



## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249 \* 978-772-8208 (fax)  
Minutes for **1/28/2016** – Approved 2/25/2016

Location: Ayer Town Hall, 1st Floor

Present: Takashi Tada (TT, Member/Acting-Chair), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Brian Colleran (CA, Conservation Administrator),

Not present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair),

APAC taped: Yes

### **7:08 PM – Open Meeting**

- **Confirmation of Agenda**

- Resident Michael Pattenden was added to the agenda with questions about work being done on Westford Road.
- JG moved to confirm the agenda as amended; BT 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Discussion (previously unscheduled): Westford Road work**

- Michael Pattenden, of 42 Westford Road, asked for information about the nature of the work being performed by Catania Spagna across from where he lives.
  - Mr. Pattenden said trees have been cleared and new dirt brought in for regrading the area.
  - The work has impacted his view and, he worried, lessened the value of his house.
  - In addition, Mr. Pattenden said he never received abutter notification for the work.
- ConCom shared with Mr. Pattenden the results of its 11/12/2015 Public Meeting regarding this work.
  - The Meeting was a Request for Determination of Applicability (RDA) filed by JAR Realty Corporation, 1 Nemco Way.
  - The purpose of the RDA was to determine the jurisdictional status of an intermittent stream/drainage channel to the side of Westford Road.
    - Catania Spagna planned to extend the existing culvert from under Westford Road and improve drainage.
  - CA had previously visited the area and determined it was not a jurisdictional ecosystem.
  - ConCom concluded that the area was not jurisdictional and that the planned work would not negatively affect the performance of the existing drain.
    - A Negative Determination of Applicability was issued to the applicant.
  - TT also explained to Mr. Pattenden that an RDA does not require abutter notification.
- Mr. Pattenden thanked the Commission for the information.

- **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.
- Dr. Wang provided ConCom with a revised mitigation plan, including planting specifications, as requested at the 1/14/2016 Hearing.
  - The new plan provides 13,230 sq. ft. of mitigation to compensate for both the building construction of the proposed triplex for 56-57-58 and relocation of the old mitigation area to the west of units 95-96-97.



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- This complies with the 2:1 ratio requirement of 310 CMR 10.58 (5) (g).
- Dr. Wang noted that this was slightly larger than ConCom's request for 13,224 sq. ft. of mitigation (3 x 4408 sq. ft. – 4408 sq. ft. being the amount taken from the current mitigation area for the relocated triplex).
- The location of the 13,230 sq. ft. mitigation area is to the east and in the riverfront, at the location originally discussed at Hearings prior to 1/14/2016.
- CA asked that a time schedule for starting this work be included in an OOC, if issued.
  - Dr. Wang said the best time for clearing invasives is late fall when they can cut brush down to the ground and then apply Roundup to kill root systems.
  - The primary invasive in the area is 'Russian (or Autumn) Olive', a thorny shrub/small tree.
  - Dr. Wang said when the mitigation area is prepared, they would monitor it for a couple of years and then, after that, it would not need to be maintained.
- Abutter Duncan Brown read his 1/21/2016 email to ConCom into the record, asking that ConCom deny issuance of an OOC for the construction of the triplex within the 200 ft. riverfront.
  - Mr. Brown again challenged the claim that the riverfront area where units 95-97 were built and the original mitigation area set aside was previously undisturbed.
  - Mr. Brown also objected to all of the trees in the new mitigation area having to be cut down.
    - Dr. Wang said this was not true and that only invasives, not native trees, would be cleared.
  - Regarding Mr. Brown's argument that there was no substantial cost savings from relocating units 56-58 from uphill to the new location west of units 95-97, TT said ConCom could not respond to the figures used by the applicant.
  - Dr. Wang reiterated that the construction cost data was fact-based and that, from an engineering standpoint, other factors besides soil quality, such as environmental context and compaction, went into determining structure-bearing capacity.
  - Mr. Brown's email also said that the Willows Condominium Association did not want to incur future maintenance expenses from having a building located within the riverfront, nor from having to maintain the mitigation area.
    - Dr. Wang reiterated that the mitigation area would not require maintenance.
    - CA did note, however, that when invasives eventually return, the Association might want to control them but that this would be voluntary.
- In response to a question from BT, Mr. Brown said that no actual polling of Condo Association members on these issues has been taken.
- Mark Kotfila, Treasurer and Vice President of the Condo Association, said his primary concern was incremental costs to the Association in the future.
  - In response to a question from JG, Dr. Wang said the maintenance costs for units 56-58 should be no different from those for units 95-97, also in the riverfront area.
  - Mr. Kotfila asked if there were specific obligations that ConCom would impose for future maintenance work done in the riverfront buffer.
    - ConCom members made clear that any ground-disturbing work done within buffer zone to wetlands or riverfront, whether in this development or elsewhere, is always subject to State law, regardless of ConCom.
- Mr. Brown said approval of an OOC by ConCom would be inflicting a "needy child" on the Association.



