



## **Town of Ayer Conservation Commission**

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

Minutes for 1/26/2017 – Approved 3/9/2017

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**
  - Request for COC for 31 Pingry Way was removed from the agenda.
  - Brief discussion of revised Wetland Bylaw draft added to agenda.
  - GB moved to confirm the agenda as amended; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Request for Certificate of Compliance (COC) – 118 Sandy Pond Road, MassDEP # 100-0183**
  - Original OOC issued to Sandy Pond Investment Trust, Ed Cornelier.
    - Two of the 3 houses constructed under this OOC received Partial COCs.
    - This COC would close the OOC out completely.
  - It appears everything was done according to the plans, however Special Condition #4 required an official engineer's letter, in this case from David E. Ross Associates, and this has not been done.
    - Both BD and TT said ConCom needs that in order to issue a COC.
    - Further action will pend receipt of this letter.
- **Public Hearing (cont'd.): Abbreviated Notice of Resource Area Delineation (ANRAD) – 53 Willow Road, Brent Routhier, North Country Developers LLC, MassDEP # 100-0397**
  - Assessor's Map 30, parcels 8, 9, 12, 20, & 21.
  - Dr. Desheng Wang, of Creative Land & Water Engineering, was present on behalf of the applicant.
  - ConCom performed a site walk with Dr. Wang and Mr. Routhier on 1/14/2017; CC performed an independent site walk more recently and has conferred with Dr. Wang.
    - On the site walk, ConCom observed an old building foundation and an old man-made dam that was previously not known to exist.
    - BD asked CA to notify the Circuit Rider, Judy Schmitz, about this dam so that she can consult with the Office of Dam Safety.
      - ConCom is looking for advice re the appropriate thing to do with this dam, in the interest of public safety.
      - Were beavers to add additional dam material, the impoundment of more water could pose a significant hazard for Rte. 2A (a state road) as well as Willow Road.
  - In response to CA's question, BD said the associated floodplain should be understood as the flat ponded area behind the dam and should not include the area currently used by Mr. Routhier as a trailer park on Rte. 2A.
  - As for the ponded area, Dr. Wang said it measured approximately 14,000 sq. ft., meeting the definition of a pond.
    - Therefore, Bennett's Brook itself will remain the defining factor for defining the jurisdictional area as a 200 ft. riparian zone.



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- The area defined as a ponded area is already within this zone and therefore does not affect jurisdictional considerations.
  - Between ConCom's and CA's site walks, some of the wetland flagging was confirmed for the ANRAD, including all those flags to the north of the brook and that would have an impact on future plans to work on this large parcel.
    - The flagging not confirmed at this time is inconsequential to the application any way.
    - The flagging NOT confirmed: S-1 to S-13; B-1 to B-13.
    - The flagging that IS confirmed: A-1 to A-23; B-14 to B-22; S-14 to S-33.
      - One flag, previously noted as "A-24" was moved 3-1/2 ft. in the field and renamed "24-N".
  - GB moved to accept the ANRAD flagging for 100-0397, excepting those areas noted [above] as not confirmed; TT 2<sup>nd</sup>.
    - Motion approved unanimously and the signature page was signed.
  - BD asked CA to type the final ORAD.
- **Public Hearing (cont'd.): ANRAD – 0 Washington Street, Rohit Garg, Triple AE Group LLC, MassDEP # 100-0398**
  - Assessor's Map 13, parcels 1 & 2.
  - Nick Pauling, of Goldsmith, Prest & Ringwall (GPR), was present on behalf of the applicant.
  - Mr. Pauling said a revised plan, including some missing flags, will be coming.
  - ConCom performed a site walk on 1/14/2017, with Calvin Goldsmith, of GPR, and David Crossman, senior biologist of B & C Associates.
    - Mr. Crossman did the wetland delineation flagging between 9/15 and 10/3/2016.
    - CA performed an independent site walk earlier in the day (1/16) as well.
    - During ConCom's site walk, Mr. Crossman took several soil samples to confirm flagging decisions.
      - BD and others agreed that Mr. Crossman's flagging was conservative.
  - ConCom only walked the flagging on the property itself, not the flagging that went beyond.
    - A wetland culvert drain area seen at the beginning of the walk is not on the property.
    - In addition, there are other wetlands beyond the property line that might affect a project.
    - However, the ANRAD was only to confirm wetland flagging on the property.
    - Consideration of issues affecting wetlands off the property would be dealt with at the NOI stage, and this would include the drainway.
  - It was decided that a vote on this ANRAD, however, would be delayed until the revised plan has been received.
  - GB moved to continue the Public Hearing to 2/9/2017, with the applicant's permission; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - It was also noted that the applicant has yet to provide payment for the legal notice.
- **Public Hearing (cont'd.): Notice of Intent (NOI) -- Balch Dam Dike Improvements Project, East Main Street, MassDEP # 100-0396**
  - ConCom performed a site walk on 1/14/2017; CA performed a site walk on 1/25/2017.
    - No issues were seen, nor any Special Conditions deemed necessary.
  - GB moved to approve and issue an OOC; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
    - CA will prepare the OOC for signing at ConCom's 2/9 meeting.
  - GB moved to continue the Public Hearing for 100-0396 to 2/9/2017; TT 2<sup>nd</sup>.



