

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **11/12/2015** – Approved 12/10/2015

Location: Ayer Town Hall, 1st Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Takashi Tada (TT, Member), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Brian Colleran (CA, Conservation Administrator),

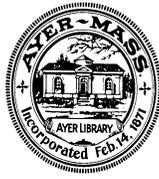
APAC taped: Yes

7:10 PM – Open Meeting

- **Confirmation of the Agenda**
 - A 7:45 Public Meeting for an RDA for Nashoba Hospital was cancelled.
 - GB moved to confirm the agenda as amended; TT 2nd.
 - Motion approved unanimously.

- **Discussion: Conservation Restriction (CR) for Sandy Pond #3 (MassDEP # 100-0220)**
 - Dave Murray, of Sandy Pond Estates, was present.
 - The process for the CR was started in 2004.
 - Mr. Murray said that originally the CR was held up because the ConCom in 2004 was pushing for a walking path.
 - More recently, Mr. Murray said they tried to have the CR accepted in 2013, at the same time that Mountain Laurel Road was put before Town Meeting for road acceptance.
 - Mr. Murray said that this request was made to the Planning Board Administrator and was denied.
 - Mr. Murray said Town Counsel also ignored the CR when submitted, though the roadway was accepted.
 - CA talked with Amanda Veinotte, of the Natural Heritage and Endangered Species Program, who said that everything has been done for the CR except the final signatures.
 - CA asked Mr. Murray for an updated copy of the CR (new date, newly signed).
 - BD suggested that if jurisdictional construction was complete, a request for a Certificate of Compliance (COC) be filed to close out the OOC.
 - CA will check on the status of the OOC, to see whether it has expired.
 - TT asked CA to check the wording of the OOC to see if a COC was contingent on completion of other items such as the CR.
 - BD asked CA to contact Town Administrator Robert Pontbriand for the procedures for finalizing the CR, including when in the process ConCom signs the CR, whether prior to or after the Board of Selectmen (BOS).

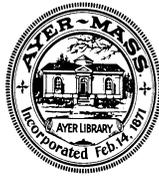
- **Public Hearing: NOI – The Willows, Willow Road Development LLC (MassDEP # 100-0387)**
 - Erosion Control Specialist Desheng Wang, of Creative Land & Water Engineering LLC, and Bruce Wheeler, of Habitech Homes LLC, were present.
 - CA has received proof of abutter notification and check reimbursement for the legal ad.
 - The NOI proposes the relocation of a Dover triplex unit from its previous planned location under the subdivision OOC, MassDEP # 100-0288, issued 12/1/2005.
 - The relocation moves the triplex for units 56-57-58 from an uphill location with clayey soil found to be unsuitable for supporting a foundation.
 - The proposed new location is downhill and to the immediate west of an existing triplex housing units 95-96-97.



