

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **9/10/2015** – Approved 9/24/2015

Location: Ayer Town Hall, 1st Floor

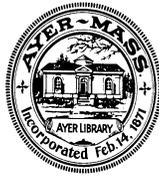
Present: Bill Daniels (BD, Chair), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/8Clerk), Brian Colleran (CA, Conservation Administrator),

Not present: George Bacon (GB, Vice-Chair), Takashi Tada (TT, Member),

APAC taped: Yes

7:14 PM – Open Meeting

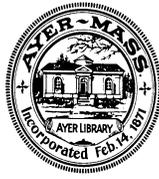
- **Confirmation of the Agenda**
 - JG moved to confirm the agenda as posted; BT 2nd.
 - Motion approved unanimously.
- **Welcome**
 - BD welcomed Bonnie Tillotson to her first meeting as ConCom’s new Commissioner (“BT”), and Brian Colleran to his first meeting as ConCom’s new Conservation Administrator (“CA”).
- **Approval of Meeting Minutes**
 - Review of the minutes for 8/27/15 was deferred to 9/24 because of the lack of a quorum of members present who were at the August meeting, including “nitpicking” GB, as BD noted.
- **Public Meeting: Request for Determination of Applicability (RDA) – 78 Sandy Pond Road, Hagel LLC**
 - Robert Oliva, of David E. Ross Associates, appeared on behalf of the homeowner, Hagel LLC.
 - Mr. Oliva provided a check for \$62.65 as reimbursement for the legal notice.
 - The homeowner proposes the demolition of the existing house at 78 Sandy Pond Road, and the construction of a new single-family house, including utility connections.
 - The existing house is approximately 7 ft. off the edge of Sandy Pond and is two houses away from the Town Beach.
 - All of the proposed work would fall within the 100-ft. buffer zone to the pond.
 - The new house would be moved toward the front of the lot and away from the pond.
 - It will not have a basement.
 - A number of trees would also be removed.
 - This includes two (ailing maple and near-dead pine) along the edge of the pond.
 - The owner proposes to leave the stumps in for these.
 - BD asked why this was presented as an RDA and not a Notice of Intent (NOI), given that all of the proposed work is within buffer zone, involves a complete tear-down as well as excavation for the new house, and is in such close proximity to the resource area.
 - Mr. Oliva said this was the homeowner’s request, given that the project is straightforward, and that it was hoped the project could move forward as an RDA while using the normal conditions assigned under an NOI filing.
 - BD said that under every parameter, this should be an NOI filing.
 - Nevertheless, he agreed to meet Mr. Oliva for a preliminary site visit on Saturday, 9/12, at 7:30 a.m.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for 9/10/2015 – Approved 9/24/2015

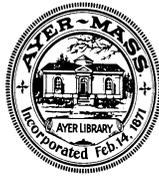
- BD stressed that his agreeing to visit the site in no way indicated that he was committing to this moving forward under the RDA process.
- JG expressed doubts about this being an RDA filing and noted that the existing house is very low and when the water on the pond is high, it can reach to the back of the house.
- The abutter from 80 Sandy Pond Road spoke and said he had no objection to the project.
 - The existing house is dilapidated; rebuilding further from the water would be good; and while the water level can come up, Sandy Pond drains relatively quickly.
- BT moved to continue the Public Meeting to 9/24; JG 2nd.
 - Motion approved unanimously.
- On behalf of the Historical Commission (HC), JG asked if the homeowner would have an objection to someone from the HC coming onto the property to photograph the exterior of the existing house, which is over a hundred years old, for its records.
 - Mr. Oliva said he would grant this permission on behalf of the owner.
- **Public Meeting: RDA – Town of Groton, “Four Corners Sewer Initiative and Appurtenant Work”, Westford Road.**
 - Ryan Allgrove, Engineer for Environmental Partners Group (EPG), was present on behalf of the Town of Groton.
 - The project proposes the extension of a Groton sewer line, via force main, from the “Four Corners” (in the vicinity of Shaws on Rte. 119) into Ayer along Westford Road where it will connect into the Ayer sewer system.
 - In addition, approximately 300 ft. of 12-inch gravity sewer running from Westford Road to Willow Road will be upgraded and replaced by 15-inch PVC gravity sewer.
 - A Memorandum of Understanding (MOU) has been approved by the Ayer Board of Selectmen for this arrangement between the two towns.
 - Mr. Allgrove described the project:
 - Shortly after crossing into Ayer from Groton, the force main will change to a 12-in. PVC gravity sewer (including manholes) and extend 3400 ft. to connect into Ayer’s system at the pump station near Nemco Way.
 - In Ayer, the PVC gravity sewer will be installed via open trench construction, with a depth of 5-8 feet.
 - The sewer extension will connect to the pump station via gravity sewer but leave the pump station via force main for the Westford Road-to-Willow-Road upgrade.
 - These proposed construction activities encroach upon a 100 ft. and a 25 ft. wetland buffer zone to two BVW resource areas (Bordering Vegetated Wetland), one located to the east of Westford Road and the other to the west.
 - The project encroaches into the Petapawag ACEC but in a phone conversation with Nancy Putnam, the State has indicated that neither a resource management plan nor any special conditions are required.
 - The project is also located within Priority and Estimated Habitat areas but since the work is strictly within paved areas, the MESA exemption for utility work within paved areas applies.
 - BD asked for clarification of the work to be done connecting to the Nemco Way pump station since there is a wetland area and pond next to Catania Spagna in that vicinity.
 - Mr. Allgrove said the connection work would only extend approximately 300 ft. in from Westford Road.
 - BD asked for an electronic copy of the plan to be made available.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for 9/10/2015 – Approved 9/24/2015

