



## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249

Minutes for **10/13/2016** – Approved 10/27/2016

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)

Not Present: Brian Colleran (CA, Conservation Administrator)

APAC taped: Yes

### **7:15 PM – Open Meeting**

- **Confirmation of Agenda**
  - GB moved to confirm the agenda as posted; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Meeting (cont'd.): Request for Determination of Applicability (RDA) – 15 Groton-Shirley Road**
  - Homeowner Marva Moller was present for review of her home expansion project.
  - CA did a site visit and confirmed that all of the work planned is outside of the 100 ft. buffer zone to wetlands, as well as outside of the 200 ft. buffer zone to riverfront and is therefore nonjurisdictional.
    - Ms. Moller plans to install wattles at the bottom of the property as a precaution nevertheless.
  - GB moved to issue a Negative DOA; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
    - The DOA was signed, copied, and the original given to Ms. Moller.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 9/20/2016 as written; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - GB moved to accept the minutes for 9/22/2016 as corrected; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Hearing: Request for Amendment to Order of Conditions (OOC), Rosewood Avenue Extension, MassDEP # 100-0388**
  - Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), was present on behalf of the applicant, Calvin Moore.
    - Mr. Burchard provided the greencards showing abutter notification, but still owes ConCom a check for \$67.32 as reimbursement for the legal notice.
  - The approved project involves dismantling of a beaver dam, re-creation of the stream channel, and construction of an access road over the stream to service a planned solar farm installation.
    - An area of wetland replication is required for this project.
      - Because of the unusual drought conditions this year, completing wetland replication this fall, as specified in the OOC, is not feasible.
    - CA determined that changing the OOC date of completion for the wetland replication to next spring should be done as an amended OOC rather than a minor change.
  - In addition, when the beaver dam is dismantled, this will drain a substantial flooded area where the Town has 5 currently-submerged sewer manholes that it needs to access.



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- Residents John and Susan Andres, of Doug Road, were present.
  - Ms. Andres asked about clearing she has already observed.
    - BD explained that the project is now permitted and that an area needs to be cleared in order to make the work possible.
    - Mr. Burchard said a pre-construction conference was held the previous week.
- DPW Superintendent Mark Wetzel briefly came in for the Hearing.
  - The DPW has started the Emergency Permitting process with the Nashoba Board of Health that will allow the beaver dam to be taken apart.
  - Completion of the paperwork for the 10-day permit is awaiting a specific date from the contractor that the work is ready to begin.
- The current planned sequence is to install the stream culvert and build the new maintenance road after which the beaver dam will then be taken down.
  - The water level will be set so that none of the sewer manholes, for a critical line that runs from the hospital, will be submerged anymore.
  - Ms. Andres asked how much water needs to be drained in order to access the sewer covers.
    - The height of the remaining water level after removal of the beaver dam will not be known until after the dismantling and draining is actually complete.
    - She requested that consideration be made to retain some water in the area to protect animal habitat that has been established there for the past couple of decades.
  - BD noted that the area in question was not originally a wetland but rather a stream.
    - The new culvert will be set as close as possible to re-establish the original stream bottom.
    - While appreciating Ms. Andres' concerns, BD said the issues she was raising were outside of ConCom's purview.
    - BD said that most likely the beavers will return to re-establish another dam, and if so, ConCom will work with DPW to install a water flow device that maintains a lowered water level and protects access to the sewer line.
    - A manmade dam to retain water is costly and will not happen.
- GB moved to amend the OOC as written and discussed; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
  - The Amended OOC was signed; CA will forward the original to GPR the following week.
- GB moved to close the Public Hearing; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Meeting: RDA – Tim Dolan, 25 Wright Road**
  - The project is for removing some rocks from the retaining wall along the shore of Sandy Pond, and installing four 5-ft. wide bluestone steps for safe access to the pond and dock area.
    - In addition, erosion control plants will be installed near the edges of the patio walls, as suggested by CA following a site visit and having observed erosion patterns.
    - The Dolans possess a dock license that includes authorization for retaining wall maintenance.
  - Mr. Dolan provided ConCom with a sketched plan prepared by Pinard Landscaping, which will do the work.