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- JG said that regardless of how ConCom voted on the NOI, the proposed relocation of units 56-58 would be going to MassDEP for review on appeal.
  - If ConCom approves the OOC, the abutters, led by Mr. Brown, plan to appeal.
  - If ConCom denies issuance of an OOC, the applicant will also file an appeal to MassDEP.
    - In the latter case, if MassDEP disagrees with ConCom's ruling, they would issue a Superseding Order of Conditions.
    - The downside of this scenario, for the abutters, is that ConCom would no longer be in control of monitoring the site for environmental violations.
- Given the strong disagreements on this NOI application, TT asked that ConCom continue the Public Hearing to 2/11/2016 so that a vote on the OOC can include the participation of BD and GB.
- BT moved to continue the Public Hearing to 2/11; JG 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Request for Certificate of Compliance (COC): 19 Fitchburg Road, Hunt Real Estate, MassDEP # 100-0380**
  - Steve Dumont was present on behalf of the applicant, Hunt Real Estate.
  - CA performed a site visit and found no issues with the work permitted.
    - CA did observe 55 gallon plastic trash drums have spilled off the paved area and into the woods abutting wetlands in back.
      - Mr. Dumont said that was the responsibility of their tenant, Family Dollar.
  - ConCom decided to handle the COC request separate from the trash issue.
    - CA will contact Family Dollar directly about the trash problem.
  - JG moved to approve the issuance of a COC; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Enforcement Order (EO): 78 Sandy Pond Road, Hagel LLC, MassDEP # 100-0386**
  - CA received a planting plan from Rob Oliva, of David E. Ross Associates, to correct for the unpermitted removal of trees on the bank that led to the issuance of the EO.
    - The plan calls for approximately 50 live stakes of a mix of Dogwood species to be planted, with at least 3 at the location of each previously removed tree.
    - In addition, a 10-14 ft. tall red maple, with a minimum caliper diameter of 2 in., will be planted in the front yard.
    - The volume of stakes to be planted should allow for the survival of enough to make up for the trees taken down.
  - Mr. Oliva's 1/26 email had also asked if the Cease & Desist would be lifted once ConCom approves the mitigation plan.
    - JG read from the draft minutes for 1/14, where BD already told Mr. Oliva that it was permissible to continue with work covered under the OOC; CA will convey this to Mr. Oliva.
- **Request for Certificate of Compliance: 23 Hemlock Drive (Lot 61), MassDEP # 100-0354**
  - CA revisited the site and confirmed that the boulder line demarcating the yard from wetlands was in place, as required by the OOC.
  - TT deferred voting on issuing the OOC since ConCom did not have the forms to sign.



