



## Town of Ayer Conservation Commission

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249  
Minutes for 3/15/2018

Location: Ayer Town Hall, 2nd Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Jon Schmalenberger (JS, Member), Jo-Anne Crystoff, (CA, Conservation Administrator)

APAC taped: No

### 7:02 PM – Open Meeting

- **Confirmation of Agenda**

- A Certificate of Compliance request for 25 Calvin Street was removed from the agenda as it is under the purview of MassDEP.
- GB moved to confirm the agenda as amended; BT 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Approval of Meeting Minutes**

- GB moved to accept the minutes for 2/22/2018 as written; BT 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Accounts Payable**

- Jess Gugino: \$125.00, reimbursement for MACC Conference attendance, 3/3/2018.
  - BT moved to approve payment of \$125; JS 2<sup>nd</sup>.
    - Motion approved unanimously.

- **Public Hearing (cont'd.): Notice of Intent (NOI) – 217 West Main Street, Calco LLC, MassDEP # 100-0420**

- Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), was present on behalf of the applicant.
- A draft Order of Conditions (OOC) was prepared by CA and approved by Mr. Burchard.
  - Mr. Burchard went out of his way to commend “Agent Crystoff” for the thoughtful and thorough work she did in preparing the OOC.
- CA displayed the final plans, revised through 2/21/2018, received from GPR.
  - Mr. Burchard said a new sheet 4.3 had been added showing tree box filter detail as well as detail for the deep sumps.
  - Detail for the construction entrance is on sheet 4.1.
- GB moved to issue the final OOC for 100-0420 and to close the Public Hearing; BT 2<sup>nd</sup>.
  - Motion approved and the OOC was signed.

- **Public Hearing (cont'd.): Request for Amendment to Order of Conditions – 138 Littleton Road (Pingry Hill Subdivision), Ridge View Realty Trust, MassDEP # 100-0271**

- Steve Mullaney, of S.J. Mullaney Engineering was present on behalf of the applicant.
- ConCom performed a site walk on 2/17/2018.
- On 2/22/2018, ConCom also met with Judy Schmitz, MassDEP Circuit Rider for the Central Region, to discuss Ch. 91 dock licensing and related issues.
  - In general terms, ConCom also took the opportunity to consult with Ms. Schmitz about other permitting issues, including the legitimacy of a wetland line dating back to 2005 and part of an OOC Amendment application.



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- Ms. Schmitz confirmed the legality of a wetland line in an original OOC that has since been extended multiple times by ConCom and the State Permit Extensions Act.
- CA has also consulted with Ms. Schmitz independently regarding additional questions as to the amount of changes, including a new stream crossing and wetland replication area, indicated in the Amendment request for 100-0271.
  - Ms. Schmitz referred ConCom to Wetland Program Policy 85-4, Amended Orders.
    - If changes to an OOC involve minor deviations or less impact to resource areas, then an Amendment to the OOC is the appropriate application vehicle.
    - Greater impact should be handled by closing out the original OOC and submitting a new Notice of Intent.
    - This evaluation is at the discretion of the Commission.
- Given this, BD said the Commission should not have accepted this application as an Amendment.
- Mr. Mullaney said Policy 85-4 was referenced in the cover letter, dated 1/22/2018, accompanying the application.
  - As read by Mr. Mullaney, the cover letter asserted that “the project purpose and scope are unchanged, that its new configuration meets relevant performance standards, and that the potential for adverse impacts to the protected statutory interests will not be increased.”
  - The cover letter requested the “Commission determine that the project change described ... qualifies as relatively minor in nature...”
- The original OOC, issued in 2005, was based on Plan 15-D-11, for Lot O.
- The Amendment application includes mapping (Plan L-13407) that notes yellow and beige colored areas that now “may also be bordering vegetated wetlands,” with the beige areas comprising 6790 sq. ft. of previously approved design activity that now overlaps the subsequent delineation showing wetland expansion from 2005.
  - According to Plan L-13407, based on wetland changes over the past 13 years, the building lot has now been reconfigured, replacing Lot O with new Lot O-2.
    - This reconfiguration was approved by the Planning Board on 2/1/2018.
  - In the Amendment application based on Lot O-2, the location of the house, with a reduced footprint, has been moved away from the new wetlands, and is now actually located outside of the original boundary of Lot O.
  - As the cover letter states, “the new plan positions the driveway connection to Littleton Road at the only location presently acceptable to the Massachusetts Department of Transportation due to sight lines along the state highway.”
    - This relocation of the driveway requires wetland filling of 1,545 sq. ft.
      - The Amendment application proposes wetland replication at a ratio of 2:1, amounting to 3,101 sq. ft. further upland.
- Mr. Mullaney stated that the revised plan reduces the area of wetland alteration, and increases the net wetland area overall because of the proposed 2:1 replication.
  - Mr. Mullaney said the language in this Amendment application was no different than the language used in several applications to amend OOCs submitted to the Commission by Ridge View Realty Trust last fall.
- CA circulated a map showing the original plot plan for Lot O (Plan 15-D-11) overlaid onto the new plot plan for Lot O-2 (Plan L-13407) so that the Commission could better evaluate the extent of the changes proposed.
- BD said, following the site walk, that the Commission had questions about the viability of the proposed replication area.