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

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- Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – 7 Trevor Trail, Joseph D'Ambrosio Jr.**
  - Assessor's Map 12 & 13, lots 106 & 9; Riley Jayne Farm subdivision, lot 13.
  - Nick Pauling, of GPR, was present on behalf of the applicant.
  - The purpose of the RDA is to move the Limit of Work (LOW) approved under the Order of Conditions (OOC) for Riley Jayne Farm, MassDEP # 100-0389 (6/23/2016).
    - Mr. Pauling said that the work approved under the subdivision's OOC was based on approximations of house sizes and locations.
    - The OOC covered the entire subdivision, and approved both roadway construction and LOWs for the approximated dwellings.
    - Specific plans are now being drawn up for each house lot, in some cases with changes to the original approximations.
  - 7 Trevor Trail is the first of the housing lots to have changes reviewable by ConCom.
    - The entirety of the proposed house is within the buffer zone.
    - Mr. Pauling outlined the changes planned under the RDA:
      - The proposed house is larger than represented under the plans submitted for OOC 100-0389;
      - The closest point to the wetlands was 40 ft. under the original OOC; the RDA proposes moving the LOW for 7 Trevor Trail to 25 ft. from the wetlands;
      - While the orientation of the proposed house remains the same, the driveway has been flipped from the west to the east side of the house.
    - This revision results in an overall increase in pavement on the property.
    - Despite the increase in pavement, roof size, and clearing, Mr. Pauling said that stormwater runoff would continue to flow to the same previously designed Best Management Practices (BMPs) for the subdivision.
      - The adjacent Water Quality Swale would have its volume adjusted to account for the increase in impervious surfaces.
    - As the RDA indicated, the total lot disturbance would increase from 18,947 sq. ft to 27,437 sq. ft., with buffer zone disturbance increasing from 17,301 sq. ft. to 23,988 sq. ft., up nearly 6700 sq. ft. from the original OOC.
  - ConCom members felt that these changes represented a significant increase of work inside the buffer zone.
    - BD was not happy that the LOW now mirrored the 25. ft. bound to the wetlands.
    - TT felt that the substantial increase to the footprint should be handled either by an amendment to the existing OOC or a new NOI just for this lot.
    - All felt that the changes being discussed were too substantial to be addressed by an RDA.
    - TT noted that ADM-9 in the Special Conditions for OOC 100-0389 mandated that ANY change in the plans approved under that OOC must be submitted in writing for ConCom approval before implementation.
      - "The Commission will then decide whether the change is substantial enough to require a new Notice of Intent filing or a request for an amendment to this Order of Conditions."
  - To give the applicant the benefit of the doubt, BD asked CA to consult with the DEP Circuit Rider, Judy Schmitz.



