

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **9/24/2015** – Approved 10/8/2015

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

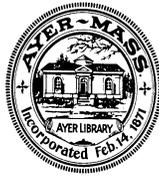
7:08 PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm agenda as posted; TT 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**
 - GB moved to approve the minutes for 8/27/2015 as written; TT 2nd.
 - Motion approved unanimously.
 - JG moved to approve the minutes for 9/10/2015 as written; BT 2nd.
 - Motion approved 3-0 (GB, TT abstained).

- **Public Meeting (cont'd.): RDA – 78 Sandy Pond Road, Hagel LLC.**
 - Re: demolition of existing house and construction of new single-family house.
 - On 9/12/2015, BD met onsite with the applicant who hoped the project could be handled under an RDA.
 - BD reviewed and said that given the scope of work and its close proximity to the pond, an NOI would have to be filed.
 - CA has since received the NOI filing and the Public Hearing will be scheduled for 10/8/2015.
 - JG moved to issue a Positive Determination of Applicability, meaning that the law under the Wetland Protection Act does apply and an NOI needs to be filed; BT 2nd.
 - Motion approved 3-0 (GB and TT abstained) and the DOA signed.

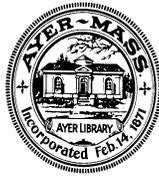
- **Discussion: Mike and Sandra Malatesta, 31 Mountain Laurel Road (Sandy Pond 3 subdivision)**
 - The Malatestas would like to construct a detached garage at the back of their property but their current plan would place it a few feet over their property line and onto abutting conservation land.
 - Their question was whether the Town/ConCom would entertain the idea of a very small land swap to make this possible.
 - BD explained the nature of Conservation Restrictions and that the only way to change a CR was through a vote of the State Legislature.
 - That said, the CR for this development, 'Sandy Pond 3', has not yet been finalized.
 - Perhaps the Malatestas could talk to the developer.
 - TT said, however, that the boundaries were probably agreed to by Fish & Wildlife during the planning process and therefore the State would also have to be consulted to find out if this were even possible.
 - An additional complication would be Ayer Bylaws regarding required setbacks and the Zoning Board (ZBA) would need to be approached for a variance.
 - BD summarized that the Malatestas would need to talk with the State first about the possibility ("a tough sell") of altering the CR.



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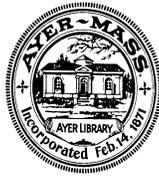
- If that was approved, they would then need to go before the ZBA for a setback variance and ConCom with an NOI.
- On a separate matter, the Malatestas said it appeared someone was controlling the level of the pond behind their house (“Middle Pond”) and that it had emptied within a couple of days and was now swampy.
 - BD explained that the ‘dam’ on the nearby Cowley property is just a culvert with no water level controls.
 - He suggested that the next time the pond is full, to contact ConCom so that BD could come out to take a look.
- **Discussion: 39 Groton-Harvard Road**
 - Homeowner Karen Balchunas was present after having been contacted by CA over a report of unpermitted earthwork, including the use of heavy equipment (a bobcat) in the backyard directly abutting Flannagan Pond.
 - Ms. Balchunas immediately ceased work on the project in an effort to cooperate with ConCom.
 - Ms. Balchunas has taken over the house from her now-deceased parents.
 - In the process of trying to remove a profusion of poison ivy from the backyard, Ms. Balchunas discovered that when the house was built in the 1980s, heavy black plastic landscaping sheeting (5 ml) was used across all of the back, side, and front yards.
 - The black plastic is now well-covered with dirt and vines, but is impossible to dig through.
 - In addition, the impervious sheeting prevents water drainage into the ground below.
 - Ms. Balchunas’ goal is to remove all of the black plastic as well as the old pebbled driveway that runs along the edge of the pond, and replace the area with a new lawn.
 - She would also like to clean out the area in the water around an old dock where branches from a willow tree and other organic matter have filled in close to the shore over the years.
 - This would be in addition to rebuilding the dock itself.
 - BD explained how such a project, right next to and in the pond, requires going through the NOI process with ConCom.
 - TT said she would also need to determine if her property is within the ACEC (Area of Critical Environmental Concern) and explained that ACEC does not allow work in the water unless it is a limited project.
 - BD said the immediate issue is how to make sure that no loose soil or new grass is able to wind up in the pond.
 - Haybales or straw wattle will need to be used for erosion control.
 - CA noted an area of the backyard has a small retaining wall.
 - BD said Ms. Balchunas will need to file an NOI for her project and, given the extent of the project, strongly encouraged her to hire a professional to assist.
 - CA noted that a great deal of bare soil is now exposed in the backyard.
 - BD arranged to stop by the property on Saturday, 9/26, at 8 a.m. for a preliminary site visit and to make recommendations for immediate erosion protection.
- **Discussion: Harry Zane, 32 Wright Road**
 - Mr. Zane appeared to again discuss his interest in re-grading the sides of his driveway for easier maintenance.