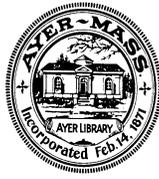
- The project plans already adequately detail the location and extent of erosion controls.
- Mr. Allgrove affirmed that the overall plans have been approved by Ayer DPW Superintendent Mark Wetzel, although there remain some details for Mr. Wetzel yet to review.
- A grant application has been filed for the project and, if approved, the work is planned for summer 2016.
- Provided that the mitigation controls per the ‘August 2015 plans’ are followed, JG moved to issue a Negative Determination of Applicability, with no special conditions; BT 2nd.
 - Motion approved unanimously and the DOA signed.
- **Discussion: JAR Drainage Easement, Catania Spagna**
 - On 9/1/15, the Ayer Board of Selectmen (BOS) unanimously approved and signed an “Easement Confirmation Agreement” with JAR Realty Corp., and also approved a drainage easement with JAR as well.
 - Ayer Town Counsel Attorney Katherine Klein, of Kopelman & Paige, prepared the legal documentation.
 - To assure that JAR Realty Corp. has good title to the easement, Attorney Klein advised the BOS that ConCom should also review the Agreement and drainage easement and vote to sign the signatory page of the Agreement.
 - BD carefully scrutinized the documentation included, detailing the history of the easement, since ConCom had not previously been made aware that part of the land on which the easement is being obtained was conveyed to the Town “for conservation use pursuant to G.L. c. 40, s. 8C.”
 - In a 9/2/2015 email to Town Administrator Robert Pontbriand, Attorney Klein wrote that, while the Commission was not listed as the “grantee,” she was making the assumption that “the land is held by the Conservation Commission, for conservation purposes,” hence requiring ConCom members to co-sign the BOS agreement.
 - This parcel of land was conveyed by deed to the Town by San-Vel Concrete Corporation on December 6, 1982 (Middlesex South Registry of Deeds, Book 14840, page 146).
 - Ayer Assessor’s Map 17, Parcel 13.
 - As the Agreement states, in this conveyance, San-Vel reserved “to itself, its successors and assigns an easement to permit the drainage and flowage of water into or upon the granted premises from other land of [San-Vel].”
 - Part of the new easement crosses the “Town Parcel” and part crosses a parcel owned by JAR Realty (the “JAR Parcel”).
 - The “Town Parcel” section for the drainage easement is approximately 1500 sq. ft. in size (20 ft. wide by 72.47 – 80.95 ft. long).
 - The need for the new drainage easement agreement pertains to the building expansion planned by JAR Realty, for Catania Spagna, and given an Order of Conditions by ConCom on 5/28/2015 (MassDEP # 100-0383).
 - The building expansion, to cover new rail sidings (the “JAR Improvements”), includes a roof drain system extending into Town property.
 - This will increase stormwater runoff from the new roof into nearby wetlands.
 - In her 9/2/15 email, Attorney Klein noted that title research indicated that JAR Realty Corp is a “successor in interest to San-Vel” and therefore has the rights to drain onto Town land.
 - Attorney Klein also noted that because JAR Realty is a ‘successor and assign’ to San-Vel, the Agreement regarding property held for conservation purposes was NOT subject to Article 97.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **9/10/2015** – Approved 9/24/2015

