



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **1/14/2016** – Approved 2/11/2016

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), Brian Colleran (CA, Conservation Administrator),

APAC taped: Yes

7:07 PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm the agenda as posted; TT 2nd.
 - Motion approved unanimously.
- **Accounts Payable**
 - Brian Colleran: \$66.36, mileage reimbursement.
 - GB moved to approve reimbursement of \$66.36 to CA Brian Colleran; TT 2nd.
 - Motion approved unanimously.
- **Request for Certificate of Compliance (COC): 40 Highland Street, MassDEP # 100-0112**
 - GB moved to issue a Partial COC for 100-0112; TT 2nd.
 - Motion approved unanimously and the PCOC signed.
- **Request for Certificate of Compliance: 19 Fitchburg Road, Family Dollar, MassDEP # 100-0380**
 - A 12/30/2015 letter from P.E. Philip Henry, of Civil Design Group, LLC, to Doug Murray, of Hunt Real Estate, provided an as-built as well as engineer certification that the stormwater conveyance system “was constructed in substantial accordance with the design documents.”
 - BD will stop by the site on Saturday, 1/16, to see if conditions permit adequate validation of the final work.
- **Enforcement Order (EO) and Cease & Desist (C&D): 78 Sandy Pond Road, Hagel LLC, MassDEP # 100-0386**
- Robert Oliva, of David E. Ross Associates, was present on behalf of Hagel LLC.
- The EO was issued because of non-approved actions on the property.
 - An existing house close to the shoreline was demolished and the lot cleared in preparation for the construction of a new single-family house further from the shoreline (27 ft.).
 - In the process, several trees on the shoreline were removed that were not permitted for this action by the OOC, including a cluster in the western corner.
 - Mr. Oliva apologized on behalf of the homeowner who he said is truly sorry.
- Mr. Oliva suggested leaving the stumps in place on the bank and asked ConCom for input as to how best to remediate the situation, perhaps by planting new trees pulled back a distance from the bank.
 - Given the narrowness of space between the planned house and shoreline, BD questioned whether planting new trees in front of the house might be better replication.
 - JG noted that the homeowner in recent years completely cleared established trees from the front of the lot and questioned whether this would be a viable solution.
 - Mr. Oliva said the homeowner understands he screwed up and will be happy to plant new trees.



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- GB suggested a large tree (oak or hickory) and a few smaller trees.
- BD added that the large tree should be 10-14 ft. tall when it goes in, and asked Mr. Oliva to come back to ConCom with a plan for this.
- TT said the trees on the bank that were removed should be replaced by species suitable for the bank, and that the alteration of land in wetland should be mitigated in kind – i.e. near the bank itself.
- Mr. Oliva will provide a plan for ConCom’s next meeting.
- BD told Mr. Oliva that it was now permissible to continue with work covered under the OOC, but if any work outside of this was planned, the applicant needed to come before ConCom first.
- GB moved to ratify the EO; TT 2nd.
 - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – MBTA Commuter Rail**
 - Holly Palmgren, of the MBTA, and Jessica Miess, of Ramaker & Associates, Inc, were present.
 - A check for \$60.86 was given to CA to reimburse for the cost of the legal notice.
 - The RDA was prepared by Ramaker in conjunction with inMOTION Wireless Inc. for a proposed antenna and equipment installation as part of ongoing improvements to the Fitchburg Commuter Line.
 - This improvement involves the construction of a series of 65-ft. tall monopoles, and 5 ft. x 5 ft. associated equipment pads, along the track that will allow a dispatcher to exert “positive train control” and remotely stop a train.
 - The wireless poles, spaced 1 to 1-1/2 miles apart, will allow the dispatcher to ‘speak’ to the trains.
 - This complies with the *Rail Safety Improvement Act of 2008*.
 - All of the work is within the MBTA’s previously developed Right-of-Way (ROW) and will be accessed from the tracks.
 - The RDA indicated that two of the poles for this project fall within 100 ft. Buffer Zone and are the subject of the RDA:
 - “Ayer West” (BOSTFB010), near 71 Shirley Street, 80 ft. north of mapped wetlands;
 - “Ayer Central” (BOSTFB011B), near 143 Central Avenue, 50 ft. northwest of mapped wetlands.
 - Because of the very limited disturbance within the ROW, Ramaker anticipates “No Effect” to wetland areas and asks for a Negative Determination of Applicability.
 - The poles will be dug to a maximum depth of 19 ft.
 - Crushed-stone ballast material removed during the drilling will be backfilled and redistributed after the poles are installed.
 - Any soil material removed from below the ballast layer will be taken off-site since sedimentation would interfere with the drainage and support function of the ballast.
 - BD asked how power service would be attached to each pole.
 - Ms. Palmgren said this would be from the 5x5 equipment pads.
 - BD noted that the plans submitted do not show the excavation of power conduit lines to the poles.
 - “Ayer West” (Shirley Street, near Sculley Road)
 - The wetlands are on the opposite side of the track for this pole.
 - Erosion controls are therefore not proposed for this site.