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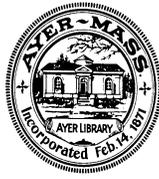
- Mr. Zane last appeared before ConCom in 2010 on this.
 - His driveway runs next to a small stream/wetland area running into Sandy Pond.
 - His recollection is that his request was turned down.
 - ConCom records show that, at that time, Mr. Zane was told he would have to submit an NOI and have the wetland area flagged by a professional since the project involves work next to a protected resource area, and the area is also ACEC.
- Mr. Zane noted the similar work done at 6 Wright Road but it was explained that this work is in violation of the law and ConCom has been attempting to contact the homeowner with a Violation Notice in this regard.
- Mr. Zane asked if he could use wetland flagging information from many years ago.
 - BD said that wetland flagging is only good for 5 years since conditions change.
- For Mr. Zane’s project, ConCom will still need to see professional flagging that determines the precise edge of the wetland.
 - While ConCom cannot specifically recommend a wetland biologist, BD noted that some applicants have used two local companies, David E. Ross & Associates and Goldsmith, Prest & Ringwall.
- **Project Presentation: “Expanding Riparian Forest Buffers in Threatened Urban and Suburban Watersheds”**
 - Al Futterman, of the Nashua River Watershed Association (NRWA) made the presentation.
 - The restoration project is led by the Merrimack River Watershed Council, working with, among others, the NRWA.
 - In cooperation with landowners, it seeks to establish, where possible, a 300-ft. buffer to riverfront with less than 5% impervious surface.
 - The ideal buffer would be a tree, shrub, grass mix within 300 ft. of flowing water.
 - While it wouldn’t be as easy, another goal is to reduce or remove impervious surfaces within the buffer where possible/feasible.
 - Through the presentation, the NRWA is currently doing outreach to local communities for help in identifying prospective property owners, including municipal lands, that would have potential for expanded buffer restoration.
 - The project can also be used to help towns strengthen their wetland bylaws.
 - Mr. Futterman said the NWRA, for its portion, will be taking on the cost of restoration plantings and labor.
 - Regarding buffer maintenance, the NRWA plans to find a way to make this viable for property owners for the first year at least.
 - BD asked that an electronic copy of the entire presentation be sent to ConCom and that the Commission would talk about this project further at a future meeting.
- **Discussion: JAR Drainage Easement, Catania Spagna, 1 Nemco Way**
 - After discussing this at its 9/10 meeting, ConCom was only able to provide two signatures to the “Easement Confirmation Agreement” with JAR Realty, approved by the BOS on 9/1/15.
 - Town Administrator Pontbriand returned a corrected signature sheet to ConCom for re-signing since Town Counsel said that two signatures were insufficient.
 - The revised sheet now lists BT as a Commission member.
 - BD reviewed for GB and TT the details of the 9/10 discussion.
 - TT expressed reservations with the process.