- Ordinarily, this would require a two-thirds vote by both branches of the State Legislature in order to grant the drainage easement.
 - The language of the BOS-signed Agreement describes the Drainage Easement as:
 - “The Drainage Easement shall include, but not be limited to, the right in, upon, over, through, and across the Drainage Easement Area for purposes of construction, installation, maintenance, repair, replacement, and operation of all drainage pipes, culverts, level spreaders, cutoff walls and other drainage structures appurtenant thereto intended for drainage and stormwater management, and including the right to enter onto the Town Parcel for all purposes necessary, incident and related thereto, so long as the exercise of these rights of access and egress do not unreasonably interfere with the Town’s use of the Town Parcel.”
 - BD noted that this seemed to include both drainage and utility easement language.
 - However, on reflection, he noted that any future work of a utility nature would require ConCom review regardless because of the land being jurisdictional under the Wetland Protection Act.
 - BT asked why the drainage easement had to cross onto Town land in the first place.
 - BD described the topography of the area and the JAR building expansion.
 - He also stressed that the stormwater runoff would be entirely roof runoff.
 - BD also bemoaned the fact that the Commission was being asked to sign off on something of which it previously knew nothing about and which came before ConCom at the proverbial last minute.
 - He indicated he would be asking the Town for more information to see if there was any way that this Town Parcel could also be used to benefit Ayer residents.
 - He will also take the opportunity to inquire as to whether there is any other such ‘land conveyed for conservation use’ owned by the Town that ConCom is not aware of.
 - After lengthy review, BD indicated he was comfortable with ConCom signing off on the Agreement.
 - However, because GB and TT were not present, and because BT’s name was not included in the signatory sheet provided by Town Counsel, BD questioned whether two signatures (BD and JG) would be adequate.
 - If not, the BOS would have to wait until ConCom’s next meeting on 9/24 for additional signatures.
 - JG moved to approve ConCom signing the Easement Confirmation Agreement; BT 2nd.
 - Motion approved unanimously.
 - BD and JG signed the Agreement.
 - JG will confirm with Mr. Pontbriand that two signatures are acceptable and if not, ConCom will revisit the Agreement at its 9/24 meeting.
- **CA Updates**
 - 187 Old Farm Way, Pingry Hill
 - The “Supplemental Briefing Order” dated September 8, 2015 (OADR - Office of Appeals and Dispute Resolution Docket No. WET-2015-009) was reviewed re “In the Matter of Richard Roper and Crabtree Development, LLC.”
 - The “Petitioners” (Michael Anuta and Jean Hoffman-Anuta) filed an appeal challenging MassDEP’s April 17, 2015 decision denying their request for a Superceding Order of Conditions to revoke an OOC issued by ConCom to Richard Roper and Crabtree Development (the “Applicant”).



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **9/10/2015** – Approved 9/24/2015

- The Briefing Order of June 12, 2015 gave deadlines for the filing of “Memorandum of Law addressing the Legal Issues” for MassDEP (July 3, 2015); the Applicant (July 24, 2015); and the Petitioner (August 14, 2015).
- At that time, in a June 15 email to Town Administrator Pontbriand from Attorney Mark R. Reich, Town Counsel reviewed the Briefing Order and indicated that nothing was required of ConCom.
 - [“This appears to be an unusual case involving issues of property ownership and authority. It does not appear from this Briefing Order that the Town currently has any involvement in the matter. I suggest that the Conservation Commission review this matter further to determine whether it believes it should seek to intervene, although at this time this appears to be a private dispute.”]
- To date, only MassDEP (the “Department”) has filed a legal memorandum with OADR.
- The September 8 Supplemental Briefing Order provides new deadlines and now also includes an Action Deadline for “ACC” (Ayer Conservation Commission) to file legal memorandum by October 20.
 - The new deadlines for the other parties are: the Applicant (September 22, 2015); the Petitioner (October 6, 2015), and the Department’s Reply Memorandum to the memoranda issued by the Applicant, Petitioner, and ACC (November 3, 2015).
- Mr. Anuta, from the audience, indicated that they had never received the June 12 Briefing Order but are formulating their memorandum and will be responding to the new deadline.
- JG will pass the new Supplemental Briefing Order on to Town Counsel through Town Administrator Robert Pontbriand for advice on how to proceed.
- 43A Groton-Harvard Road
 - At homeowner Ed Ouilette’s request, CA and JG performed a site visit.
 - Mr. Ouilette, whose home abuts Flannagan Pond, had been advised by National Grid to contact ConCom for review prior to their installing a gas line connection from the house to the street.
 - At the site visit, the distance of the proposed gas line to the pond was measured at well over 100 ft.
 - It is therefore outside the buffer zone and non-jurisdictional.
- Office hours
 - Monday: 9:30-1:30
 - Tuesday: 11:30-3:30
- **9:50 PM – Adjourn Meeting**
 - JG moved to adjourn; BT 2nd.
 - Motion approved unanimously.