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- TT asked for the distance of work from Nonacoicus Brook and said the RDA should specifically note this work is not just within 100-ft. BZ, but within 200-ft. jurisdictional BZ to riverfront.
 - TT asked for something in writing to clarify the distance to the brook and specifically reference the proximity of riverfront.
- BD also asked for a plan that pulled the scale back so that the resource area could be indicated on the map.
- A revised plan showing the excavation of the power conduit lines needs to be submitted as well.
- **“Ayer Central” (Central Avenue)**
 - The RDA application references proposed erosion controls since the work is on the same side of the tracks and 50 ft. away from a nearby stream.
 - The plans submitted to ConCom did not show the location of erosion controls, but Ms. Palmgren was able to immediately provide ConCom with a revised plan that does show their location.
 - BD noted that these plans also did not show detail for the power conduit line excavation and related, that the proposed erosion controls in the revised plan did not address this portion of the work either.
 - BD said the plan for this pole did not show enough detail for the scope of work, and that ConCom would need to see precisely where the power conduit would be coming in.
 - Work on this pole might need to be submitted under a Notice of Intent (NOI), given the distance to the stream.
 - TT thought the nearby stream might be intermittent but that the plan for this pole, like the ‘Ayer West’ pole, also did not provide adequate detail indicating riverfront proximity.
 - BD decided that if the stream was confirmed as intermittent, then ConCom would revisit this as an RDA.
 - If, however, the stream is not intermittent, an NOI will need to be submitted for “Ayer Central.”
 - Revised plans will need to clearly show wetland resource locations and distances, identify riverfront areas and distances, and show power conduit line excavation areas as well as erosion controls for that.
- GB moved to continue the Public Meeting to 1/28/2016; TT 2nd.
 - Revisions to the “Ayer West” plans as specified above will need to be submitted.
 - The status of the stream near the “Ayer Central” pole needs to be addressed.
 - Depending on the outcome, revisions to the RDA, as specified above, need to be submitted, or an NOI needs to be submitted instead.
 - Motion approved unanimously.
- **Public Meeting: RDA – 43 Willow Road, J. P. Routhier & Sons Recycling Corp.**
 - Environmental engineer Kenneth Snow was present on behalf of the applicant.
 - Mr. Routhier sold his business to Liberty Tire in 2011 but then repurchased it in June 2015.
 - Since retaking ownership and in the process of addressing stormwater issues, Mr. Routhier discovered a problem on the north side of the property, probably the result of snow-plowing by the previous owner.
 - A large quantity of shredded tire chips had been pushed over an 8 ft. concrete block retaining wall and down the steep embankment into the wetlands.