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- BD also felt that, this being the first of the subdivision lots asking for a revision of the LOW from the original OOC, ConCom needs to do this correctly from the start and not set any bad precedents.
  - GB moved to continue the RDA Meeting to 2/9, pending feedback from the Circuit Rider as to the validity of using an RDA for this kind of change; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: 26 Hemlock Drive, Pingry Hill subdivision (Lot 58), MassDEP # 100-0358**
  - Per ConCom's 1/12/2017 discussion, CA consulted with Circuit Rider Judy Schmitz for advice on how to rescind an Enforcement Order (EO).
  - The EO was issued a year ago, in 1/2016, to developer Rick Roper, of Crabtree Development, for what appeared to be a filled in strip of wetland, across which a utility easement (gas and water lines) runs.
    - Not only did a portion of the wetland appear to have been filled in, but it was clear it was also being used for vehicle access to the homeowner's backyard storage shed on Lot 58.
    - At ConCom's last meeting, where Dr. Wang was present on behalf of the developer, it was clarified that that portion of the wetland strip was approved for permanent fill as part of the utility easement.
      - The filling was mitigated elsewhere, and this portion of the wetland strip/utility easement was clearly meant to be left open and maintained as such.
    - Therefore the original EO was improperly issued.
      - Ms. Schmitz told CA that ConCom can rescind the EO by simply sending a letter to MassDEP.
  - While it is clear additional filling was done at some point, it is unclear as to by whom or when.
  - The continuing problem is that the wetland strip is being crossed by vehicles, whether by the homeowner of lot 58, or by abutting neighbors on lot 59 and lot N.
    - The utility easement crossing the wetland strip should only be used for utility maintenance, not for other traffic access (also noting that gas lines are laid closer to the surface than water lines and therefore more vulnerable).
  - CA was asked to:
    - send a letter to MassDEP rescinding the original EO against Mr. Roper;
    - send a letter to the homeowners on lots 59 and N reminding both that the wetland/utility easement is not for vehicle access;
    - send a letter to the homeowner of lot 58 requesting a meeting with ConCom, at 9 a.m. on site, Saturday morning, 3/11/2017, to discuss access to the homeowner's backyard shed.
      - TT said this should be posted as a Public Meeting.
- **Discussion: Updates on Kohler Place subdivision, Wright Road, MassDEP # 100-0358**
  - A.J. Bergin was present on his own behalf.
  - Blasting debris
    - Mr. Bergin reported that the large boulders/blasting debris that had gone beyond the LOW and into the no-disturb zone have now been removed.
    - CA will do a site visit to confirm tomorrow (1/27).
  - Conservation Restriction (CR)
    - The CR is in process, with certain details and legalities being finalized with the DPW.

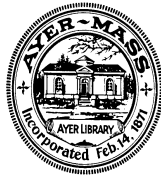


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- The DPW will be extending the water line from Wright Road, using directional drilling underneath the Sandy Pond inlet stream and connecting to the water main on Sandy Pond Road.
  - The initial CR draft gave the DPW access to this area but did not specify an easement and this is now being corrected.
    - David E. Ross Associates has already surveyed the easement area.
  - Oxbow Associates is finishing adding a couple of items to its Baseline survey, part of the State requirement when submitting a CR.
  - CA noted that the CR is written in a way that doesn't specify that a path to an eventual dock (behind lots 1 and 2) has to be mapped.
    - Mr. Bergin asked if he has to designate an actual path.
    - Given the almost impenetrable thickness of brush that ConCom observed on a site walk last fall, BD said it was likely some clearing would have to be done.
    - BD asked Mr. Bergin to roughly flag an area where access to Sandy Pond is most feasible and have ConCom review on another site walk.
  - CA also noted that the language of the CR grants access to the DPW, for the utility easement, but does not currently grant access to ConCom or CA for assessment of the CR, which is landlocked.
    - This language will be changed.
  - Mr. Bergin also said that he has broken the CR up into 3 different pieces, one for the area between the pond and behind lots 1 and 2.
    - The other two portions of the CR will belong respectively to the homeowners of lot 4 and lot 3.
- **Discussion (unscheduled): Public input from resident Ken Disken, 180 Washington Street**
  - Mr. Disken missed the earlier Public Hearing for 0 Washington Street, for which he is an abutter, and will plan to be at ConCom's next Hearing on this on 2/9.
  - Mr. Disken, however, also wanted to bring up his concerns over the adequacy of erosion controls for the solar project/stream crossing at the end of Rosewood Avenue.
    - While hiking in one area, he observed a silt fence that is now in the water.
      - CA will be doing a site visit to the solar project next week, to inspect the erosion controls for the solar array (approved under an RDA, separate from the stream crossing/Rosewood extension), and will check this area out at the same time.
      - CA also noted that when the beaver dam at Rosewood was demolished so that a new culvert and access road could be put in, the local beaver population began new damming activities further downstream.
        - This has made unanticipated changes in the water in this area.
    - Mr. Disken was also concerned about exposed sediment in the area behind the former dam, that used to be underwater, and the possibility of these sediments making their way into the stream.
      - BD said that the beaver dam was taken down not only for the access road but also to drain the impounded water so that the DPW could regain access to the sewer line, and 5 manhole covers, that runs across the wetland.
        - That ponded area has now been drained, leaving exposed sediment, but BD anticipates that, come spring, new wetland growth will quickly ensue and that will solve the problem of holding the sediments in place.

