

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **1/22/2015** – Approved 2/12/2015

Location: Ayer Town Hall, 1st Floor

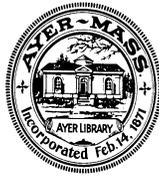
Members present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Takashi Tada (TT),
Jessica Gugino (JG, Clerk)

Not present: Lee Curtis (LC), Vacancy: Conservation Administrator (CA)

APAC taped: Yes

7:08 PM – Open Meeting

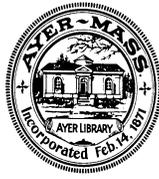
- **Confirmation of Agenda**
 - Two items were added to the agenda:
 - Don Price, for Patriot Way, regarding a field change to OOC, at 8 p.m.;
 - Discussion of Attorney General response to Open Meeting Law complaint.
 - GB moved to confirm the agenda as amended; TT 2nd.
 - Motion approved unanimously.
- **Meeting Minutes Approval**
 - GB moved to approve the minutes for 1/8/15 as amended; TT 2nd.
 - Motion approved unanimously.
- **Accounts Payable**
 - Lowell Sun: \$66.23, legal notice for Family Dollar NOI (applicant's reimbursement check already received).
 - GB moved to approve payment of \$66.23; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Request for Amended Notice of Intent (NOI) – The Willows Subdivision, Willow Road Development LLC, DEP # 100-0288**
 - Desheng Wang, of Creative Land & Water Engineering LLC, was present.
 - Also present was Duncan Brown, representing an ad hoc Homeowner's Association.
 - The draft Order of Conditions (OOC) was reviewed.
 - Mr. Brown had previously requested a copy of the draft OOC to review and had a number of comments:
 - Mr. Brown said the area of affected riverfront was not increased with the relocation of the 56-58 triplex.
 - BD said the relocation area was already counted as affected riverfront so the number would not increase.
 - BD appreciated Mr. Brown's differing opinion but said ConCom was accepting the Applicant's numbers on this.
 - Mr. Brown said that OOC condition #19 (on MassDEP's Form 5) should be amended to check that the planned work *was* subject to stormwater standards.
 - Dr. Wang agreed and this condition will be amended on the final OOC.
 - Mr. Brown said the area of proposed relocation was initially designed for mitigation and that the required mitigation measures for the site had not been amended to include compensatory mitigation elsewhere.



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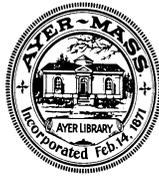
- BD noted that the original mitigation required in this area had been for the removal of invasive species.
- Plan L-9166, sheet 8 of 8, was consulted.
- BD read from Table 1, ‘Supplemental Mitigation Measures’, as prepared by David E. Ross Associates, Oct. 17, 2005.
- Mr. Brown’s assessment was correct and an additional 1840 sq. ft. of mitigation area for herbaceous shrubs/trees needed to be added to compensate for the area to be lost to the relocation.
 - BD asked Dr. Wang to revise the plan and provide new calculations for this, along with a revised mitigation area plan.
- Mr. Brown questioned a number of the Special Conditions (Attachment A), lasting in perpetuity, in the draft OOC:
 - S.C. 58 prohibits the use of sodium chloride (road salt) within 100 ft. of wetland or 200 ft. of riverfront.
 - Mr. Brown said the Homeowner’s Association would find this dangerous as the road ices up here.
 - Dr. Wang said this section of the road drains away from the riverfront, so would take stormwater runoff and carry it beyond the 200-ft. threshold.
 - BD asked Dr. Wang to see if there are reasonable alternatives to the use of road salt for de-icing roadways.
 - S.C. 60 prohibits the use of nonorganic fertilizers, pesticides and herbicides within the same parameters as above.
 - It was noted that this condition does not prohibit the use of organic products.
 - S.C. 62 requires that any maintenance “that may impact wetlands” will require coming before ConCom and getting its approval.
 - BD said this condition pertains to every resident of Ayer who does work that may impact wetlands.
 - Mr. Brown said that these conditions would be a burden to the Homeowner’s Association, especially with regard to the relocated triplex 56-58.
 - BD pointed out that the existing building which houses units 95-97 already falls under the same kinds of restrictions.
 - While some of the Special Conditions are new since the original OOC was issued in 2005, TT said that when an applicant requests an amendment to their OOC, this does not mean they simply get a recycled version.
- BD summarized that a revision to the plan, including a new mitigation area/plan, now needed to be done.
- GB moved to continue the Public Hearing to 2/12/2015; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont’d.): NOI – Borrego Solar Systems, Inc. / New England Power Co., DEP # 100-0379**
 - The draft OOC was reviewed for the solar panel installation on the right-of-way off Park Street.
 - No comments had been received from the applicant or representatives in response to the draft OOC.



