

## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249 \* 978-772-8208 (fax)  
Minutes for 7/14/2016 – Approved 7/28/2016

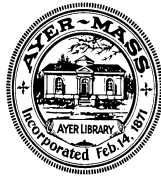
Location: Ayer Town Hall, 1st Floor

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

### **7:07 PM – Open Meeting**

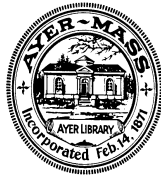
- **Confirmation of Agenda**
  - GB moved to confirm the agenda as posted; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Approval of Meeting Minutes**
  - The minutes for 6/23/2016 were reviewed.
    - BD asked if the soil data sheets had been received from Goldsmith, Prest & Ringwall (GPR), for the Rosewood Avenue Extension (100-0388), as requested at ConCom's 6/23 Public Hearing.
      - CA said they had not yet been received.
    - BD asked CA to contact GPR, noting that the start of their project was in peril if the sheets were not received soon.
    - CA noted that the DPW did not go before the Board of Health (BOH) at its most recent meeting, to seek an emergency permit to allow the beaver dam at the end of Rosewood to be taken down under the supervision of GPR.
      - CA learned that GPR had not been ready to get the work rolling, hence the DPW delayed seeking the time-limited emergency certification.
    - CA also said that the Town just received a letter, dated 7/14, from a representative of Calvin Moore, officially notifying the Town that Mr. Moore is bringing the land to be used for the solar farm out of Ch. 61 tax protection.
      - This triggers the Town's option for right-of-first-refusal if it considered purchasing the land.
      - Since the Rosewood Extension project, and associated demolition of the beaver dam, are specifically to create access for Mr. Moore to the solar farm area, it is possible that the Ch. 61 process is the reason for the delay noted above.
    - GB moved to accept the minutes for 6/23/2016 as corrected; TT 2<sup>nd</sup>.
      - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – 59 Shirley Street**
  - The homeowner, who is interested in installing a deck, did not show up for the meeting.
- **Discussion: Violation Notice (VN) – 25 Wright Road**
  - Tim and Betsy Dolan were present to discuss the VN issued for unpermitted earth work, including use of a mini-excavator, within less than 20 feet of the bank of Sandy Pond.
    - JG also noted that some large rocks have also been removed from the 4 ft. high bank to facilitate access to the water.



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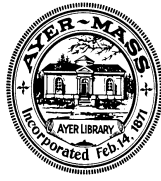
- BD explained the nature of the violation, and the permitting process which such projects must be reviewed under.
- Mr. Dolan said they were considering putting in 3 granite steps to get down the bank to the water.
  - BD said when that is planned, the landscaper (in this case Jim Pinard) should draw up a plan and the Dolans should bring it before ConCom, through an RDA if the plan is simple.
  - If excavation work is planned on the bank, however, an NOI would have to be submitted.
- CA will take a look at the work performed next week to see if the haybale/silt fence line can be removed until such time as further work is planned and permitted.
- For any questions regarding the dock permit for this property, Mr. Dolan was advised to contact Andrea Langhauser, at MassDEP.
  - Ms. Langhauser oversees the State's Waterways Regulation Program (Ch. 91).
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Kohler Place, Lot #1, Wright Road, Alfred Bergin, MassDEP # 100-0392**
  - Rob Oliva, of David E. Ross Associates, was present along with owner/developer Alfred Bergin.
  - A site walk was conducted by ConCom on 6/29.
  - Mr. Oliva said the letter from Natural Heritage and Endangered Species Program (NHESP) had not yet been received but that they expected it within days.
  - Mr. Bergin said that the degraded haybales observed on the site walk had now been replaced.
    - BT received an assurance from Mr. Bergin that he would make sure extra haybales (at least 25) were stored on-site in the future, as required by the OOC.
  - Mr. Bergin also said that he had scheduled the removal of 3 dead or precariously leaning trees at the edge of the work area, as requested by BD on the site walk.
  - JG asked about the status of the Stop Work order previously issued by NHESP.
    - Mr. Bergin said his understanding was that this was no longer in effect since he was working with Oxbow Associates to come into compliance with the turtle protection requirements, and had begun work on moving forward on the completion of the Conservation Restriction (CR).
  - At the site walk, the general area to be used for constructing a path to an eventual dock, per the existing dock license, was walked, although nothing had been marked out by the applicant.
    - It was decided at that time that this would be handled separately, probably through an RDA, later in the fall.
    - At that time, it would also likely be easier to plot a viable route to the pond through vegetation.
  - In the draft CR which Mr. Bergin provided, JG asked about the language used to allow the right to improve and maintain the beach area.
    - Since no beach area exists, JG asked that CA query NHESP to see if this language needs to be, or can be, changed to allow for the initial creation of a beach area.
  - Mr. Bergin noted that he has put language into the CR for the water easement that will allow the DPW to extend the Wright Road water main, through directional drilling, to Sandy Pond Road.
  - Since the CR process will take several months to complete, Mr. Bergin said that, in the meanwhile, a Declaration of Restriction needs to go into effect soon.
  - GB moved to approve and issue an OOC for 100-0392; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - BD noted that ConCom will expect to see the letter from NHESP at its next meeting before signing the OOC.