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- Mr. Mullaney said its viability was addressed in the 2/14/2018 letter from Dr. Desheng Wang, of Creative Land & Water Engineering LLC, attached to the application.
  - “Wetland Replication Plan, Lot O-1, Pingry Hill Subdivision.”
- BD noted that the Commission’s previous Administrator had alerted ConCom to the high rate of failure for replication areas as noted by MassDEP.
  - Mr. Mullaney said other replication areas created under the guidance of Dr. Wang are thriving and he was confident this replication area would succeed.
- Mr. Mullaney said that Ridge View Realty was being proactive in acknowledging and showing the changes and extension to the wetlands in the Amendment application.
  - The wetlands were reflagged and the new wetland line is shown on Plan L-13407.
  - Mr. Mullaney distinguished between the “legal wetland line” of 2005, still applicable under the original OOC, and the “proactive wetland line.”
- JG said she was uncomfortable with the extent of change to the lot shape and felt the application should be reviewed under a new NOI.
  - Mr. Mullaney asked what new information an NOI would provide that wasn’t proactively provided in the Amendment application.
- CA said the existing OOC is based on wetland flagging as accepted in 2005.
  - In her conversation with Ms. Schmitz, the MassDEP Circuit Rider indicated concern that the new configuration of the lot and house location is not on a piece of earth that is covered by the existing OOC to 100-0271.
  - Mr. Mullaney responded that the change in the footprint of the house location is also now outside the buffer zone of the original OOC.
- CA said that according to Ms. Schmitz, the Commission can, if it chooses, deny the Amendment because of the extent of changes indicated, and the applicant can submit a new NOI or appeal directly to MassDEP.
  - Mr. Mullaney said another option is that the applicant simply build in the originally approved location.
- GB said he agreed with JG that the changes exceeded the limits of what was appropriate under an Amendment to an OOC.
  - He did not consider the changes to be “minor work.”
- Mr. Mullaney again asked why changing the lot lines was significant now when it wasn’t in the fall with the previous Amendment requests where lot lines had also changed due to the reconfiguration of Woodland Way.
  - BD said that, as a volunteer commission, we are always in the process of learning.
- Mr. Mullaney expressed disappointment in the Commission’s resistance to this Amendment and said it sounded more like a “process issue, not a substantive issue.”
  - He suggested the applicant could come in with a new NOI for the sake of efficiency.
- BT said changes she would like to see were moving the location of the replication area, and wondering if it could be split into two areas.
  - Mr. Mullaney said it could be split in two, and emphasized that the applicant is proposing a 2:1 replication area where only a 1:1 is required.
  - BD wanted to see the replication area moved as well, and then asked questions to better understand how runoff from the proposed new driveway location would be handled.
- CA said she was still stuck on the wetland lines themselves.
  - The new delineation is only part of the Amendment application by reference, not legality.
  - Right now there is no OOC for 100-0271 that includes a replication area, and that this is therefore not a minor change.



