



## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249 \* 978-772-8208 (fax)  
Minutes for **8/25/2016** – Approved 9/22/2016

Location: Ayer Town Hall, 1st Floor

Present: George Bacon (GB, Acting Chair), Takashi Tada (TT, Member), Jessica Gugino (JG, Member/Clerk), Brian Colleran (CA, Conservation Administrator)

Not Present: Bill Daniels (BD, Chair), Bonnie Tillotson (BT, Member)

APAC taped: Yes

### **7:07 PM – Open Meeting**

- **Confirmation of Agenda**

- Discussion of water chestnut pulling at Grove Pond was added.
- JG moved to confirm the agenda as amended; TT 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Approval of Meeting Minutes**

- TT moved to accept the minutes for 8/11/2016 as written; JG 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Rescheduling of Conservation Commission's next meeting**

- Because the State's primary election is scheduled for Thursday, 9/8, ConCom is barred from holding its regularly scheduled meeting.
  - ConCom has rescheduled its 9/8 meeting to the following Thursday, 9/15.
- ConCom's 9/22 meeting will be held as previously scheduled.

- **Public Hearing (cont'd): Notice of Intent (NOI) – 0 Washington Street, MassDEP # 100-0394**

- Applicant Thomas Bailey was present for the Hearing.
- A site walk took place on 8/20 with BD, GB, BT, and JG.
- A revised plan has now been submitted, including the detail that haybales and silt fence will be used for erosion controls instead of straw wattles, due to the steepness of the back slope.
- The OOC will note details discussed at the site walk:
  - erosion controls will be inspected after every significant rain event;
  - the back slope must be stabilized with rip rap prior to house construction;
  - if gutters are used, roof drainage should be directed to outflow onto the rip rap.
- JG moved to approve and issue an OOC with details as noted above; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
- JG moved to continue the Public Hearing to 9/15 for signing of the OOC; TT 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Public Meeting: Request for Determination of Applicability (RDA) – 99 Barnum Road, Ayer Department of Public Works (DPW)**

- Town Engineer Dan Van Schalkwyk was present on behalf of the DPW.
- The DPW plans to construct a 60' x 35' garage on the existing Grove Pond water treatment site, at the southeast side of Grove Pond.
  - The garage itself will be constructed outside of the buffer zone.
  - The project also involves 325 sq. ft. of minor grading inside the buffer zone, hence the RDA.



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- GB said ConCom would leave it up to Mr. Van Schalkwyk's discretion whether to use haybales/silt fence or straw wattles for erosion controls.
- TT moved to issue a Negative Determination of Applicability (#3); JG 2<sup>nd</sup>.
  - Motion approved unanimously and the DOA signed.
- **Request for Certificate of Compliance (COC): 8 Hemlock Drive, Pingry Hill, MassDEP #s 100-0359, 0341**
  - This is the property which ConCom has previously discussed because the homeowner had previously filled in a wetland area and used it to drive over.
  - A title clearing company submitted the COC request on behalf of the owner, but did not submit all of the required materials.
  - No one showed up for the meeting.
- **Discussion: Kohler Place Conservation Restriction (CR), Wright Road, MassDEP # 100-0392**
  - Alfred Bergin was present.
  - A letter from Town Counsel, Attorney Katharine Lord Klein, of Kopelman & Paige, was read.
    - Attorney Klein is updating the Kohler Place CR to reconcile it with the new template now required by the Executive Office of Environmental Affairs (EOEA).
  - A request for an extension of NHESP's 9/1/2016 deadline has been sent to Misty-Anne Marold and a reply is expected after Ms. Marold returns from vacation.
  - Attorney Klein questioned the need for a Declaration of Restriction since completion of the CR will replace the Declaration.
    - TT said the Declaration goes into effect immediately and is a placeholder that provides protection to the land while the CR is being processed.
    - The Declaration is a standard requirement of the State.
    - The CR, once submitted, undergoes a 60-day review process.
    - CA will let Attorney Klein know ConCom would like the Declaration to be prepared.
  - CA said Attorney Klein also said that, in her opinion, the Town cannot be a grantee on the Declaration of Restriction without a Town Meeting vote.
    - This was questioned and will be looked into further.
  - Mr. Bergin asked for historical detail on the CR as proposed by the original property owners.
    - The original CR was approved by NHESP on 7/5/2011.
    - The previous property owners did not complete the CR process and therefore ConCom was not given the opportunity to approve it and pass it on to EOEA for final.
  - Mr. Bergin noted that ConCom will need to sign off on the Conservation Restriction Application after a field inspection.
    - He asked if field inspection and sign off on the CR could be done simultaneously.
    - TT said some of the logistical questions would be best directed by the applicant to the Division of Conservation Services.
  - CA said that baseline documentation will also need to be done in order to complete the CR.
    - Mr. Bergin will first need to make sure that Misty-Anne Marold officially extends the deadline for submission of the CR.
    - Mr. Bergin was advised that Oxbow Associates, which is familiar with the project and visits the site weekly for turtle inspections, could do the baseline documentation.
- **Discussion: Sandy Pond 3 CR, Baseline Documentation**
  - ConCom will wait for full Commission attendance before signing the now completed CR.