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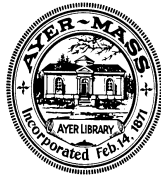
- GB moved to continue the Public Hearing to 7/28/2016, for the purpose of reviewing the NHESP letter and signing the OOC; TT 2<sup>nd</sup>
  - Motion approved unanimously.
- BD asked Mr. Bergin to contact CA for site inspection prior to initiating work on the house foundation for this lot.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Kohler Place, Lot #3, Wright Road, Alfred Bergin, MassDEP # 100-0390**
  - Rob Oliva, of David E. Ross Associates, was present along with Alfred Bergin.
  - No issues were found during the 6/29 site walk on this lot other than BD's request that 3 trees just on the other side of the haybale line be taken down.
    - The trees, either dead or leaning severely, would need to come down at some point, and it would have far less negative impact if it were done now, while the area is already disturbed by construction work.
  - The same conditions applying for this NOI as for the previous one, GB moved to approve and issue an OOC for 100-0390; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - GB moved to continue the Public Hearing to 7/28/2016, for the purpose of reviewing the NHESP letter and signing the OOC; TT 2<sup>nd</sup>
    - Motion approved unanimously.
  - BD asked Mr. Bergin to contact CA for site inspection prior to initiating work on the house foundation for this lot.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Kohler Place, Lot #4, Wright Road, Alfred Bergin, MassDEP # 100-0391**
  - Rob Oliva, of David E. Ross Associates, was present along with Alfred Bergin.
  - No issues of concern were found during the 6/29 site walk.
  - Mr. Bergin was advised of the need to carefully maintain the haybale line at the bottom of the steep slope at the back of the planned house.
  - The same conditions applying for this NOI as for the previous two, GB moved to approve and issue an OOC for 100-0391; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - GB moved to continue the Public Hearing to 7/28/2016, for the purpose of reviewing the NHESP letter and signing the OOC; TT 2<sup>nd</sup>
    - Motion approved unanimously.
  - BD asked Mr. Bergin to contact CA for site inspection prior to initiating work on the house foundation for this lot.
- **Public Hearing (cont'd.): NOI -- Ridge View Heights Phase V, Woodland Way (Pingry Hill), MassDEP # 100-0393**
  - Steve Mullaney, of S. J. Mullaney Engineering, was present on behalf of the applicant (Rick Roper, of Ridge View Realty Trust).
  - The NOI is for infrastructure installation only (roadway, basins, etc.).
    - NOIs, RDAs, or Amended OOCs will be submitted for 20 of the 36 planned house lots in the future.
  - A site walk was conducted by ConCom on Saturday, 6/25.



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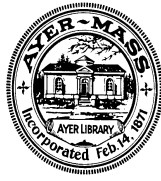
- Mr. Mullaney provided copies of the comment letter from MassDEP which was essentially ‘no comment’.
  - Although there was some confusion on the form, Mr. Mullaney received clarification from DEP that a 401 Water Quality Certificate was not needed for this NOI.
- During the site walk, all of the basin locations as well as the center of the roadway were identified.
  - No issues of concern were discovered.
- Mr. Mullaney provided mapping showing the Limit of Clearing, as requested.
  - Some of the lots have minimal clearing but others, where fill is needed to level the lot, will require more clearing.
- GB moved to approve and issue an OOC for 100-0393; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
- GB moved to continue the Public Hearing to 7/28, for the purpose of signing the OOC; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Discussion: Eugene Benson, Executive Director of the Massachusetts Association of Conservation Commissions (MACC)**
  - Director Benson was present to discuss ConCom’s interest in updating the Town’s Wetland Bylaw as well as the Commission’s Enforcement Policy.
  - Some of the points made by Director Benson during the discussion:
    - More than 195 of the 351 towns in Massachusetts have local wetland bylaws.
      - A local bylaw needs to be stricter than the State Wetlands Protection Act or there is no point.
      - ConComs therefore have to identify what in particular their community is interested in protecting.
  - Some of the things other communities focus on in their local bylaw include:
    - the authority to write and adopt regulations;
    - greater protection of intermittent streams;
    - greater protection of vernal pools;
    - no-disturb and no-build zones;
    - extra fees;
    - authority to implement enforcement of the local bylaw;
      - this would include an entering-property clause, although Director Benson noted that even MassDEP will secure an Administrative Search Warrant from Court rather than enter onto private property without permission.
    - the ability to have an applicant pay for outside consultants;
      - the burden should be on an applicant to show something would not have a negative impact;
    - more attention to flooding and flood zone areas;
    - accommodations for limited projects (e.g. decks);
    - better stormwater rules.
      - Director Benson noted that MassDEP’s stormwater rules are based on data that is several decades old.
      - A year ago, NOAA came out with “Atlas 14” that would make a lot of changes to these rules.