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- BD said ConCom's primary concern was with the careful removal of material in the area so that it does not make its way into the pond.
- If approved, the work will likely be done the following week.
- GB moved to issue a Negative DOA for the project; TT 2<sup>nd</sup>.
  - Motion approved unanimously.
  - The DOA was signed, copied, and the original given directly to Mr. Dolan.
- **Public Hearing: Notice of Intent (NOI) – Jonathan Drive, MassDEP # 100-0395**
  - Robert Oliva, of David E. Ross Associates, was present on behalf of the applicant.
    - The applicant is Calvin Moore, Maple Sugar LLC.
    - Mr. Oliva has not yet provided a check for \$81.60 as reimbursement for the legal notice.
  - The project location consists of two parcels combined into a single building lot (Map 12, Lots 58 and 124) totaling 57,521 sq. ft.
    - The NOI proposes the construction of a single family house, driveway, landscaping, and utility connections, all within the 100 ft. buffer zone to BVW.
    - The total construction disturbance is estimated to be 6350 sq. ft. of buffer zone.
    - The wetland was delineated by David E. Ross Associates in August, 2016.
    - The submitted plan shows the driveway on the side of the house closest to the wetland.
      - This location would necessitate alteration of 138 sq. ft. of wetland.
      - The application proposes 276 sq. ft. of wetland replication (2:1) to mitigate the alteration.
    - The plan also indicates a stone trench along the driveway to assist drainage.
    - The closest corner of the proposed house to the wetland is 5 ft.
    - The plan shows the storage of stockpiled material inside the buffer zone but outside the 25 ft. setback.
    - Clearing would be minimized as much as possible, with only 15. ft. of clearing planned for the backyard and deck area.
    - Mr. Oliva said some additional clearing would need to be done to gain equipment access to the replication area, but once the replication was complete, this clearing would be allowed to return to its natural state.
  - BT asked why the driveway was planned for the side closest to the wetland and not on the other side of the lot.
    - Mr. Oliva said the reason had to do with the grades on the lot.
      - Moving the driveway to the other side would either require creating a large earthwork cut on that side, or would require adding fill to the wetland side to raise the house.
    - JG cited CA's written comment noting that wetland replication should be avoided where possible given the high percentage of replication areas that are known to fail.
  - BD also criticized the plan showing the need to do additional clearing in order to get machines into the replication area.
    - In its current form, BD said this was not an application that ConCom was likely to approve.
    - ConCom's primary concerns were with the wetland replication as well as the closeness of the house to the wetland itself.
  - BD also noted that there was nothing on the plan (eg. fencing or boulders) that indicated how the builder would prevent the homeowner from some day expanding the yard into the wetland.
  - TT asked for information on the grading required to flip the driveway to the other side.