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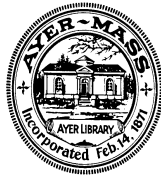
- The area is not within any ACEC.
 - Mr. Routhier's application addresses his plan to remove the chips and clean this up.
 - Mr. Snow prepared a justification for this work being approved under an RDA as "maintenance of a stormwater management system."
 - The plan calls for the use of an excavator with an extended reach to be used to excavate chips near the top of existing soil.
 - The use of an extended-reach excavator prevents moving heavy equipment into the wetlands.
 - This will then be followed by hand raking and shoveling into the bucket.
 - TT asked about the impact of erosion and disturbance to vegetation below the retaining wall.
 - CA said the existing vegetation is shrubby and woody, and dominated by invasives.
 - Whether using rakes or an excavator, the process of removing the chips will create bare soil regardless.
 - Mr. Snow said their plan proposes to mulch and seed the area after chip removal.
 - BD asked that the steep slope also be matted with jute to further stabilize it.
 - All agreed it would be best to get the tire chips out of the wetland area.
 - BD asked that the excavator work be done while the ground is frozen as a means of minimizing impact to the resource area.
 - Given the steepness of the slope, GB asked for the use of an erosion control barrier at the end of the slope and edge of the wetlands.
 - TT asked for use of the largest straw wattles available, approximately 10-12".
 - BD summarized the Special Conditions that will be attached to a Negative Determination of Applicability:
 - before and after photos to be provided to ConCom;
 - installation of a wattle line at the top of the slope, or haybales if large wattles are unavailable;
 - coverage of the area with a jute mat upon completion of clearing, seeding and mulching.
 - BD asked that CA be notified when work starts.
 - BD also asked that ConCom be provided with the new snow plow plan going forward.
 - Mr. Snow said he has not looked at the current snow plow plan but that he was sure it was not going to replicate the mistakes of the previous owner.
 - GB moved to issue a Negative DOA with Special Conditions as stated above; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – The Willows, Willow Road Development LLC, MassDEP # 100-0387**
- Desheng Wang, of Creative Land & Water Engineering, LLC, was present on behalf of the applicant.
 - The NOI proposes the relocation of a Dover triplex for units 56-57-58 from an original location uphill to an already-disturbed area west of the triplex for units 95-96-97.
 - Both the proposed new location for units 56-58 and the existing location of 95-97 are within the outer riparian zone to the Bennett's Brook riverfront.
 - Since ConCom's last Hearing on 12/10/2015, CA discovered and circulated some important documents that had been misfiled:



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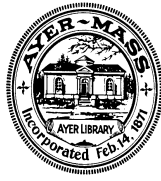
- Supplemental Mitigation Measures, from Applicant (MCO & Associates c/o Mark O'Hagan), prepared by David E. Ross Associates, Inc., October 17, 2005;
- Second Review by Epsilon Associates, October 25, 2005;
- Notice of Intent Supplemental Information II, from Applicant/David E. Ross Associates, November 2005.
- Dr. Wang said he had reviewed these documents and then asserted that their current plan remains accurate as a project proposed in a previously degraded area (prior to passage of the Riverfront Protection Act in August, 1996) and that it will, when complete, improve upon current conditions insofar as stormwater drainage and groundwater recharge.
- At the 12/10/2015 Hearing, Dr. Wang said the Applicant proposed a 2:1 mitigation area of approximately 10,000 sq. ft. at a different location to the east in the riverfront.
 - For the 1/14/2016 meeting, Dr. Wang said they are no longer proposing this 2:1 mitigation and instead argue that 1:1 restoration/replication in that area meets the requirements of 310 CMR 10.58 (5) (f).
 - Dr. Wang also said that 2:1 mitigation can be done off-site, “within the same general area of the river basin” and suggested the location uphill, where units 56-58 were originally to be located. 310 CMR 10.58 (5) (g)
- The distinction between ‘restoration’ and ‘mitigation’ was reviewed:
 - ‘Restoration’ is understood by ConCom to involve restoring or replicating an area/landscape ecologically so as to improve the environment and prevent further degradation.
 - This requires 1:1.
 - ‘Mitigation’ is understood by ConCom to involve reducing the severity, rectifying, and/or compensating for an adverse impact.
 - This requires 2:1.
- The proposed new location for 56-58 will use 4408 sq. ft. for the new building, taken from the 7000 sq. ft. area set aside previously for mitigation.
- To clarify, Dr. Wang said they are now proposing 1:1 restoration to the east, in an area approximately 4900 sq. ft., and 2:1 mitigation uphill at the originally planned location for 56-58.
- JG said she was not happy with the reduction of riverfront replication from 2:1 (proposed 12/10/2015) to 1:1 (1/14/2016).
 - Further, she noted the area west of unit 95 has been argued by the Applicant as originally intended for invasive species mitigation.
 - The new document uncovered by CA, the Supplemental Mitigation Measures (October 17, 2005), contains the following:
 - “It was agreed during the discussion that additional regions would be cleared of invasives and would be replanted with a herbaceous, shrub and tree layer with an adequate loam base. These areas would also act to offset the square footage of additional housing units in the Riverfront...”
 - Thus, JG said, the area west of unit 95 was intended not only as invasive species mitigation but also to offset the building of units 95-96-97 within riverfront, as had been argued at previous meetings by resident/abutter Duncan Brown.
- BD said the mitigation area west of unit 95 is approximately 7000 sq. ft., a 2:1 mitigation for the 3500 sq. ft. foundation for units 95-97.
 - Thus, the Applicant must now replicate the mitigation in this area pertaining to the building of units 95-97, as well as mitigate for the new building for 56-58.



