



Town of Ayer Conservation Commission

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

Minutes for 3/22/2018

Location: Ayer Town Hall, 1st 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: Yes

7:08 PM – Open Meeting

- **Confirmation of Agenda**

- GB moved to confirm the agenda as posted; BT 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- GB moved to accept the minutes for 3/15/2018 as written; BT 2nd.
 - Motion approved unanimously.

- **Public Hearing (cont'd.): Request for Amendment to Order of Conditions – 138 Littleton Road (Pingry Hill Subdivision), Ridge View Realty Trust, MassDEP # 100-0272**

- Steve Mullaney, of S.J. Mullaney Engineering, was present on behalf of the applicant.
- BD summarized CA's communication over past week with Judy Schmitz, MassDEP Circuit Rider for Central Region.
 - From DEP's perspective, the changes described in the Amendment application do not constitute "minor changes" and therefore an Amendment is not the appropriate vehicle.
 - A new NOI should be filed instead.
- Mr. Mullaney read from his email to the Commission sent earlier in the day (3/22).
 - Ridge View Realty Trust has chosen "to pursue multiple paths concurrently."
 - The applicant has submitted a new NOI, with new notifications to abutters.
 - At the same time, the applicant "is not withdrawing the ongoing amendment request and reserves its right to proceed with activity under the currently valid Order of Conditions."
 - The new NOI submission includes a "plan depicting alternate replication locations requested by members of the Conservation Commission during the March 15, 2018 session."
- BD asked if the applicant would therefore prefer that the Commission continue the Public Hearing for the Amendment until the separate NOI process is concluded.
 - Mr. Mullaney agreed with this path and stressed again that the applicant reserved the right to proceed with the originally approved plan for OOC 100-0272.
- GB moved to continue the Public Hearing to 4/12/2018; BT 2nd.
 - Motion approved unanimously.

- **Public Meeting: Request for Determination of Applicability (RDA) – 100 Park Street, Dan Duprez and Ernie Merrill**

- Mr. Duprez and Mr. Merrill are in the process of purchasing condo-garage space at 100 Park Street, on the right side of the building.
 - A paved parking lot exists at the back of the building, closely abutting nearby wetlands.
 - The parking lot has no stormwater structures or controls.



Town of Ayer Conservation Commission

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

Minutes for **3/22/2018**

- The wetlands were flagged by Grady Consulting, Kingston, MA.
 - The applicants propose constructing a chain-link fence around their portion of the parking lot, for security purposes, and using the lot for storage of construction equipment:
 - 4 skid steers, 3 mini excavators, 3, mid-size excavators, 1 backhoe, 2 skid steer trailers, 1 20-ton trailer, 2 dump trucks, 1 storage container for pipe/hand tools.
 - A change-of-use variance was granted by the ZBA, with 3 provisions:
 - no hazardous materials to be stored on site;
 - a spill-kit (for equipment leaks) to be on-site at all times;
 - review by ConCom.
 - CA has visited the site.
 - The 100-ft. buffer zone line runs through the middle of the building.
 - Nobody knows how old the building is but the consensus is that it predates passage of the Wetland Protection Act.
 - CA consulted with Circuit Rider Schmitz who said fences, if using driven posts, are exempt, and that grandfathering means ConCom does not have jurisdiction.
 - ConCom should therefore treat this as an “unless...until” situation.
 - The applicants can carry out their proposed use until something happens, like a spill, at which point ConCom jurisdiction comes into play and that would then trigger an enforcement.
 - ConCom cannot make the applicants responsible for correcting the pre-existing conditions of the parking lot.
 - BD said ConCom would be looking to see that no disturbance of material makes its way into the wetlands.
 - BD asked the applicants to promptly notify CA if there were ever to be a spill from leaking equipment.
 - Mr. Duprez and Mr. Merrill were agreeable to this and stressed their intent to cooperate.
 - Mr. Duprez asked about potentially piping the roof drain to empty off the side of the building to prevent ice.
 - BD asked him to give it a year and see if there was a problem or not, and if so, to then talk to CA.
 - GB moved to issue a Negative Determination of Applicability; BT 2nd.
 - Motion approved unanimously and the DOA was signed.
- **Unscheduled Discussions from Members of the Public**
 - Chris Valentine, 141 Snake Hill Road
 - Mr. Valentine asked about the process of extending his OOC for MassDEP # 100-0381.
 - The OOC expires 4/23/2018.
 - He was advised to have the extension form filed with CA for formal consideration at ConCom’s 4/12/2018 meeting.
 - BD said ConCom, following new procedures, will no longer automatically extend OOCs and will likely schedule a site walk following that meeting.
 - Because of the looming expiration date, JG suggested ConCom could provisionally approve the extension on the 12th, subject to no issues of concern arising from the site walk.
 - Robert Gardner, 78 Sandy Pond Road