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- It has been vetted by NHESP after Town Counsel reconciled it to the EOE template.
  - TT asked CA to email copies of the CR to members prior to signing at the next meeting.
  - GB was at the site walk to Sandy Pond 3 on 8/20 with BD and BT.
    - Because it was difficult to clearly locate the bounds since the drawing for the CR is inaccurate, the baseline documentation was not done.
    - It has previously been noted that there are significant discrepancies between the development as it was planned versus the development as it was built.
    - BD suggested at that time that ConCom consider hiring a land surveyor.
  - There is also some confusion over the distinction between land for the CR and 3 parcels to be deeded to the Town.
  - TT said it did not make sense to do baseline documentation until we know for certain what we are documenting, the exact bounds.
  - CA will seek cost estimates for land surveying from SJ Mullaney Engineering, David E. Ross Associates, and Goldsmith, Prest & Ringwall.
  - CA will also ask for monumentation after the reconciliation matching the CR on paper to physical reality has been done.
- **Discussion: Water Chestnut Weed Pull on 8/27, Grove Pond**
  - CA met with Martha Morgan, of the Nashua River Watershed Association, and visited the Grove Pond site of the beginning water chestnut infestation.
    - Ms. Morgan pulled two plants which CA will drop off for Wellesley College students to perform lab analysis.
    - This will give an idea of arsenic and heavy metal contamination present in the plants.
    - It appears that there are 30-50 water chestnut plants at present.
  - Conservationist Marion Stoddard was in the next office on Wednesday (8/24) and stopped by to talk to CA.
    - After also doing a site visit with CA, she offered to come out on Saturday, 8/27, to pull the water chestnuts.
  - This led to CA contacting PACE (People of Ayer Concerned about the Environment) for volunteers to help.
    - After test results come back from Wellesley, the issue of permanent disposal of the contaminated plants can be figured out.
  - TT, who worked on the EPA's Superfund site at Fort Devens years ago and is very familiar with the contamination, raised several issues:
    - wading in would kick up sediment that has unknown but likely superhigh concentrations of heavy metals;
    - liability issues for the Town, with ConCom as the responsible party since recruiting of volunteers was done via ConCom office.
  - TT recommended not doing anything until the lab results are back and the Town Administrator is consulted for advice on how to address risk factors.
  - CA will cancel the weed pull on 8/27 until further information is gathered.
- **Unscheduled Discussion: 78 Sandy Pond Road, Robert Gardner, MassDEP # 100-0386**
  - BT previously reported that the erosion controls had been pulled on the eastern side of the house.
  - CA visited the site and spoke with the landscapers.