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- In addition, none of the OOC Amendments for this subdivision approved by the Commission in the fall included new wetland replication areas.
  - Mr. Mullaney again stressed that this change was based on proactive wetland delineation, even if not the legal line approved in 2005.
  - BD said the Commission was faced with the situation where the Circuit Rider has indicated the Amendment process was not the appropriate way to handle the extent of these changes.
    - This included noting that the new house location is not on the original lot.
    - BD said the Commission is learning better how to approach OOC Amendments.
    - But, he added, the difference between the proposed Amendment application and a new NOI might be just in the labeling of the application.
      - JG expressed concern about ConCom establishing a precedent.
  - BD asked CA to speak to Ms. Schmitz again about concerns expressed at this meeting.
  - Mr. Mullaney said he would submit a new NOI on the following day but was not withdrawing the Amendment request.
  - BD will also contact Ms. Schmitz in an open email letter that would include Mr. Mullaney.
  - GB moved to continue the Public Hearing to 3/22; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – Pirone Park Perimeter Path, Bligh Street, Ayer Department of Public Works, MassDEP # 100-0422**
  - Andrea Tavares, of LandTech Consultants, was present on behalf of the Parks Department and the DPW.
  - ConCom performed a site walk on 2/17/2018.
  - In response to concerns expressed at the site walk, Ms. Tavares described revisions made to the plans.
    - At the eastern end of the path along the Grove Pond shoreline, a level spreader has been added.
      - It will be comprised of crushed stone, 12 inches wide, 4 inches deep, and 20 feet in length.
    - A 150-ft. long line of shrubs and trees has been added to a portion of the path closest to the bank.
      - Two deciduous trees will be planted on the side of the path away from the bank, and 20 shrubs will be added on the side closer to the pond.
      - CA will work with Ms. Tavares and DPW to decide on the best shrubs to use.
    - The Commission also had concern about a portion of the path that was only 3.5 ft. from the bank, with playing field fencing on the other side, making for a tight fit.
      - Ms. Tavares spoke to the Parks Commission about this at a recent meeting.
        - This field is used by younger players, and the Parks Commission had no problem with complying with the Commission's question (made by BT) as to whether the fencing itself could be moved further from the bank.
        - Accordingly, the revised plan shows the fence moved in (north) 5 ft.
      - The realigned perimeter path would therefore also be shifted away from the pond's bank, so that the closest distance from the path to the bank changes from 3.5 ft. to 8 ft.



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- In addition, Ms. Tavares said that comments from MassDEP regarding alteration of the floodplain, and compensatory replacement, in a couple areas for ADA-related path grading, will be covered in a revision that DPW is working on and will resubmit.
  - ConCom having no further issues, GB moved to approve the application and move forward with issuing a draft OOC; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - Ms. Tavares said she would be submitting the revised final plan, with the floodplain changes described above, on the following day.
  - While work is not anticipated to begin until after July 4, she said that the DPW and Parks Dept. need to get the project out to bid ASAP.
    - BD said there was no problem with the request for bids going forward while the OOC was being drafted.
  - GB moved to continue the Public Hearing to 4/12; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Enforcement Order (EO) – 29 Jonathan Drive, Joan Gower, MassDEP # 100-0395**
  - The new homeowner, Ms. Gower, was present for the discussion.
  - The EO was issued after CA, while inspecting the rain garden still in process, observed sewage having spilled out of a grinder pump in the back yard.
    - The entire lot is within the buffer zone to a resource area.
  - BD said that the contractor had apparently installed something that wasn't on the original approved plan, and in addition, it appears that the pump was never turned on.
  - Ms. Gower said she wouldn't have known whether the grinder pump was turned on or not, and that she called Eone, the maker of the pump unit, as soon as she noticed the problem on a Saturday.
    - Eone walked her through the process of flipping the breaker on, at which point she heard gurgling sounds that suggested the unit was now operational.
    - Because of the unusually cold weather, the initial spillage had frozen solid and Ms. Gower was unable to clean it up right away.
    - She had someone from F. R. Mahoney, which provides services on behalf of Eone, come out to inspect the unit the following week.
    - When the weather turned warmer, Ms. Gower cleaned up the spillage.
      - CA showed the Commission before and after photos showing the cleaned up area.
  - Regarding the still unfinished rain garden, the Commission expressed the hope that the contractor would return, as he promised, to finish it this spring.
    - CA will work with Ms. Gower to develop a list of appropriate plants for the rain garden.
    - Ms. Gower will make sure the contractor is notified of this plant list.
  - BD thanked Ms. Gower for her cooperation and asked for a motion to not ratify the EO.
    - GB so moved; BT 2<sup>nd</sup>.
      - Motion approved unanimously.
    - BD explained that not ratifying the EO means that it does not get sent to the State, affirms that she did not do anything intending harm to the environment, and that everything has now been resolved satisfactorily.
- **Public Hearing (cont'd.): NOI – 12 Patriot Way, Thomas DiPietro, MassDEP 3 100-0421**
  - Steve Sears, of David E. Ross Associates, was present on behalf of the applicant.