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- Mr. Oliva said he would sketch something up.
  - BD asked that the house and driveway be staked according to the current NOI plan.
    - A site walk was scheduled for 9 a.m. on Saturday, 10/22.
  - GB moved to continue the Public Hearing to 10/27; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Enforcement Order – 230 Snake Hill Road**
  - New homeowners Melissa and Mark Kapeckas were present.
  - The Kapeckas are replacing the lawn around their house, have cleared shrubs and the top layer of soil, and have several large piles of new topsoil waiting to be spread.
    - They also plan to remove some tree stumps.
    - The house is located across Snake Hill Road from the shore of Sandy Pond.
  - After receiving the EO, the Kapeckas have since had straw wattles placed around the perimeter of their lot as erosion control.
    - This now also protects the stormwater grate at the front corner of the lot, a grate which drains directly into the pond.
  - The Kapeckas had not realized that earth work within buffer zone must be reviewed by ConCom and expressed their eagerness to do things right.
  - A site visit was planned for 9 a.m., Saturday, 10/15.
    - The EO was not ratified.
    - It was also agreed that the initial action should have been in the form of a Violation Notice.
- **Discussion: Updating the Ayer Wetlands Bylaw**
  - ConCom will hold a special meeting, on Monday 11/14, from 7-9, solely for the purpose of discussing the Bylaw.
    - At that time, ConCom will set additional meeting dates and schedule what needs to be done in order to have a Bylaw ready for Spring Town Meeting in May 2017.
    - This would include seeking draft comments from the BOS and Planning Board prior to holding Public Hearings.
    - It was agreed that the Bylaw discussions need to take place outside of ConCom's regular meeting schedule given the fullness of these agendas.
- **ConCom Updates**
  - Ch. 61 properties
    - BT updated ConCom on the activities of the new Ch. 61 Working Group.
    - JG said CPC is also working on expediting the process by which CPC funds could be used quickly for appraisals when time-sensitive opportunities arise in the future.
    - Resident Ruth Maxant said that the BOS should not be the only Town board to weigh in on Right of First Refusal Ch. 61 properties, and that ConCom and CPC should also be part of the process.
  - Open Orders of Conditions (OOC) and Certificates of Compliance (COC)
    - The question of who is responsible for securing a COC has arisen with regard to some Pingry Hill properties.
      - Open OOCs require the signing of an Affidavit acknowledging the transfer of responsibility from the original Applicant (often the developer) to a new homeowner.



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- Regarding Pingry Hill, some houses have previously been sold without the buyer having been asked to sign an Affidavit.
- BD said ConCom's policy should be that if the Applicant/developer did not pass along the OOC, with the signed Affidavit submitted to ConCom as proof, then the responsibility for securing the COC remains the Applicant's problem.
- Willows Appeal (MassDEP # 100-0387)
  - A 10/22/16 letter from Denise Child, Wetlands Section Chief for MassDEP, was reviewed.
  - DEP completed its review of the Appeal filed 3/9/16 by 10 Ayer residents, represented by Sheila Schwabe, questioning the issuance of an OOC for the relocation of a triplex townhouse into the riverfront area next to the building housing units 95-97.
    - DEP determined the new location does not qualify as previously degraded/disturbed riverfront (prior to 1996).
    - DEP further states that the originally approved location remains a viable site for construction.
      - This is especially so given that the developer's representatives indicated at a site walk (4/8/16) that if the triplex were successfully relocated to the riverfront area, the developer still planned to then construct a single-family unit at the original location.
    - DEP also noted that the total amount of riverfront area already disturbed (14%) on the parcel from development and construction activities elsewhere in the subdivision currently exceeds the maximum allowable 10%.
    - DEP therefore issued a Superceding OOC, without prejudice, denying the project for failure to comply with 310 CMR 10.58(4) (c) and (d).
- Seasonal board removal from Balch Dam (East Main Street Spillway)
  - GB moved to authorize CA to contact the Fire Chief and have the boards removed from Balch Dam after November 1; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- Pingry Hill Borrow Pit
  - GB brought up the emails that have been circulating between representatives of the Pingry Hill development and DPW Superintendent Mark Wetzel about a borrow pit having been cut into a hill for use of the soil elsewhere in the subdivision.
  - CA previously determined that the borrow pit area is not jurisdictional to ConCom.
  - ConCom added a visit to this site for Saturday morning, 10/15.
- Fall Town Meeting, 10/24/16
  - BD reviewed what he would be presenting to Town Meeting in support of the two Warrant Articles from ConCom.
    - One Article proposes the expansion of CA's position from part-time to full-time with benefits.
    - The second Article seeks funding for spring 2017 weed treatments on Sandy, Flannagan, and Pine Meadow ponds.
- **9:55 PM – Adjourn Meeting**
  - GB moved to adjourn; TT 2<sup>nd</sup>.
    - Motion approved unanimously.