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- The controls were removed, without ConCom notification, because the landscaper constructed a rock wall between Mr. Gardner's house (under construction) and the neighbor.
  - The rock wall was then taken down since the neighbor did not like it.
  - In addition, the rock wall was not on the plans submitted for the NOI.
- The erosion controls have now been put back in place.
- CA also found that a portion of the loaming and reseeded for 78 Sandy Pond Road went into the neighbor's yard, beyond the agreed-upon limit of work.
  - CA did not find that this presented a risk to the pond because of the topography, but it is part of the several procedural errors noted.
- Although Mr. Gardner said the rock wall was the landscaper's idea, TT reminded him that ultimately he is the responsible party.
- GB asked that Mr. Gardner and his contractors stick to the approved plan going forward.
- **Discussion: Boilerplate Special Conditions to OOC Review**
  - According to Rob Oliva, of David E. Ross Associates, CA said that the lifespan of some biodegradable wetland flagging can range from 6 months to 2 years.
    - Given that an OOC is a 3 year permit, during which flagging must be maintained, Pre-Construction Condition 1a was reviewed.
      - References banning the use of 'photodegradable, UV-degradable, oxo-degradable, or oxo-biodegradable' stakes/flags were removed.
      - A more broad reference to the use of biodegradable flags or aluminum metal tags may be used instead.
  - Other conditions were discussed that, it was agreed, should eventually be taken out of the boilerplate and put into 'regulations' instead.
    - This will be dependent upon ConCom's success in passing a new wetland bylaw that gives the Commission the authority to write regulations.
  - Further revisions to the boilerplate were deferred until ConCom has full attendance.
  - Regarding future discussion of the bylaw (scheduled for ConCom's 10/13 meeting), CA asked members to consider:
    - what would be best for the Town?
    - what would be most acceptable to the Town?
- **CA Updates**
  - Intern Pete McCloughlin
    - CA prepared a draft letter from ConCom to the BOS requesting their approval of ConCom hiring Mr. McCloughlin to continue his work on the Commission's database and files.
      - Mr. McCloughlin has worked over a hundred hours so far, as part of Ayer's tax work-off program.
      - CA estimates it will take him another 100 hours to complete.
    - Consultant fees for McCloughlin will be taken from the wetland protection fund.
    - JG moved to request the Board of Selectmen approve the use of the wetland fund to reimburse Mr. McCloughlin at a rate of \$12/hour to complete the database project by the end of the calendar year; TT 2<sup>nd</sup>.
      - Motion approved unanimously.



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- GB signed the formal request letter to the BOS on behalf of Chairman Daniels.
- Weed treatments on ponds
  - CA contacted Solitude (merger of Aquatic Control Technologies and Lycott Environmental) and they will provide a cost estimate to ConCom by 9/15.
- 103 Oak Ridge Drive, John Delcore
  - CA received reports that the landscaping/yard work planned by Mr. Delcore appeared to have gone beyond what he described to ConCom on 5/12.
  - CA sent Mr. Delcore a letter asking him to come in to talk to the Commission.
  - CA received a letter from Mr. Delcore saying he could not attend the 8/25 meeting and that he had reviewed the meeting video from 5/12.
    - Mr. Delcore said that, except for some grading, he did not deviate from what was discussed at that time.
    - He did remove an overgrown evergreen shrub that was encroaching on the sewer line but said he did not remove any trees.
  - GB asked CA to check with BD to see if he has spoken with Mr. Delcore.
  - Mr. Delcore questioned whether anyone on the Commission had illegally entered his property but to everyone's knowledge, this was not the case.
- ConCom permit application packet
  - CA is in the process of updating the application packet and removing out-of-date information.
  - The question was raised of whether ConCom can require expanding the applicant's mailing to abutters to include, for instance, the MACC brochure on the WPA or something similar to the Town of Stow's 'Guide to Abutters'.
    - Is this something ConCom can require without regulatory power?
    - TT asked CA to check with the Agent in Stow to see under what basis they are able to have applicants include such material.
- Routhier Tire, 43 Willow Road
  - CA did a site visit at Routhier Tire.
    - The cleaned and re-seeded slope down to wetlands looks great.
    - This was previously the subject of an RDA Meeting on 1/14/2016 at which time a Negative DOA with Special Conditions was issued.
- Sandy Pond
  - JG received a phone call from a concerned resident noting the existence of a pipe discharging runoff water into Sandy Pond.
    - JG circulated photos and members agreed that the pipe appeared inactive and this was not of concern.
- **9:55 PM – Adjourn Meeting**
  - TT moved to adjourn; JG 2<sup>nd</sup>.
    - Motion approved unanimously.