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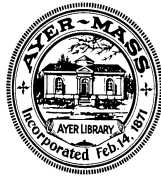
- The applicability of the distinction between mitigation and restoration for the NOI, as well as the understanding of “same general area” remained of concern to ConCom.
- Resident/abutter Sheila Schwabe said the area uphill, where 56-58 were originally located, was found not suitable for building a triplex.
 - She disagreed with the Applicant that this area could then be used subsequently to count for mitigation.
 - Several ConCom members agreed.
 - TT said that while this uphill area has been restored to better condition, he also was uneasy with it being considered as mitigation for the relocated 56-58, and asked for an interpretation from MassDEP on this point.
 - Ms. Schwabe added she did not understand how the building of a triplex in a riverfront mitigation area could legitimately count as an ‘improvement’.
- BD said ConCom members could agree that 13,224 sq. ft. of restoration (3 x 4408 sq. ft.) would meet the criterion of the law.
 - BD asked Dr. Wang to come back to ConCom with a 13,224 sq. ft. restoration area within the riverfront, or to secure an opinion from MassDEP supporting the justification of mitigation “within the same general area” but outside the riverfront.
- GB moved to continue the Public Hearing to 1/28/2016; TT 2nd.
 - Motion approved unanimously.
- **Enforcement Order: Crabtree Development, 26 Hemlock Drive (lot 58), MassDEP # 100-0358**
 - Rick Roper, of Crabtree Development, and Steve Mullaney, of S. J. Mullaney Engineering, were present.
 - ConCom performed a site walk on 12/12/2015 following a Request for a COC discussed on 12/10/2015.
 - The as-built submitted showed construction details that differed from the plans agreed to in the OOC.
 - The house was moved further into the buffer zone.
 - This increased the amount of BZ disturbance from 5900 sq. ft. to 10,900 sq. ft. and reduced the closest point of disturbance to the resource area to 7 ft.
 - The driveway was built at the south end of the house instead of the north end.
 - On the site-walk, it was also discovered that a strip of wetland to the front/left of the house, part of the utility easement, had been partially filled in and the homeowner was apparently driving across this area to access a shed in the backyard with equipment.
 - Mr. Mullaney said the as-built plan drawn by David E. Ross, stamped 12/8/2014, did not show the wetland having been filled in.
 - Mr. Roper said the house was sold to the current homeowner on 1/15/2015.
 - It was concluded that the homeowner appears to have done the filling in.
 - Regarding an increase in the depth of the house to 33 ft., Mr. Mullaney said the portion of the house that was increased is outside the buffer zone and therefore not jurisdictional.
 - The shift in the location of the driveway moved it closer to wetlands but Mr. Roper said it still drains to the street.
 - BD said that nevertheless this moved the limit of work line closer to the wetland without ConCom having been notified.
 - Mr. Roper was asked several times why he did not come before ConCom with these not-insignificant changes.