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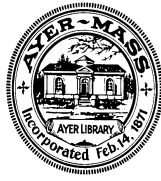
- MassDEP is aware of Atlas 14, says it plans to implement these changes, but has not done so yet.
- A lot of local ConComs are therefore incorporating the Atlas 14 findings into their own bylaws.
- Dr. Benson stressed that most of the real details would be covered in Regulations written, reviewed and adopted after a robust local wetland bylaw has been passed.
- BD detailed some of the history of Ayer's local wetland bylaw.
  - The current bylaw is weak, being nothing more than a reiteration of the State's WPA.
  - In 2005, an attempt was made to craft a more comprehensive bylaw, one that BD said 'covered everything.'
  - At that time it was discovered that a 1984 local wetland bylaw already existed (the weak one currently in effect) and the 2005 version consequently failed before Town Meeting.
- Discussion continued on the matter of what should go into a bylaw versus what should go into regulations.
  - Director Benson said that, ideally, the local bylaw should 'have enough bones to hang the rest on' (including Regulations).
- The process of adopting Regulations (via authority granted in a well-crafted bylaw) involves circulating draft material, holding Public Hearings and receiving Public Comment, then formal adoption by ConCom.
  - Regulations therefore, if authorized by the bylaw, do not have to go before Town Meeting for approval or adoption.
  - If a commission wants to tweak its Regulations, it merely has to go through another Public Comment process before deciding to adopt.
  - Similarly, while the bylaw can indicate a commission's authority to grant waivers, it would be in Regulations that details, such as the standards that must be met to qualify for a waiver, would be elaborated.
  - Specific details, such as those regarding no-build or no-disturb zones, are better handled in Regulations than the bylaw.
- It was noted that, in the 2005 attempt to pass a stronger bylaw, several residents complained about granting more authority to a commission whose members are appointed rather than voted.
  - The importance of an Appeal process was discussed.
  - Under the WPA, commission decisions can be appealed to the State (MassDEP) as well as to local District Courts.
  - Director Benson said many towns, like Andover, have also incorporated a midrange or 'backyard intermittent appeal' process into their bylaw.
- Director Benson also discussed the importance of using the current science to educate the public and promote the value of protecting buffer zones, not just to protect wetlands but also to protect wildlife corridors.
- Regarding wetland filling,, Director Benson stressed that State law does not say an applicant can fill wetland.
  - It says they have to do everything they can to *avoid* filling in wetlands.
  - The issue of determining whether there are no viable alternatives is up to commissions, but Director Benson added the default position should not be 'sure, go ahead and do it.'
    - Sometimes the wetland mitigation is basically to say, for example, 'you can't build 50 houses, you can only build 35.'



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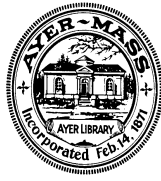
- Reflecting on the process the Town of Groton went through to work on its bylaw, TT noted the efficacy of Groton establishing, through its Board of Selectmen, a stand-alone Bylaw Review Committee.
    - The committee had a ConCom representative, but its other members were drawn from the BOS, Planning Board,, DPW, and so on.
    - This helped with going before Town Meeting to pass an updated bylaw and having other ‘entities’, besides the Commission, in support before Town residents.
  - BD agreed, noting it would be important for Ayer to solicit support in particular from its pond residents, stressing how such a bylaw would protect their interests as well.
    - Director Benson said it would also be a good idea to reach out to organizations like the Nashua River Watershed Association (NRWA) or Mass Audubon so that they can contact any of their members who are Ayer residents, and likewise appeal for their support at Town Meeting.
  - Mark Archambault, NRWA’s Circuit Rider, spoke as well, stressing the strong support science now gives to the importance of protecting buffer zones.
    - Current science suggests that the first 50 ft. of buffer zone should ideally be no-disturb, with the next 50 ft. being no-build.
    - He suggested ConCom have the NRWA review and comment on its draft bylaw revision when complete.
    - He also emphasized the importance of doing public relations outreach prior to putting a bylaw up for vote before Town Meeting.
      - Several public comment sessions would be ideal and it is in this forum that detailed discussion of the science would be most valuable.
  - Josh Chase, of the Merrimack River Watershed Council, was also present.
    - He added that one thing that often causes difficulty in getting through a Town Meeting vote is the perception some landowners have that a town is trying to ‘steal their property’.
    - It is therefore important to counter this view and stress how bylaw changes and regulations are not only important for the protection of ponds and wetlands, but also for the protection of property for the landowner as well.
      - In fact, proper protection can often actually increase property values.
  - Concluding, Director Benson said the challenge going before Town Meeting is to explain in clear and compelling terms why there is a need to have a bylaw that is “more protective” (even if also more restrictive) than the State WPA.
- **Accounts Payable**
    - Beaver Solutions: \$1910, for installation of beaver deceiver on Nonacoicus Brook.
      - GB moved to approve payment of \$1910; TT 2<sup>nd</sup>.
        - Motion approved unanimously.
    - Landlaw Specialty Publishers, \$99, online year subscription to access database on Massachusetts land court cases.
      - GB moved to approve payment of \$99 (invoice 38536); TT 2<sup>nd</sup>.
        - Motion approved unanimously.
    - J & S Business Products: \$20 additional, for manufacture of logo hats for ConCom.
      - BD will call and query re this additional cost.
  - **CA Updates**