Town of Ayer Conservation Commission

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

Minutes for 3/22/2018

- Mr. Gardner stated that he has filed an RDA for the 4/12 meeting, asking ConCom approval for creating a 10 ft. square beach and installing a dock.
- BD said ConCom will look at his RDA but that it cannot currently, under State law, issue new dock permits because of Ch. 91 regulations.
 - Mr. Gardner was given the name and phone number of Ben Lynch, who is the Program Chief for MassDEP's Waterways Regulation Program.
- BD and JG heard Mr. Lynch speak on Ch. 91 issues at the MACC Spring Conference on 3/3/2018.
 - Ayer's Great Ponds are located in the Petapawag ACEC (Area of Critical Environmental Concern) which creates a much, much higher threshold for issuing dock licenses.
 - Creation of a Resource Management Plan to fulfill the State's requirements would cost the Town tens of thousands of dollars to prepare, and would not be guaranteed acceptance by the State regardless.
 - See further discussion below.
- **Discussion: Policies and Procedures for the Commission**
 - Given this is a volunteer commission, ConCom is changing its procedures in an effort to better control its meeting lengths as well as reserve time to attend to Commission business outside of applications.
 - The first Thursday monthly meeting will be reserved for applications (NOIs, RDAs, etc.).
 - The number of applications considered for Public Hearings or Meetings will be limited to 5.
 - Ideally, the goal will be to have a cut-off time of 9:30 for Hearings and Meetings.
 - This will allow time for CA Updates and other Commission business, with a goal of adjourning at 10 PM.
 - CA will check samples of the forms that other towns use requesting signatures from applicants accepting hearing dates that might, therefore, fall outside of the 21-day deadline identified in the Wetland Protection Act.
 - Applicants may always apply directly to the State (MassDEP) but that is likely to be a much longer process.
 - The second Thursday monthly meeting will focus on other Commission business (i.e. Conservation Fund, pond management, policies and procedures, bylaw review).
 - ConCom then looked at the different types of applications that come before it in order to estimate the *minimum* number of appearances that would be required, in light of the new 5-application limit/meeting.
 - Request for Determination of Applicability (RDA)
 - This application is not as sophisticated or complicated a filing as an NOI (see below), and may often be handled with a single appearance before ConCom.
 - In all cases, CA will perform a site walk prior to the Public Meeting.
 - If CA determines that the project warrants a site walk by the whole Commission, then a second Meeting may have to be scheduled.
 - BD estimated that a Public Meeting before ConCom should generally take up to 20 minutes.