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- BD agreed that it did not make sense that ConCom was being asked to sign off on something it had no previous knowledge of, nor has any control over, but that it does not help to hold the Catania Spagna project up (MassDEP OOC # 100-0383).
 - Any future work in the area by Catania Spagna or JAR Realty would still require ConCom review since the area is jurisdictional.
- GB moved to re-sign off on the “Easement Confirmation Agreement”; JG 2nd.
 - Motion approved 4-0 (TT abstained).
- **Violation Notice: 6 Wright Road**
 - ConCom now has the returned Violation Notice, in its original envelope from the certified mailing, which the homeowner has refused receipt.
 - BD will stop by in person with a new Violation Notice.
- **Discussion: 129 Carver Road**
 - CA was contacted by the homeowners of the newly-constructed home for permission to remove erosion controls.
 - ConCom had no record of an OOC for the house construction.
 - The property abuts the wetlands adjacent to James Brook.
 - Carver Road begins in Groton and reaches a dead-end at the townline to Ayer, which is also the end of the driveway to 129 Carver.
 - Thus most of the property, including the house, are technically in Ayer but the utilities and mailing address are in Groton.
 - TT said Groton ConCom was contacted for the utility work.
 - CA contacted Ayer’s Building Inspector, Gabe Vellante, and found out that he issued an Occupancy Permit for the House.
 - Mr. Vellante expressed surprise that ConCom had not been notified about the house construction within a jurisdictional area.
 - The Ayer Board of Health also signed approval of the septic system.
 - BD said he was disappointed that ConCom was not contacted at some point by the Building Inspector or the BOH given the proximity to James Brook.
 - The builder was Bob Prescott, of Prescott Landscaping, Inc., and the engineer who signed off on the plans was Steve Mullaney, of SJ Mullaney Engineering Inc.
 - In addition to Ayer ConCom being left out of a project it shouldn’t have been left out of, CA said one side of the end of the road and driveway slopes steeply down to the wetland resource area.
 - The top of this area is mulched but the steep side of the slope is bare, loose soil and does not appear to have been done correctly.
 - This will have to be corrected.
 - BD summarized: a project happened within ConCom jurisdiction, with an engineer ConCom works with all the time and a builder ConCom has worked with in the past, and they both evidently decided to build a house within the buffer zone and uphill to a stream but not come talk to Ayer ConCom first.
 - It was also noted that the plan on file with the Building Inspector shows delineated wetlands and that, along with the installed erosion controls, shows that the jurisdictional nature of the work was known in advance.
 - Discussion then turned to what to do next.
 - The clear violations as well as the open slope of soil need to be attended to, but in a way that does not harm the new landowner.



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- BD considered making the builder go through the entire NOI process.
- The ultimate goal is to 1) protect the wetlands, and 2) seek to have the builder and engineer present at ConCom's 9/8/15 meeting with proper documentation for the project and a plan for dealing with the open landscaping area.
- Before moving to issue a Violation Notice or Enforcement Order, CA was asked to first contact Joe Bellino, of MassDEP, or Judy Schmitz, MassDEP's Central Region Circuit Rider.
- **Member Updates**
 - JG heard from the owner of 5 Ledge way, Ann Loven.
 - She and her husband are considering applying for a COC, but also may be putting in a patio in the backyard this fall or in the coming spring.
 - TT said they should hold off on the COC and come before ConCom for a "minor change" to their OOC instead.
 - GB and JG met with Parks & Recreation Supervisor Jeff Thomas at Pirone Park on Saturday, 9/19, to look over potential plans.
 - GB told Mr. Thomas that when they are ready to proceed, they'll need to hire a professional and come before ConCom with a detailed plan.
 - GB asked that ConCom discuss 'Sandy Pond 3' development (Mountain Laurel Road), and the CR that is not yet finalized, at its next meeting.
- **CA Updates**
 - 15A Mountain Laurel Road
 - Will be coming up for a Partial COC when the paperwork is turned in.
 - Posting previous reports on pond treatments and surveys
 - CA has talked to Cindy Knox about scanning and uploading previous reports on the pond for public accessibility.
 - There is a \$250 software package available that would make such material searchable as well.
 - BD thought that sounded like a great idea.
 - Groton Four Corners Sewer Project
 - As requested, an electronic copy of the plans have now been received.
- **10:25 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.