

## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249 \* 978-772-8208 (fax)  
Minutes for **8/11/2016** – Approved 8/25/2016

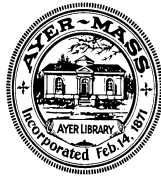
Location: Ayer Town Hall, 1st Floor

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**

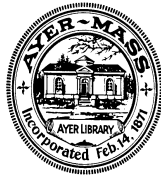
- **Confirmation of Agenda**
  - GB moved to confirm the agenda as posted; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 7/28/2016 as written; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Accounts Payable**
  - Bonnie Tillotson: \$40, reimbursement for workshop on “Fern Identification and Ecology for Conservationists and Gardeners.”
    - GB moved to approve payment of \$40 to BT; TT 2<sup>nd</sup>.
      - Motion approved unanimously.
- **Public Hearing: Notice of Intent (NOI) – 0 Washington Street, Thomas Bailey, MassDEP # TBD**
  - Richelle Angeli, of Arrow Environmental LLC, was present along with applicant Thomas Bailey.
  - The NOI is for the construction of a single-family home with driveway, appurtenances (water, sewer), deck and foundation drain.
    - The area of construction is entirely within buffer zone to an intermittent channel as well as Bordering Vegetated Wetland (BVW).
  - Mr. Bailey does not yet own the property (Map 13, Parcel 36).
    - If the permitting process goes through, Mr. Bailey plans to purchase the parcel from Calvin Moore/Maple Sugar, LLC.
  - Ms. Angeli detailed the NOI submission.
    - Since receiving comments from ConCom’s last meeting, Ms. Angeli has added more wetland flags.
    - The submitted plan indicates the planned location for soil stockpiling during construction as well as a dewatering area, if necessary.
    - Access to the parcel is from Washington Street.
    - The Limit of Work is the erosion control line as indicated on the plans.
    - Given the very steep slope at the back of the LOW area, Ms. Angeli asked and received permission to change the designated erosion controls from wattles to silt fence and double-stacked haybales.
    - The site is limited and fill will have to be brought in to support the back of the house and deck.
    - Ms. Angeli said the installation of riprap on the downhill slope, at the beginning of the project, would provide stabilization and good filtration during construction and would remain in perpetuity.



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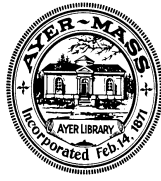
- If constructed as planned, Ms. Angeli said the project would have no negative impact on the adjacent wetlands.
  - BT noted that the nearby DPW pumping station and manholes should be indicated on the plans.
    - Ms. Angeli said these would be added to a revised plan after the site walk is complete.
  - In response to BT's question as to why the house was not located where the soil stockpile is to be, putting it further from the steep drop-off, BD said the likely answer was that such a location would put the house only 20 ft. off the street, with no room for a turn-around.
  - CA said that neighboring abutters had been in to the office to look at the plans and had described the area as 'seepy land', raising the question of whether there was any kind of spring on the steep slope.
    - While this was hearsay, ConCom would keep it in mind during the site walk.
  - DPW Superintendent Mark Wetzel, in the audience, said that current property owner Calvin Moore had dropped off his set of plans for this parcel.
    - The plans show two Town drainage easements on each side of the property.
    - It appears that only the one easement, as recorded and marked on the NOI plan, was actually needed and used.
  - A site walk was scheduled for 8 a.m., Saturday, August 20.
  - GB moved to continue the Public Hearing to 8/25/2016; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Developing a Management Plan for the Ayer Ponds, based on Geosyntec 2016 report**
  - Present were: Town Administrator Robert Pontbriand; DPW Superintendent Mark Wetzel and DPW Town Engineer Dan Van Schalkwyk; Chairman Chuck Miller and Member Don Rzasa, of the Pond & Dam Management Committee.
  - Like déjà vu, Flannagan Pond is again overrun with weeds.
  - JG said that Sandy Pond is also experiencing problematic weed growth underneath the surface.
  - BD said it is expensive for the Town to treat the ponds, but is just as expensive – if not more so – not to.
  - ConCom's goal is to be ready to do treatments on Sandy Pond and Flannagan Pond next spring.
  - Mr. Miller said having to go through the capital planning process – which is for one-time expenditures over \$10,000 – creates a substantial time delay because it is dependent on the Spring/Fall Town Meeting schedule.
    - This leaves management of the ponds consistently in a reactive 'catch-up mode', and this, in turn, winds up being more costly in the long run.
  - JG met with Mr. Pontbriand the previous week and at that time Mr. Pontbriand raised the idea of creating a separate line-item for pond management under ConCom's budget.
  - Mr. Pontbriand stressed his and the Town's commitment to support treatment of the ponds and said he would be making a recommendation to the Board of Selectmen (BOS) and the Finance Committee (FinCom) to establish this line-item, thereby removing pond treatments from the capital planning process.
    - A line item would need an adjustment mechanism to account for rising chemical costs.
      - Mr. Pontbriand said this could be handled through the BOS.
  - The issue of funding this line item was discussed.
    - Mr. Wetzel suggested creating a revolving fund, although it was noted that such funds typically have a back-channel revenue source, which would not be the case here.
      - Mr. Pontbriand will look into whether this kind of fund would be the best mechanism to use.