Town of Ayer Conservation Commission

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

Minutes for **3/22/2018**

- If there are no complications from CA's site walk or ConCom review of the application, then a vote will be taken to issue a Determination of Applicability (DOA) for Commission signature.
- Notification of Intent (NOI) and Abbreviated Notice of Resource Area Delineation (ANRAD)
 - The initial Public Hearing for each of these applications is estimated to take at least 30 minutes.
 - A site walk would then be scheduled.
 - A second Public Hearing would follow to discuss the site walk, and whether the application is ready to be voted on for issuance of an Order of Conditions (OOC).
 - It is at the discretion of the Commission whether additional Public Hearings would be required (i.e. if plans must be revised, if a third-party consultant must be hired, if the application must be delayed while waiting for State approvals, or other complications unfold).
 - Barring complications, if issuance of a draft OOC is voted on, a third Public Hearing is needed for the Commission to formally vote approval of the OOC and sign it.
 - This Public Hearing, for purpose of signing an OOC and closing the Hearing, should take no more than 10 minutes and will not be counted as part of the 5-application limitation.
- Extensions of Orders of Conditions
 - ConCom will no longer vote on Extensions without a site walk to evaluate whether wetland conditions have changed since the time of the original issuance of the OOC.
 - An initial Hearing should therefore take approximately 10 minutes, including scheduling of a site walk.
 - Following the site walk, a second Hearing, taking approximately 10 minutes, would follow.
 - At this point, either an Extension would be voted on and signed by the Commission, or if denied, the applicant would be asked to resubmit the application under a new NOI.
- Amendments to Orders of Conditions (AOOC)
 - Per "Wetlands Program Policy 85-4, Amended Orders," it is at the discretion of the issuing authority as to whether it will "consider or act upon a request to amend a Final Order of Conditions."
 - Going forward, ConCom will review the submitted paperwork in order to decide if the "changes sought...are relatively minor and will have unchanged or less impact on the interests protected by the Act."
 - If the changes meet the above criterion, then ConCom will schedule a formal Hearing, with a site walk to be scheduled, to act upon the application.
 - BD also recommended that ConCom no longer entertain more informal field changes.
- Certificate of Compliance (COC)
 - Based on previous experience, generally a COC discussion will take 10 minutes.



Town of Ayer Conservation Commission

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

Minutes for 3/22/2018

- CA will have walked the site prior to the meeting and evaluated whether there are problems that may warrant a Commission site walk and a second meeting before the ConCom.
- **Violation Notice (VN) and Enforcement Order (EO)**
 - The Commission will want to hear these as quickly as possible.
 - As a result, these may also be heard at ConCom's second monthly Thursday meeting as they are not part of the normal application process.
 - CA will have performed site walks and documented the violations.
 - A VN will generally require a single appearance before ConCom.
 - An EO may require a second appearance before the Commission following a ConCom site walk, if deemed necessary.
- **Discussion: Solitude Lake Management contract for 2018 pond treatments**
 - A revised price proposal was reviewed.
 - CA will contact Joe Onorato, of Solitude, to ask why the cost for treating Sandy Pond this year is so much higher than treating Flannagan Pond.
 - BD also asked ConCom members to plan to kayak around Sandy and Flannagan ponds on 9/29/2018, to inspect the results of this year's treatment.
- **Discussion: Chapter 91 Dock Licensing**
 - BD recapped the MACC presentation by Ben Lynch (MassDEP Waterways Program) on 3/3 regarding Chapter 91.
 - According to Mr. Lynch, there really shouldn't be private docks on Sandy Pond, because it is in the Petapawag ACEC, unless those docks were in prior to 1984 and were less than 600 sq. ft.
 - The State has been confusing on this issue.
 - In the 2007-2009 period, when the State informed Massachusetts towns that it would be enforcing Ch. 91 dock licensing requirements, there was a limited time period during which local commissions were allowed by the State to authorize licenses.
 - This included towns with Great Ponds inside ACECs.
 - Ayer ConCom used the RDA process at that time, and the licenses were accepted by MassDEP, but it now appears that the Commission should have used the NOI application route.
 - Following the expiration of the 2009 deadline, it was made clear that towns going forward, with Great Ponds inside ACECs, would either need a local Harbormaster or acceptance of a Resource Management Plan (RMP) by the State in order to process license applications.
 - Ayer would therefore need a State-approved RMP.
 - The difficulty for Ayer is that the State would consider the 'resource' here as the Petapawag ACEC, not the Great Ponds (Sandy and Long ponds) themselves.
 - The Petapawag ACEC includes portions of Ayer, Groton, Dunstable, Pepperell, and Tyngsboro.
 - ConCom did get a price estimate from Geosyntec for production of an RMP, costing over \$30,000, but the proposal did not reference the Petapawag ACEC.
 - Ayer would need an RMP based on the ACEC that includes the two ponds.
 - One question is whether Ayer could do such an RMP but limited to the portion of the ACEC that falls within Ayer's town lines.