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- **Public Meeting (cont'd.): Request for Determination of Applicability (RDA) – MBTA Commuter Rail**
  - CA has not heard anything further from Holly Palmgren, of the MBTA, or Jessica Miess, of Ramaker & Associates, about the revisions requested by ConCom on 1/14/2016.
  - JG moved to continue the Public Meeting to 2/11/2016; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Presentation: “The Importance of Healthy River Buffers for Water and Wildlife: Benefits to your Town and Conservation”**
  - The joint presentation was made by Caroly Shumway, Executive Director of Merrimack River Watershed Council (MRWC), and Mark Archambault, of the Nashua River Watershed Association (NRWA).
    - The subject was a US Forest Service project, led by MRWC and partnered with NRWA and other groups.
    - The 3-year project’s goal is to restore and protect river buffers, specifically in this case, the Merrimack River watershed and its subwatersheds.
    - The Merrimack River watershed is the 4<sup>th</sup> largest in New England, and the 2<sup>nd</sup> largest contributor to the Gulf of Maine.
  - Previously, Al Futterman, of NRWA, appeared before ConCom on 9/24/2015 to discuss an earlier phase of the restoration project to expand riparian forest buffers in urban and suburban watersheds.
  - Among points of note:
    - the Merrimack River watershed is the most threatened watershed in the nation, largely due to deforestation within the first 100 ft. of buffer zone;
    - both water quality and riverine ecosystems are degraded when impervious cover is above 5-7% within the first 100 ft. of buffer zone;
    - construction violations (non-farm related) are the most significant contributor to polluted runoff impacts (e.g. sediment, phosphate);
    - while good for other purposes, stormwater engineered BMPs have not been shown to protect diversity or abundance of riverine species;
    - to enhance water quality, reduce flooding, and protect wildlife habitat, 80% of studies recommend a minimum of a 100-ft no-build buffer zone.
  - For local communities in the Merrimack River watershed and subwatersheds, the project offers:
    - technical assistance to plant forest trees and shrubs to clean up polluted runoff on select municipal lands and private forested lands along the river;
    - assistance and information to help towns rewrite stronger bylaws;
    - facilitation of public education to town residents and / or boards.
  - The goal is to help local towns reduce, or at least maintain, the amount of impervious surface within the 100 ft. buffer.
  - With respect to ConCom’s comprehensive pond survey, Ms. Shumway said they can also be contracted (for a fee) to help set up and train water testing programs.
- **CA Updates**
  - Geosyntec
    - CA received a 1/19/2016 email from Robert Hartzel, of Geosyntec, inquiring about their outstanding final invoice for \$16,604, submitted 11/17/2015.



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- Mr. Hartzel asked if payment of the final invoice was linked to ConCom's review of the Final Report, and asked that the review be completed by the end of the month if possible.
  - JG will have a draft of ConCom comments on the Final Report ready for review at the 2/11 meeting, prior to submission to Geosyntec.
- Ice House Dam
  - CA asked for information on the nature of the OOC Extension for work on the Ice House Dam, as set up jointly by Ayer and Shirley.
    - The idea of having an open OOC, subject to periodic extension, was to keep both towns in the loop for work regularly done on this dam.
    - It also negates the need for submitting costly new NOIs each time.
- **Approval of Meeting Minutes**
  - Approval of meeting minutes was deferred until ConCom's 2/11/2016 meeting.
- **Member Updates**
  - BT is still waiting for a response from Nashoba Analytical to her email asking for details and costs of water testing.
  - BT also recently talked to DPW Superintendent Mark Wetzel on this subject and thinks a pond testing program could, to some degree, be piggy-backed onto what the DPW already does.
  - JG noted that the water level in Sandy Pond is fairly high and suggested this was due both to ConCom deciding not to remove the Balch Dam boards this year as well as the success of the new beaver deceiver at Long Pond dam preventing the beaver impoundment of water there.
  - TT reminded members of the upcoming MACC Conference on 3/5/2016 and noted that there were other conferences scheduled in coming months, including one on conservation land use management.
- **9:55 PM – Adjourn Meeting**
  - JG moved to adjourn; BT 2<sup>nd</sup>.
    - Motion approved unanimously.