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- ConCom performed a site walk on 2/17/2018 and found no issues of concern.
- As mentioned at the site walk, Mr. DiPietro said there were to be no gutters, and that he had confirmed approval of this with the Building Inspector.
- CA had a draft OOC ready, which Mr. Sears had reviewed and found no concerns.
- GB moved to issue a final OOC and close the Public Hearing for 100-0421; JS 2<sup>nd</sup>.
  - Motion approved unanimously and the OOC was signed.
- **Conservation Office Updates, including CA's 3/15/2018 Update Report**
  - 2/22/2018 Agenda
    - BD asked commissioners to bring their old MACC books so that ConCom can review its process.
    - The only two public applications for this meeting will be the continuation for 138 Littleton Road (100-0271) and a Request for Determination of Applicability for 100 Park Street.
  - Conservation Commission Annual Report 2017
    - GB and JG prepared the draft for review.
      - BT added a couple items to the list of accomplishments.
    - GB moved to approve the Annual Report entry for submission to the Town by deadline, 3/16; BT 2<sup>nd</sup>.
      - Motion approved unanimously.
  - 2018 Pond Weed Management
    - JG described her conversation at the MACC conference with Joe Onorato, of Solitude Lake Management.
      - Mr. Onorato said last year's weed treatments had not taken place until later in June due to the RFP requirement for a pre-treatment survey (including photos and GPS data points) to be completed not before June 1.
      - Mr. Onorato had suggested that the post-treatment survey information from the previous year's treatment be used as the baseline basis for the next year's treatment.
        - This would allow Solitude to schedule weed treatments earlier, in late April or early May, as they recommend.
    - With ConCom's agreement, JG will contact Mr. Onorato and ask for a revised price proposal that eliminates the pre-treatment survey described above.
    - BD also said ConCom should use the cost for this year's treatment as the basis for its request for funding weed treatment in the FY2019 budget, to be voted on at Spring Town Meeting.
  - Nashua Street Extension
    - MassDEP asked for ConCom comments as it considers an Extension to its Superceding OOC for 100-0363.
      - BD said ConCom's response, based on recent experiences, should be that all OOC Extensions going forward should require reflagging of the wetlands before determining approval of the extension.
        - If wetland changes are not observed, or are minor, no problem.
        - More significant wetland changes may require an Amendment to the original OOC.
  - Nonjurisdictional lots spilling mud into roadways?



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- CA has observed some nonjurisdictional lots under construction at Pingry Hill bleeding mud into the roadway.
    - BD said if the mud is getting into the stormdrains or detention basins, this needs to stop.
      - Otherwise, an Enforcement Order will be issued.
  - Oil Spill from Page-Hilltop School
    - With regard to the recent 800-gallon heating oil spill, that crossed under Washington Street and flowed directly into a brook and downhill into the Nashua Street Extension/Trevor Trail area, CA said that ConCom had not been notified by either MassDEP or the contractors involved, as required.
      - The only reason CA found out about the 2/23 spill was via DPW Superintendent Mark Wetzel.
    - Entities involved in the cleanup were DEP Emergency Response, Omni Environmental Group, Cyn, and Trident.
      - CA had to chase down the Emergency Certification paper work, and was told that someone at the site was under the mistaken impression that the Commission did not need to be notified because “they were just part time.”
        - CA let Town Administrator Robert Pontbriand know about this as well.
    - BD asked CA to find out the precise sequence of events and notifications that are required after such a spill.
      - She is then to send an email to Cyn and the other entities informing them that the failure to fill out the required paperwork and notify the Commission was a gross dereliction of duty.
  - Solar fencing
    - At the recent MACC conference, BD learned that the State now requires such fencing to be raised a foot off the ground, to allow passage for wildlife.
      - A question to pursue is whether this applies only to new installations or whether it also affects already-constructed older projects as well.
  - Littleton Road, Mill Corps. subdivision
    - Concerns were expressed about the extent of clear-cutting along Littleton Road.
      - Two of the 8 lots are under Commission OOCs, but the other 6 are nonjurisdictional.
      - The question is whether clearing on the other 6 lots extended further than anticipated and crossed into buffer zone activity.
      - CA will visit the site to evaluate.
- **10:10 PM – Adjourn Meeting**
    - JG moved to adjourn; GB 2<sup>nd</sup>.
      - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gogino, Clerk

Date Minutes Approved by Conservation Commission: 3/22/2018

Signature Indicating Approval: 