (MassDEP # 100-0267)
 - This property had been observed at the 10/18/14 site walk in the area and found to have no problems.



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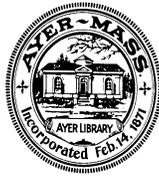
- JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- Phase II Infrastructure (MassDEP # 100-0330)
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 8 Hickory Way, Lot 37 (MassDEP # 100-0338)
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 214 Old Farm Way, Lot 84 (MassDEP # 100-0339)
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 31 Partridge Run, Lot 34 (MassDEP # 100-0347)
 - The owner was present during this site walk and had asked about removing 6 trees within the buffer zone.
 - He was told he would need to file an RDA with ConCom in order to do this.
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 282 Old Farm Way, Lot 49A (MassDEP # 100-0348)
 - The use of boulders in the back to demarcate the end of lawn from resource area was found acceptable.
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 264 Old Farm Way, Lot 51A (MassDEP # 100-0350)
 - The owner of this lot was advised to discontinue moving so close to the detention basin.
 - While not pertinent to the COC, it was noted that the driveway was likely constructed lower than as depicted on the plan, and that this was probably the cause of flooding issues experienced by the owner.
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 74 Hemlock Drive, Lot 55 (MassDEP # 100-0353)
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 67 Hemlock Drive, Lot 64 (MassDEP # 100-0357)
 - JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- 116 Hickory Way, Lot 82 (MassDEP # 100-0360)
 - This property was walked on 10/18 and found to have no issues.



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- JG moved to issue a Certificate of Compliance with an attached sheet containing any Special Conditions that shall last in perpetuity; GB 2nd.
 - Motion approved unanimously and a blank signature sheet was signed.
- **Lots still pending COCs:**
 - Mr. Mullaney noted that 5 other lots were walked on 11/8, or attempted, and that requests for COCs were not ready to be submitted because of various issues:
 - 32 Deer Run, Lot 88 (MassDEP 100-0263)
 - This property was subject to an Enforcement Order in 2012 because the owner had done unpermitted clearing into a resource area.
 - In ConCom's view on 11/8, additional clearing had since been done and this will need to be addressed.
 - 37 Hemlock Drive, Lot 62 (MassDEP # 100-0355)
 - Special Condition 52 requires boulders or a line of fencing to demarcate the rear yard limit and this has yet to be done.
 - 45 Partridge Run, Lot 35 (MassDEP # 100-0268)
 - This property is the subject of a grading dispute between the owner, Nick Mancini, and the developer, Rick Roper.
 - Mr. Mullaney said Powell Construction refuses to enter the property because of past rudeness on the part of the homeowner.
 - Mr. Mullaney said Mr. Roper indicated he will deal with the homeowner if a legal suit is brought to bear.
 - Otherwise, in Mr. Roper's view, any changes to the lot, such as regrading work, should be handled by a new NOI or RDA submitted by the current homeowner.
 - 272 Old Farm Way, Lot 50A (MassDEP # 100-0349)
 - Special Condition 50, in the OOC, specified the construction of a natural berm of mounded soil to demarcate the rear yard limit.
 - ConCom observed on 11/8 that there was no such berm, and that the current owner has planted rhododendrons on the other side of the erosion control line.
 - BD asked that the applicant fulfill the terms of the OOC for this lot.
 - 187 Old Farm Way, Lot 32 (MassDEP # 100-0337)
 - Mr. Mullaney cited an email, dated 11/7/14, received from homeowners Jean Hoffman-Anuta and Michael Anuta, refusing permission for ConCom to walk on their property.
- **Public Hearing (cont'd.): NOI – 97 Holly Ridge Road, Lot 29, Pingry Hill, Rick Roper / Crabtree Development (MassDEP # 100-0375)**
 - GB moved to continue the Public Hearing for 100-0375 to 12/4/14; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Conservation Administrator Job Posting**
 - CA has tendered her resignation and will be sorely missed.
 - Her final day of work will be 12/12/14.
 - BD attempted to contact Town Administrator Robert Pontbriand about the process of posting this job, now a union position, but has not heard back.



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- BD will attempt to contact Mr. Pontbriand again.

- **Meeting Minutes Approval**
 - GB moved to approve the minutes for 11/6/14 with one small correction; TT 2nd.
 - Motion approved unanimously.

- **Citizen Concerns**
 - Mr. Anuta, the citizen present, did not indicate any concerns.

- **9:49 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.