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- WPA pamphlet
  - CA handed out samples of an informational pamphlet for residents that ConCom purchased.
    - Under consideration is requiring this pamphlet to be sent by applicants along with their abutter notifications.
- Pond treatment
  - Solitude Lake Management (formerly Aquatic Control Technology/ACT and Lycott Environmental) treated Spectacle Pond on 7/7 for the Town of Littleton.
- Beaver deceiver
  - A beaver deceiver has been installed at the head of Nonacoicus Brook, behind the new Fire Station, by Mike Callahan of Beaver Solutions.
- Pingry Hill, Crabtree Development
  - Via email, Desheng Wang indicated he has spoken to the homeowner at 26 Hemlock Road (Lot 58, 100-0358).
    - The homeowner has recently been mowing an area that is a wetland strip.
    - Previously, on a 12/12/2015 site walk, ConCom members had discovered that this wetland strip had also been partially filled in by the landowner.
    - Developer Rick Roper, who was seeking a Certificate of Compliance (COC) at the time, was told he would have to restore the wetland area and advise the homeowner to cease filling in, mowing, and crossing the wetland area with vehicles.
    - Dr. Wang said he has now put up signs as well as talked to the homeowner.
  - BD asked CA to contact Desheng Wang to have him find out from Mr. Roper when Mr. Roper plans to complete the wetland restoration work.
    - BD also asked for details regarding Dr. Wang's conversation with the homeowner.
  - This will be addressed again at ConCom's 7/28 meeting.
- 8 Hickory Way, Pingry Hill
  - CA has received the email BD requested, from the homeowner, detailing which trees she, with his permission, actually took down.
- Senior Volunteer
  - CA asked ConCom to consider authorizing the use of its Wetland Protection Fund to pay CA's intern to continue cleaning up ConCom's files and database, at roughly \$10-12/hour.
  - The intern has currently used 95 of his allotted 111 hours under the Town's tax abatement program.
    - CA estimates he will need another 100 hours to complete this task.
    - The intern was a professional in inventory management.
  - Completion of the file clearing and inventorying will enhance the ability of the office to better monitor and enforce past and present projects.
  - BD said ConCom would consider this if the intern could commit to finishing the work by the end of the year.
  - BD asked CA to talk to Town Administrator Robert Pontbriand to find out if this temporary hiring was possible and what rules would apply to doing so.
- 7/28 Agenda
  - At BD's request:



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- hearing from Commission members as to what each considers most important to have in a revised local wetland bylaw;
  - review of ConCom's 'boilerplate' OOC Special Conditions.
- 
- **Member Updates**
    - JG will email Chuck Miller, of the Pond & Dam Committee, as well as DPW Superintendent Mark Wetzel, inviting them both to ConCom's 8/11 meeting.
      - The purpose would be to discuss steps going forward in acting on the recommendations of Geosyntec's Pond Survey report.
      - JG also noted that anecdotal observation indicates that Sandy Pond is experiencing a lot of weed growth.
      - BD said ConCom should meet twice a year with the Pond & Dam Committee, but noted that no meetings had been called of the Pond & Dam Committee since sometime last year.
    - BT was contacted by Scout Robert Houde, who is considering constructing a bridge over the stream running into Pine Meadow Pond in fulfillment of his Eagle Scout requirements.
      - Mr. Houde asked for more information on the length of the bridge, who decides this, etc.
      - BD noted that the span of a bridge and the length of a bridge are two different things.
      - BT will advise Mr. Houde that he needs to figure this out with an engineer.
        - Calvin Goldsmith, of GPR, already gave Mr. Houde his card and offered to help.
        - BD said Mr. Houde should contact Mr. Goldsmith for help preparing a sketch before he comes back before ConCom.
- 
- **10:20 PM – Adjourn Meeting**
    - JG moved to adjourn; GB 2<sup>nd</sup>.
      - Motion approved unanimously.