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- Mr. Roper said that he moved the driveway because the original location would have been much steeper, making it like a “ski-jump.”
 - Mr. Mullaney indicated that the steepness was the result of Mr. Roper changing how he graded the lot.
 - TT reiterated that this should have been handled as an amendment to the OOC and noted that Mr. Roper had been before ConCom enough times to have known better.
 - Mr. Roper said he really had not thought that what he did was in violation.
 - BD stressed that at the end of the day, if Mr. Roper wants to make any changes to construction on lots with open OOCs, he needs to come before ConCom so that the Commission can review and has appropriate documentation.
 - As recompense, and to address the filled-in wetland, BD said Mr. Roper will need to restore that area.
 - The homeowner will need to be informed that driving equipment over the wetland area to reach the shed is not permissible.
 - Mr. Mullaney said the homeowner is among those who have not turned in a signed Affidavit, as required by the OOC.
 - In response to a question from Mr. Mullaney, CA will make corrections to the EO, including removing the requirement that Mr. Roper file new NOIs by 1/19.
 - GB moved to ratify the EO and have it indicate that in the spring, the area of wetland disturbance in the utility easement will be brought back to what it is supposed to be; TT 2nd.
 - Motion approved unanimously and the EO signed.
- **Enforcement Order: Crabtree Development, 23 Hemlock Drive (lot 61), MassDEP # 100-0354**
 - Mr. Mullaney said that changes indicated in the as-built showed that all of the house was constructed outside the buffer zone.
 - On its 12/12 site walk, ConCom members confirmed that the boulders required for demarcation of the wetlands in the back were present as required by the OOC.
 - BD said that the applicant was not in violation after all and that no EO was necessary.
 - TT asked CA to send written notice confirming the withdrawal of the EO to MassDEP.
 - ConCom will move forward on issuing a COC at its next meeting on 1/28, following posting to the agenda.
- **Enforcement Order: Crabtree Development, 53 Hemlock Drive (lot 63), MassDEP # 100-0356**
 - As confirmed on the 12/12 site walk, the boulders required by the OOC to demarcate the wetlands were not present.
 - Mr. Roper asked if he could put signs up instead.
 - Given that the OOC is still open, TT said this could be done if Mr. Roper requested a plan change.
 - Mr. Mullaney advised Mr. Roper to file an amendment to the OOC, for which ConCom will advertise a Public Hearing, and ask to change the OOC condition from boulders to posted signs.
 - Mr. Mullaney also argued that the lack of demarcation was a COC issue, not an EO issue.
 - ConCom agreed to rescind the EO but require Mr. Roper to file an Amendment to the OOC and to secure a signed Affidavit from the homeowners indicating their understanding and cooperation.
- **Discussion: Consideration of Open Space Acquisition**
 - On 12/10/2015, ConCom met with Steve Sifakis to discuss the possibility of his selling 5 undeveloped/wooded lots behind 27 High Street, totaling approximately 2 acres, to the Town.



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- ConCom performed a site walk on 12/12/2015 with Mr. Sifakis.
 - The area is undeveloped, steeply graded, with a lot of visible ledge.
- The consensus among ConCom members was:
 - the area might make a nice pocket park, but if so, Parks & Recreation should be the one to push forward a purchase and funding agreement;
 - if these lots were combined with the acquisition of other undeveloped land in the area (e.g. the Hudlin property), it would be more attractive but otherwise it was not viable in terms of ConCom goals;
 - regardless, the first step in considering a purchase should be to have the area accurately surveyed and the bounds set since the Assessor's maps did not provide clarity.
 - As an example, Assessor's parcel 27-39 (3 of the 5 lots [No. 77, 81, 82] on the 1930 Registry of Deeds map provided by Mr. Sifakis) are given a size of 1.14 acres but the adjacent Town-owned parcel 27-40 is noted as 3 acres in size.
 - On the maps as well as the aerial photo overlaid with mapping, the Sifakis 1.14 acre parcel is visually clearly much larger than the Town's 3-acre parcel 27-40.
 - Discrepancies such as this would need to be resolved prior to having the Sifakis lots appraised.
- **CA Updates**
 - CA will forward material regarding an upcoming railroad project in Town, as part of a settlement agreement.
 - Comprehensive pond survey
 - Geosyntec is still awaiting feedback from its final draft as well as payment of its final bill.
 - Zoning Bylaw Amendment
 - Chair Jeremy Callahan is scheduling an Informational Meeting open to the public on Tuesday, 1/26/2016, 5:30 p.m. at Town Hall to provide an overview of the proposed Zoning Bylaw and solicit comments.
 - The Bylaw will be presented at Spring Town Meeting for vote.
 - Mr. Callahan asked if at least 3 members of ConCom could attend so as to provide a Conservation quorum and add support to the presentation.
 - CA will post joint-meeting material in the event that a quorum of commissioners are able to attend.
 - Matching Grant Opportunity
 - CA brought to ConCom's attention details regarding a 5 Star and Urban Waters Restoration Program 1:1 matching grant with a submission deadline of 2/3/2016.
 - This could be a good funding source for some of the projects initiated as a result of the comprehensive pond survey.
 - However, proposals need to reflect a partnership of 5 organization, and given that the pond survey has yet to be finalized, ConCom members felt it was premature to consider making an application this year for such a grant.
- **11:00 PM – Adjourn Meeting**
 - GB moved to adjourn; BT 2nd.
 - Motion approved unanimously.