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- There being none, GB moved to sign and issue the OOC as written; TT 2nd.
 - Motion approved unanimously.
- GB moved to close the Public Hearing for 100-0379; TT 2nd.
 - Motion approved unanimously.
- **Public Meeting: Request for Partial Certificate of Compliance (COC) – 8 Amandrey Way, DEP # 100-0152**
 - BD inspected the site on 1/17/15 and found no issues for former lot 7C off Groton-School Road.
 - GB moved to sign and issue a Partial COC; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – Family Dollar, 19 Fitchburg Road, Hunt Real Estate, DEP # 100-0380**
 - BD reviewed the letter received 1/22/15 from DPW Superintendent Mark Wetzel regarding the Family Dollar project.
 - Concerns raised by the DPW had been satisfactorily addressed by the applicant.
 - BD reviewed ConCom's site walk conducted on 1/17/15.
 - ConCom gave particular attention to the front corners of the property where new headwalls are to be constructed.
 - The erosion controls for this work were discussed at length on site.
 - Two rows of haybales, stacked two high, are to be used inside the drainage ditch.
 - As requested at the site walk, an Operations & Maintenance Plan for the planned Stormceptor has now been received.
 - The revision to the plans showing more detail regarding the headwall construction has now been received.
 - An area for a temporary enclosed drainage basin is marked on the revised plan.
 - After the site walk, Phil Henry, of Civil Design Group, was provided with a copy of the dewatering detail used by the DPW during work at the Grove Pond wells.
 - While this diagram was not used on the revised plan, BD found a note added to sheet 3 that verbally describes the suggested dewatering plan using haybales and filter fabric.
 - BD asked Paul Beck, in the audience from Civil Design Group, to let Mr. Henry know that a copy of the dewatering drawing provided by ConCom should be kept on site during the construction.
 - GB moved to sign and issue an OOC for 100-0380; TT 2nd.
 - Motion approved unanimously.
 - GB moved to close the Public Hearing for 100-0380; TT 2nd.
 - Motion approved unanimously.
 - At Mr. Beck's request, JG will send the OOC by certified mail to Mr. Henry.
- **Discussion: Field change to OOC, Patriot Way, Lot 4A, DEP # 100-0343**
 - Don Price appeared before ConCom and presented copies of a revised site plan for this corner lot, now under construction.
 - He was looking for approval for the addition of a 10x12 ft. deck inside the buffer zone that extends beyond the shaded area on the original plan.
 - With the deck added, all of the work remains within the haybale line.
 - The deck will be on the back side of the house, farthest from the wetland resource area.
 - The house is also separated from the resource area by Sandy Pond Road.



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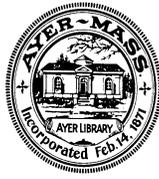
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- BD did not see any problem with this change to the plan provided that the deck is completed at the same time as the house.
 - Since the deck work is encompassed within already existing erosion controls, no additional protection is required.
- GB moved to approve a field change allowing the addition of a 10x12 ft. deck to the back side of the house; TT 2nd.
 - Motion approved unanimously.
- JG will stamp the plan and forward a copy on to Mr. Price.

- **Discussion: Pingry Hill development, follow-up to previous discussions on outstanding violations to OOCs**
 - Nothing new to report.

- **Discussion: Nashua Street Extension appeal (DEP # 100-0363)**
 - The OOC was appealed, resulting in MassDEP overturning the OOC and issuing a Superceding Order.
 - According to MassDEP, a new NOI will have to be filed addressing the infiltration basin's distance from the resource area.
 - On behalf of the applicant, Goldsmith, Prest & Ringwall has now formally requested an Adjudicatory Hearing to contest the MassDEP ruling.