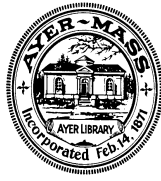


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- **Discussion: Request for Proposals (RFP), Aquatic Plant Management for Town Ponds**
  - Town Bid #17CC01
  - The RFP deadline just closed for proposals for pond weed treatment for Sandy, Flannagan, and Pine Meadow ponds.
    - Two bids were received, one from Solitude Lake Management (formerly Aquatic Control Technologies and Lycott Environmental), of Shrewsbury, and one from All Habitat Services LLC, of Branford, CT.
  - ConCom reviewed the technical non-price proposals for each.
    - The four primary criteria ConCom used to evaluate the proposals were:
      - testing plans and procedures;
      - time planned for treatments;
      - method of treatments;
      - specificity re unique issues pertaining to each pond.
  - Both proposals were found to be “responsible and responsive” and appear to guarantee doing effective jobs and use trained technical specialists.
    - ConCom members all felt they would rather use Solitude, based on a few differences, among them:
      - Solitude provided a more well-thought out proposal, with a broader use of chemicals to treat different aspects of target weeds in each pond;
      - Solitude highlighted a different and more specific treatment plan for Pine Meadow Pond;
      - Solitude’s time of treatment began earlier (in late April/early May) than All Habitat’s, which would likely be more advantageous for Town residents’ use of Sandy Pond during swimming season.
      - It was noted that All Habitat provided better testing protocol information.
  - BD said that, at the end of the day, both proposals guaranteed reaching the same end-goal, even if by different means.
    - Therefore, while ConCom members had a preference for Solitude, the next step will be to open the price proposals and see how the proposals compare on that score.
    - CA will provide ConCom with the sealed price proposals, currently held by Town Administrator Pontbriand, for its next meeting on 2/9.
  - BT asked CA to copy the descriptive pages of both proposals (around 6 pages each) and provide them to members of the Pond & Dam Committee.
    - BT also asked that the Pond & Dam Committee be invited to ConCom’s next meeting (2/9) prior to the Commission making a final decision on the proposals.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 12/8/2016 as written; TT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - GB moved to accept the minutes for 12/12/2016 as written; BT 2<sup>nd</sup>.
    - Motion approved 4-0 (TT abstained, not having been present).
  - TT moved to accept the minutes for 1/12/2017 as written; GB 2<sup>nd</sup>.
    - Motion approved 4-0 (BD abstained, not having been present).
  - GB moved to accept the minutes for 1/17/2017 as written; BT 2<sup>nd</sup>.
    - Motion approved 4-0 (TT abstained, not having been present).



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- **Discussion: Draft Ayer Wetland Bylaw**

- A draft, finalized at ConCom's 1/17/2017 meeting, is ready to go onto the Commission's website for public review.
- ConCom will be holding several meetings for public comment on the revised Bylaw, prior to submitting it to Town Counsel for review and placement on the Warrant for Spring Town Meeting.
  - The dates of the ConCom meetings at which public comment will be accepted are 2/13, 2/23, and 3/9.
    - Notice of these meetings, dated 12/9/2016, was included in a Town Clerk's mailing in December.
- It was noted that the current draft specified a 125 ft. buffer zone, rather than the 100 ft. recommended in the Massachusetts Association of Conservation Commissions model bylaw template.
  - Notes from the meeting, by both JG and CA, were unclear on this.
  - After brief discussion, the draft will cite a 100 ft. buffer zone, as per the MACC model.

- **Accounts Payable**

- Town Clerk: \$204, for fees attached to ConCom's mailing insert (see above discussion re Bylaw).
  - GB moved to approve payment of \$204; TT 2<sup>nd</sup>.
    - Motion approved unanimously.

- **CA Updates**

- Possible land donation
  - Steve Slarsky owns some land and wetlands (under 40 acres) which he is interested in donating to the Town in lieu of back taxes.
    - If accepted, he would ask that the Town agree to a plaque (which he would provide) dedicating the land in his father's name.
  - This is the land through which Nonacoicus Brook runs, and includes the area where ConCom – with Mr. Slarsky's permission – had a beaver deceiver installed last year to mitigate flooding issues nearby.
  - Before ConCom can decide this, BD asked CA provide a plan of the area to be considered for a gift as well as a valuation of the land for comparison with taxes owed.
- Annual Town Report
  - GB will put together a draft, JG will add figures, and it will then be forwarded to CA for finishing.
- CA work
  - CA is continuing to work away at compiling the ConCom database.
  - Related to that work, CA has sent out 7 or 8 new notification letters to homeowners in an effort to close out old OOCs.

- **10:28 PM – Adjourn Meeting**

- JG moved to adjourn; TT 2<sup>nd</sup>.
  - Motion approved unanimously.