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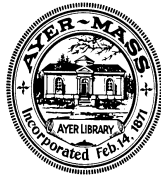
- Mr. Miller said that the Town of Lincoln uses an enterprise fund.
- CA suggested if ConCom had permitting fees, such monies could go into a pond-specific fund.
  - BD asked CA to find examples of other towns in Massachusetts that have done something similar.
- Mr. Wetzel said the DPW has a stormwater budget to improve water quality but did not know if this could be used as a source of funding for pond treatment.
- BT presented a number of slides she created tracking the history of the Town's treatment of the ponds and associated costs.
  - BT is also developing a spreadsheet of historical data on chemicals used in these treatments and will forward when ready.
- Mr. Wetzel said the DPW is in the process of acting on the Geosyntec report's recommendations for cleaning up 4 outfall treatment areas.
  - They will be putting this out to bid.
  - The DPW is also now performing regular water quality testing in the ponds, per Geosyntec recommendations, taking samples in May, July, and September.
    - This includes Long Pond, which currently is not in need of any treatment but which Geosyntec recommends be monitored in order to keep it in excellent condition.
    - This information will go into the creation of a data base that will enable the Town to track changes in each pond and act more swiftly before problems reach a more costly crisis levels.
    - The DPW is taking its samples from the center and tributary entrance of each pond, consistent with Geosyntec's initial testing sites in fall 2014.
      - JG asked about the phosphorous test results the DPW is finding for Flannagan Pond.
        - Geosyntec's 2014 samples showed very high phosphorous readings but the report suggested these readings were outliers, possibly from bad lab results.
      - Mr. Van Schalkwyk said the DPW's May and July test results showed phosphorous levels much lower than those in the Geosyntec report.
- CA brought up a separate but related issue regarding the growing water chestnut problem in Grove Pond.
  - CA will be getting information from the State sometime over the winter regarding how contaminated material from a pond can be disposed of.
  - BD asked CA to contact PACE as well, and also to find out what the Army Corps of Engineers did with the contaminated soils it removed from Plow Show Pond in 2014.
  - Mr. Wetzel wondered if pulled water chestnuts could be put into the DPW's Town compost area.
- Next steps:
  - Mr. Pontbriand will speak to the BOS and Chair of FinCom regarding creation of a dedicated line item under ConCom for pond weed management.
  - By 9/20/16, ConCom will provide Mr. Pontbriand with a detailed cost estimate for spring 2017 treatments.
  - CA will contact Solitude (formerly Aquatic Control Technologies and Lycott Environmental, now merged) to ask them for an estimate of costs for treatment next year.