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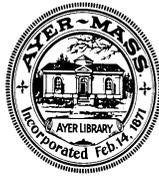
- Dr. Wang reviewed the history of this relocation, originally filed as an Amendment to the OOC on 10/28/2014.
 - After a lengthy review process, ConCom approved an Amended OOC on 2/12/2015.
 - This was appealed by abutters, resulting in MassDEP requiring the applicant to file a separate NOI for the proposed change.
- BD explained to BT that the hillside on which The Willows is located was once a clay mining operation back in the 1970s.
- Dr. Wang provided historic photos showing the extent of pre-existing disturbance in the area prior to The Willows construction.
- Dr. Wang said the proposed new location, within the outer 200 ft. riparian zone to Bennett's Brook, is an already-disturbed area originally intended as a partial 4408 sq. ft. mitigation area for invasive species.
 - The new location keeps the triplex in the same watershed, draining to the same detention basin #2, and does not increase impervious surface or stormwater runoff from the original subdivision plan (under 100-0288).
 - A new invasive species mitigation area, 4950 sq. ft., is planned further to the east.
 - The 56-58 triplex will be 3300 sq. ft. in size, with an additional 793 sq. ft. of paved driveway.
 - The only construction-related work in the inner 100-ft. riparian zone will consist of enhancement planting.
- Abutter Duncan Brown, who appealed the original OOC Amendment, presented a list of objections to the relocation.
 - Mr. Brown claims the original mitigation purpose for this parcel of land was mitigation for runoff from triplex 95-97, not for invasive species.
 - BD asked CA and Dr. Wang to research the original application to find specificity as to the intended mitigation purpose for the parcel.
 - Mr. Brown also argued the required mitigation area should be doubled.
- Mr. Brown asked about the status of the OOC #100-0288 and whether it had expired.
 - CA said the next item on ConCom's agenda was a request to extend this OOC, which is due to expire on 12/1/2015.
- Mr. Brown cited Mass. General Laws 310 CMR 10.58 to claim that the developer has disturbed more (35,000 sq. ft.) than the 10% or 5000 sq. ft. of riverfront area allowable for the 28 acre/147,840 sq. ft. subdivision.
 - BD asked CA to get an opinion on this from MassDEP's Circuit Rider.
- Mr. Brown argued that no data on soils/soil analysis has been provided, and claimed that the soils on the whole site "are all the same," therefore not justifying the relocation of a building from one area of the site to another on the basis on soil quality.
 - Mr. Brown said that the costs of building the foundation uphill as originally planned would not be significantly more.
 - He asked to see a cost comparison for #56-58 foundation construction between the original and proposed new site location.
 - Citing 310 CMR 10.58, Mr. Brown claimed that only single-family homes, not triplexes, can be built within the 200 ft. riverfront area.
 - BD asked CA to consult with MassDEP to ascertain the level of detail required for riverfront analysis.
- BD summarized the issues that need further clarification:
 - the reason for the mitigation in the proposed relocation site;



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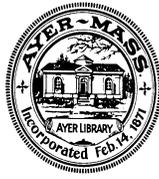
- the standard of data required for sq. footage of disturbance allowed in riverfront area;
 - the standard of data required for engineering and soil analysis;
 - issues raised under 310 CMR 10.58.
- Dr. Wang said he would also prepare responses to issues raised by Mr. Brown.
 - He added that he did not think some of the limitations under 310 CMR 10.58 applied to an already pre-disturbed area.
- A site walk was scheduled for 11/14 at 7:30 a.m.
 - JG asked Mr. Brown to flag the location of the pipe draining from units 95-97 which he had mentioned during the winter hearings for the OOC amendment and which ConCom members were never able to find.
- GB moved to continue the Public Hearing to 12/20/15; TT 2nd.
 - Motion approved unanimously.
- **Request for Extension of Order of Conditions: The Willows (MassDEP # 100-0288)**
 - Both Desheng Wang and Bruce Wheeler remained present from the previous Hearing.
 - Duncan Brown questioned the number of years an OOC can be extended after previous extensions.
 - BD confirmed that ConComs can extend OOCs for 1-3 years at their discretion.
 - It was also noted that the State's automatic extensions acts did not affect Extension limitations.
 - Mr. Wheeler said they expected to have the development complete in 2016, but to be safe were asking for a 3 year extension.
 - GB moved to approve a 3-year OOC Extension for 100-0288; BT 2nd.
 - Motion approved unanimously and the signature sheet signed.
- **Public Meeting: Request for Determination of Applicability (RDA) – 1 Nemco Way, JAR Realty Corporation**
 - Arthur Allen, of EcoTec, Inc., and Dan Brackett, of Catania Spagna, were present.
 - CA received the check for legal ad reimbursement.
 - Mr. Allen, Senior Environmental Scientist for Ecotec, described the purpose of the RDA being to determine the jurisdictional status of an intermittent stream/drainage channel to the side of Westford Road and across from Mulberry Circle.
 - Mr. Allen said the drainage channel conveys only stormwater and upland runoff.
 - In answer to BD's question, Mr. Allen said the purpose behind the RDA is that Catania Spagna wants to extend the existing culvert under Westford Road.
 - BD agreed that the area is not jurisdictional and that such work would not negatively affect the performance of the existing drain.
 - CA earlier performed a site visit and agreed it was not a jurisdictional ecosystem.
 - CA did ask about an unconfirmed potential vernal pool noted on MA maps and asked whether the hydrology for that might be affected.
 - BD said ConCom has to act on the information it actually has, and an unconfirmed vernal pool is still unconfirmed.
 - Mr. Allen added that the pool never dries out and would not be likely to be confirmed a vernal pool.
 - He said they nevertheless knew it qualified as a resource area and could not be impacted.