Town of Ayer Conservation Commission

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Minutes for 3/22/2018

- Previously MassDEP Circuit Rider Judy Schmitz expressed doubt as to whether a non-ACEC-wide RMP (covering multiple towns) would be acceptable to the one person in the State currently responsible for approving RMPs.
 - The Commission will have to consider what the benefit of a costly RMP, that may or may not be acceptable to the State, would be to the Town.
 - It was also noted that the Renewal process for existing dock permits is very unclear.
 - This will have to be investigated further.
 - BD also brought up the issue of enforcement for docks on its Great Ponds.
 - Mr. Lynch's MACC presentation indicated that existing docks should have a metal plate/medallion attached, displaying the license number.
 - As for docks on Sandy Pond that may not be licensed, BD said ConCom will have to discuss enforcement to ensure such docks are removed.
 - Looking at a map, it appears that there are at least 32 properties abutting Sandy Pond – but only 17 dock licenses were issued in 2008-2009.
 - GB noted that the State identifies itself as the enforcing power, not local ConComs.
 - While true to an extent, BD said that where the dock meets the land, that is where ConCom's enforcement responsibility enters the picture.
 - Going forward, ConCom will look into the metal plate/medallion issue.
 - In addition, ConCom will prepare a letter for homeowners who already have dock licenses.
 - The letter will ask homeowners to check their licenses for the expiration date, and will state that ConCom reserves the right to come and inspect.
 - JG and CA will set up a meeting with Town Administrator Robert Pontbriand to solicit Town input on this issue.
- **Discussion: Policies and Procedures for the Conservation Fund**
 - ConCom will schedule further discussion of this for its 4/26/2018 meeting.
 - **Conservation Commission Office Updates**
 - ConCom Budget
 - ConCom is seeking to resolve the deficit currently appearing in its budget.
 - Town Accountant Lisa Gabree asked CA for documentation of that the Commission voted that excess funds for payment of Temporary CA Kate Rimol, last year, were to be taken from the Commission's WPA fund.
 - CA provided Ms. Gabree with the entry from ConCom's 7/12/2017 minutes:
 - "BD asked for a motion to approve the contract from BSC Group to engage a person from the company 2 days a week to assist the Commission until a new CA is hired.
 - The funds for this will come from the ConCom salary budget for the CA position, supplemented with additional funds as necessary from the Commission's WPA fund.
 - The Commission will maintain this coverage at 2 days/week through August and will then reevaluate the Commission's needs.
 - It is the Commission's hope that the outside help from BSC Group will not be needed for longer than 3 months.
 - JG so moved; GB 2nd.
 - Motion approved unanimously."



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Minutes for 3/22/2018

- Page-Hilltop oil spill (2/23/2018)
 - CA talked earlier in the day with Greg Morand, the LSP (licensed site professional) for Omni.
 - Their 30-60 day Emergency Certification is potentially running out on 3/23.
 - CA asked Mr. Morand to have a plan for going forward ready for her by 4/2.
 - CA also gave Mr. Morand feedback about the Commission being kept out of the loop on this accident.
 - BD suggested ConCom register a formal complaint that the LSP did not notify the Town immediately.
- Upcoming filings
 - The DPW has filed an NOI to replace a bridge/culvert on West Main Street, crossing Nonacoicus Brook.
 - This will be heard on 4/12.
- Brent Routhier garage
 - Mr. Routhier contacted CA about constructing a garage at his trailer park on Littleton Road (2A).
 - This work would be within the 200-ft. buffer zone to Bennett's Brook and is in floodplain.
 - The plan submitted to CA is not appropriate to meet the standard required for an NOI.
 - Mr. Routhier will need to hire someone to prepare a professional plan that, among other things, accurately establishes where the floodplain is located.
 - Such elevations cannot be taken from a map but have to be established on the ground and in actuality.
- **Member Updates**
 - GB noted that Town Meeting is coming up in May.
 - ConCom will need to provide a number for next year's weed treatment to be included in the budget.
 - This number should be based on the cost of this year's treatment.
- **10:15 PM – Adjourn Meeting**
 - GB moved to adjourn; BT 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

4/12/2018

Signature Indicating Approval: _____

Jessica G. Gugino