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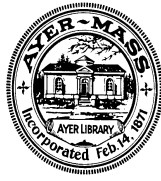
- Mr. Pontbriand asked ConCom to submit a worst-case scenario figure with an added 15% contingency amount.
  - ConCom will research other vendors from whom it could solicit bids, in addition to Solitude.
    - The Town is required to make a ‘good-faith’ effort to solicit multiple bids.
  - Mr. Pontbriand again stressed his and the Town’s support for the creation of a proactive and institutionalized process.
  - Mr. Pontbriand will place ConCom on the BOS agenda for its 9/20/2016 meeting to make a formal request for a Fall Town Meeting warrant article to fund pond weed treatment in spring 2017.
- **Public Meeting: Request for Determination of Applicability (RDA) – 59 Shirley Street, John Ford**
  - Mr. Ford described his project for constructing a 10 x 16 ft. deck off the back of his house, along with redoing stairs at the front of his house.
    - His house is about 150 meters from Nonacoicus Brook.
    - He described his backyard as very flat.
  - BD asked CA to visit the property on the following Tuesday, 8/23.
    - If CA has any concerns, ConCom may ask Mr. Ford to have his contractor use erosion controls.
  - BD asked for a motion to issue a Negative Determination of Applicability, with the condition that the contractor haul excess material off the site after excavation of the post holes for the deck.
    - GB so moved; TT 2<sup>nd</sup>.
      - Motion approved unanimously.
  - In response to BD, Mr. Ford said he has also been in contact with the Building Inspector for his project.
  - CA will drop off the signed DOA when he does his site visit next week.
  - Mr. Ford said he also eventually plans to bring in some soil to level out his back yard.
    - BD asked Mr. Ford to contact ConCom prior to doing this.
- **Discussion: Updating the Ayer Wetland Bylaw**
  - Town Administrator Pontbriand was present for this discussion.
  - BD said ConCom’s intention is to:
    - improve upon the State’s minimum standards established through the Wetland Protection Act;
    - help Ayer establish some of the same protections that other towns have to protect their resources;
    - create the ability for the Commission to write regulations;
    - make sure every applicant is fully informed as to the Town’s and Commission’s requirements.
  - Mr. Pontbriand said the Town is in the process of thoroughly reviewing all of the Town’s bylaws to bring them up-to-date and make them consistent.
  - He said the revised bylaw will need to be:
    - clear for everyone to understand;
    - articulate an optimal enforcement mechanism that is clear, realistic, and ‘has teeth’.
  - The Town has funding in place for Town Counsel review of bylaws.
  - Mr. Pontbriand said the procedure to be followed is:
    - ConCom should draft a revised Wetland Bylaw;



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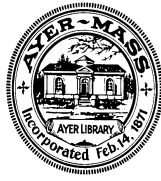
- Town Counsel will review the draft and make revisions;
  - the draft goes back to ConCom for final review;
  - ConCom holds a Public Hearing;
  - ConCom takes a vote and then sends a formal letter to the BOS recommending the bylaw for inclusion in the next Town Meeting Warrant;
  - the bylaw is submitted to Town Meeting for vote to approve or reject;
  - an approved bylaw goes to the Attorney General's office and, within 120 days, will be approved; denied; approved with mandated changes; or approved with advisory changes;
  - an approved bylaw then goes into effect upon posting by the Town Clerk in 3 conspicuous locations.
- Mr. Pontbriand recommended against rescinding the currently existing bylaw prior to passage of a new one.
  - The Warrant article would instead read something to the effect that “upon passage of Town Meeting, this becomes the bylaw and the previous bylaw is rescinded.”
- Mr. Pontbriand noted that the numbering of bylaws is chronological and does not reflect an organization structure.
  - Consequently, a new wetland bylaw would have a different number from the current one.
- Bylaws can be submitted for vote at either Spring or Fall Town Meetings.
- In response to BD's question, prior to its 8/25 meeting, Mr. Pontbriand will provide ConCom with a list of wetland bylaws for other towns that Town Counsel (Kopelman & Paige) has worked on as well as had approved by the Attorney General's Office.
- In terms of a timeline, BD said ConCom would plan to dedicate one of its two monthly meetings in October, November, and December to working on a revised draft bylaw.
  - The bylaw draft would then go to Town Counsel for review in January-February, after which ConCom would hold a Public Hearing.
  - This would allow the revised bylaw to go before Spring Town Meeting in May 2017.
- **Discussion: Other matters as addressed by Town Administrator Pontbriand**
  - Town Counsel budget
    - In order to reduce costs, the Town is asking boards to be very specific in requests for Town Counsel review of other documents.
    - For ConCom, Town Counsel has now reviewed the Conservation Restriction (CR) for Sandy Pond 3.
    - Town Counsel will have the Kohler Place CR ready for ConCom approval by 9/8.
  - Nashua Street Extension, Right-of-First-Refusal (ROFR)
    - The BOS will be holding a Public Hearing on 8/16 before it makes a decision whether to waive or move forward with the ROFR.
    - The parcel has been appraised at a value of \$535,000.
    - Mr. Pontbriand said the BOS has now formed a working group to create a master inventory/database of the remaining Chapter 61 properties in Town.
      - The database will describe the attributes of each such parcel, their potential value to the Town, and prioritize them.
      - This will enable the Town to move out of a reactive mode and develop a thoughtful proactive plan going forward as other such parcels become available.
      - Mr. Pontbriand said that BT has been added to the working group as ConCom's representative.