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- BD said that improving the drainage channel would also likely improve general overland flow and could be construed as an improvement that would likely also help nearby protected areas.
- GB moved to issue a Negative Determination of Applicability; JG 2nd.
 - TT moved for a friendly amendment to indicate that boxes 1 (not an area subject to protection) and 6 (work described not subject to review by Ayer ConCom) were to be checked on the DOA.
 - Motion approved unanimously and the DOA signed.
- **Violation Notice: 6 Wright Road**
 - Homeowner Julie Elmore was present.
 - BD recalled meeting the homeowner in 2005 when some other work was done on the property without ConCom authorization.
 - BD said earthwork was done over this past summer, also without ConCom notification.
 - Ms. Elmore said the work was only to remove some rhododendron bushes in front of the barn and excavate the lawn.
 - Wattles were used at the edge of the lawn.
 - BD asked that, going forward, any future work in the yard that exposed soil in the buffer zone to both a stream and Sandy Pond be brought before ConCom first for review and approval.
- **Discussion: Comprehensive Survey of Ayer Ponds, Geosyntec draft**
 - Chuck Miller was present from the Dam & Pond Committee, which met earlier in the week to comment on the draft material.
 - CA made editing notes into a draft of the document displayed on screen.
 - The Executive Summary was discussed first.
 - BD read an 11/5/15 email from DPW Superintendent Mark Wetzel with review comments.
 - CA suggested the report add an appendix of ‘tricky terms’, explaining for the lay reader what is meant by terms or phrases such as ‘average growth density’.
 - Mr. Wetzel’s email suggested the report include detail on how to prevent adverse effects on the Grove Pond wells.
 - BD noted that Grove Pond well tests have previously proved that the wellfield is not hydrologically connected to the pond.
 - Residents in attendance – Paul, Louise, and Keven Bresnahan – had come in order to comment on the growing problem of new weeds on Sandy Pond and asked if this would be attended to by a management plan.
 - JG concurred that she, too, has noted more weed growth on Sandy Pond, and that this is not reflected in the Geosyntec draft.
 - The Geosyntec draft is based on survey material taken in 2014.
 - BD noted that the survey is essentially a single snapshot in time depicting the condition of the ponds.
 - Even so, TT said that the snapshot itself needs to be as accurate a snapshot as possible.
 - Details such as the presence of Phragmites on Sandy Pond should therefore be included.
 - TT asked that all references in the report to ‘Lower Long Pond’ be amended to read only ‘Long Pond’.
 - Preliminary discussion began on the Water Quality section.



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- BT, who was tasked with commenting on this section, said a red flag raised for her was a note that ammonia nitrogen was above the detection level in Sandy Pond.
 - BT said ammonia nitrogen should never be above detection levels and might be an indication of a lot of fertilizer runoff.
 - This would be something to keep an eye on.
- Owing to the lateness of the hour, BD proposed meeting again on 12/3 and asked CA to post a Special Meeting with the Dam & Pond Committee and to book a room.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 10/22/15 as written; BT 2nd.
 - Motion approved unanimously.
- **CA Updates**
- **Balch Pond Dam boards**
 - BD told CA to ask Fire Chief Pedrazzi for advice on whether the boards should or should not be removed this fall.
 - BD added that it is pretty clear that removal of the boards over the winter does not do much at all to impede pond weed growth.
- **CA map of Ayer land parcels jurisdictional to the Wetland Protection Act**
 - CA's latest draft was well-received.
 - When finalized, CA suggested an enlarged copy be displayed on the wall outside of ConCom's office on the 3rd floor.
 - BD asked CA to get price estimates from two local printing companies, J & S Printing, in Ayer, and Minuteman Press, in Devens.
- **10:37 PM – Adjourn Meeting**
 - GB moved to adjourn; JG 2nd.
 - Motion approved unanimously.