- **Discussion: Ayer Wetlands Bylaw revision**
 - Recently 14+ large pine trees were taken down at an address on Snake Hill Road, across the road from Sandy Pond, within the 100-ft. buffer zone.
 - Some of the trees were right up against the house but others were at a distance, along the road.
 - JG questioned whether ConCom should exercise jurisdictional review in cases like this.
 - BD said ConCom can't really regulate tree-cutting in a non-resource area.
 - TT said that while there may be little that can be done to prevent such clear-cutting, the Town of Groton would likely require that a Request for Determination of Applicability (RDA) be filed.
 - JG lobbied for trying to put something in the Town's bylaw that gives ConCom the right to review such work and at least ensure it is done in a way that does not have a detrimental impact on the environment.
 - JG also noted that if every homeowner around Sandy Pond clear-cut their lots, this would have a significant cumulative impact on the environment around the Great Pond.
 - TT said such a requirement might make homeowners more conscious about what they are doing.
 - BD suggested developing a tree-removal performance standard for the bylaw.
 - BD also noted the importance of the bylaw distinguishing between actions taken by individual homeowners versus actions taken by developers.
 - Restrictions placed on developers would likely find greater support at Town Meeting than restrictions placed on individual homeowners.
 - Looking at some examples of other local bylaws (especially the Town of Sudbury), BD noted several areas that ConCom should look into further in considering a revision to Ayer's bylaw:
 - upland areas and how they are affected;
 - tree/vegetation removal standards;
 - vernal pool habitat;
 - intermittent streams (including a viable definition).



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- Another question for ConCom to consider is whether it should add bylaw segments or come up with a completely new bylaw.
- TT said ConCom should get an opinion from Town Counsel to see if Ayer's existing wetland bylaw is written in such a way that would permit ConCom to forge regulations without going to Town Meeting for a vote.
- GB expressed skepticism that the Town would give ConCom the authority to write its own regulations.

- **Discussion: Fixed Assets**
 - The Fixed Assets sheet for ConCom was reviewed.
 - A copy of the deed transferring ownership of Pingry Hill Parcel H-2 to Ayer/ConCom in 2012 was received from Steve Mullaney.
 - GB moved to approve and sign the Fixed Asset sheet with the inclusion of parcel H-2; TT 2nd.
 - Motion approved unanimously.

- **Discussion: Open Meeting Law Complaint**
 - The Office of the Attorney General's response (dated 1/15/2015; received 1/20/15) to the OML complaint filed against ConCom by Jean Hoffman-Anuta was reviewed.
 - Assistant Attorney General Kevin W. Manganaro found that the agenda for ConCom's 8/28/2014 meeting did not contain sufficient detail on the item regarding the re-signing of previously-issued but lost OOCs for 4 Pingry Hill NOIs.
 - The properties were listed only by their DEP file numbers, with no corresponding street address.
 - The AG's office did, however, also state that because the re-signing of the OOCs was "merely a ministerial act" for OOCs voted on years earlier, ConCom could have signed the documents outside of a public meeting.
 - Because the signing was put on the agenda, though, ConCom was therefore under obligation to provide sufficient notice to the public via the posted agenda.
 - On a second point, the AG's office did not find sufficient evidence to support the complaint that ConCom had engaged in improper deliberation to discuss the content of the 4 OOCs outside of a meeting.
 - ConCom was therefore found not in be in violation of Open Meeting Law on this point.
 - BD asked that this item be repeated on the agenda of ConCom's 2/12/15 meeting so that any members of the public wishing to discuss this further have advanced notice.

- **Discussion: Zoning Board Request for Comments on Catania-Spagna proposal**
 - Catania-Spagna is considering added 3 new sets of railroad tracks, a tank farm, and pumps along the back side of their building at 1 Nemco Way.
 - BD noted a photo included in the ZBA packet shows a pond next to the area where the work is planned.
 - ConCom's response comment therefore was: "Based on noted resource areas, applicant is required to file with ConCom."
 - Catania-Spagna will have to file an RDA at minimum, possibly an NOI.

- **10:08 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.