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- BT later outlined some of the reasons why the Town might want to preserve this particular parcel – connectivity, natural resources.
  - As always, the question of where funding would come from remains.
- Conservation Administrator
  - Mr. Pontbriand is putting the Commission onto the BOS's 9/20 agenda to make a formal request for a Fall Town Meeting warrant article for funding to change the CA position from part-time to full-time and benefitted.
    - Mr. Pontbriand previously provided ConCom with a financial analysis of the additional cost to the Town.
    - Mr. Pontbriand will be talking to the Chair of FinCom about this next week as well.
  - Previously, BD and JG went before the BOS on 6/21 to discuss this; the BOS had no objections at that time.
  - Mr. Pontbriand has also talked to the union representative for Town employees and there is no objection to this change in the position from the union.
    - He added that the union would likely waive the requirement for internal posting because of Mr. Colleran's current employment as CA.
- ConCom Intern
  - CA previously requested ConCom consider hiring Pete McCloughlin for an additional 100 hours of work (approximately) to complete his overhaul of ConCom's files and database.
    - Mr. McCloughlin has already done a substantial amount of this work under the Town's 'senior tax work-off program.'
    - Mr. Pontbriand noted that the Town cannot 'forward credit' to a resident once their hours for the current fiscal year are used up.
  - Mr. Pontbriand had no objection to ConCom hiring Mr. McCloughlin as a temporary contractor, to be paid out of ConCom's wetland fund.
    - Mr. Pontbriand asked ConCom to take a formal vote to approve at its 8/25 meeting and then provide the BOS with a letter describing what the project is, the hourly rate, and the time frame for completion.
      - The BOS would then approve this at its 9/6 meeting.
- **Discussion: Updating ConCom's Boilerplate OOC Special Conditions**
  - CA asked members to circle the current conditions that they wish to discuss further.
- **CA Updates**
  - Sandy Pond 3 CR
    - BD cannot do the baseline documentation required by NHESP on 8/13 and changed the date to 8/20, following the 0 Washington Street site visit.
    - CA said a question has arisen as to who the 'applicant' is who submits the CR to the State.
      - The LLC that built the subdivision no longer exists.
      - BD said the State will need to work this out.
        - He added that one thing to look at is who is currently paying the tax bill for the land in question.
  - ConCom's 9/8 meeting



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- CA just received notice that the State is holding its Massachusetts State Primary on Thursday, 9/8.
- Because of this, legally, ConCom cannot hold its scheduled meeting on that date.
- Robert Houde Eagle Scout bridge project
  - Would this project require an RDA or an NOI submission?
    - BD said ConCom will need to see a sketch before it makes that decision.
- Landfill at 9 Bishop Street
  - The landowner contacted CA for permission to put fresh soil down, fill in divots, and clean the area up.
    - The area is within buffer zone.
    - Snowplowing as well as ATV joyriding have dug the area up.
    - The landowner also needs to put the fence back up.
  - BD said if the landowner puts straw wattle along the fence line, then this work would be fine.
- **10:15 PM – Adjourn Meeting**
  - GB moved to adjourn; TT 2<sup>nd</sup>.
    - Motion approved unanimously.