

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **11/18/10** – Approved 12/2/10

Location: Ayer Town Hall, 1st Floor

Members present: Bill Daniels (BD, Chair), Dave Bodurtha (DB, Vice-Chair)*, George Bacon (GB), Takashi Tada (TT), Jessica Gugino (JG, Clerk), Becky DaSilva-Conde (CA, Conservation Administrator)

* arrived at 7:40 p.m.

APAC taped: Yes

7:08 PM – Open Meeting

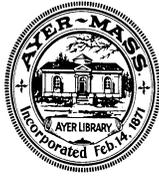
- **Pledge of Allegiance**

- **Public Meeting (cont'd): RDA: Ayer DPW, Groton-Harvard Road stormwater upgrades**
 - DPW Superintendent Dan Nason was unable to attend this meeting.
 - GB moved to continue the Public Meeting to 12/2/10; TT 2nd.
 - Motion approved unanimously (4-0).

- **Public Hearing (cont'd): NOI: MBTA, Fitchburg Commuter Rail Line upgrades**
 - Documents were not available for review.
 - GB moved to continue the Public Hearing to 12/2/10/ TT 2nd.
 - Motion approved unanimously (4-0).

- **Announcements**
 - CA has sent letter to Town Administrator Pontbriand, cc'd to Fire Chief Pedrazzi, asking for removal of two boards at Balch Dam in preparation for winter.
 - BD read into the record a "Notice of Submittal of Remedy Operation Status Report"
 - This notice, dated 8/5/10, was sent to Mass DEP, with the Commission only just receiving a copy.
 - The notice was sent by Marc Brochu, Senior Project Manager for Lessard Environmental.
 - The notice did not specify details, though it appeared that some sort of clean-up operation was underway at 27 Harvard Road.
 - BD sent an email to Mr. Brochu requesting a copy of the report sent to Mass DEP.
 - BD read a letter sent to the Town website from David Nordstrom, Associate Director of the Conway School of Landscape Design, looking for potential student projects.

- **Accounts Payable**
 - Grafax: \$15.34, for coping expenses related to a file review by Pondview residents.
 - GB moved to approve payment of \$15.34; TT 2nd.
 - Motion approved unanimously (4-0)
 - Lowell Sun: \$52.70, for publication of a legal notice for an RDA for Jessica Gugino.
 - GB moved to approve payment of \$52.70; TT 2nd.
 - Motion approved unanimously (4-0)
 - Lowell Sun: \$239.70, for legal notices for Pingry Hill NOIs (\$187) and Calvin Moore RDA (\$52.70).



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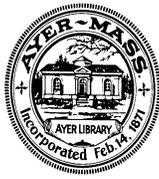
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- GB moved to approve payment of \$239.70; TT 2nd.
 - Motion approved unanimously (4-0).

- **Public Meeting: RDA – Joyce Tattelman, 18 Jonathan Drive**
 - Eric Marshall, a neighbor, appeared before the Commission, representing Ms. Tattelman
 - Ms. Tattelman is seeking approval for the keeping of 6 chickens in a coop within 50' of an intermittent stream.
 - The Nashoba Board of Health has already issued a permit for keeping 9 chickens.
 - CA visited the site on 11/17 and said that, because of the topography, she had no concerns over the possibility of runoff into the nearby stream.
 - The chicken droppings are removed from the site at least once a week.
 - CA observed that Ms. Tattelman keeps the area exceptionally clean.
 - Mary Spinner, representing the Ayer Board of Health, said that Ms. Tattelman, instead of responding directly to the Ayer BOH, went to the Nashoba BOH.
 - This complicated matters as the Ayer BOH would normally contact the Conservation Commission first before issuing a permit.
 - The Commission suggested that the application, which is for the keeping of 6 chickens, be amended to say '9' chickens to conform to the BOH permit, in case Ms. Tattelman wants to increase the number of chickens kept at some future point.
 - GB moved to issue a Negative Determination of Applicability; TT 2nd; DB abstained.
 - Motion approved 4-0.

- **Public Hearing (cont'd): NOIs, Pingry Hill development**
 - CA presented the draft OOCs for the current Pingry Hill NOI applications.
 - BD suggested CA, to save time in the preparation of future OOCs, simply cross out conditions that do not apply rather than delete and renumber each time.
 - CA stated her intent to require future applicants to initial each page of the OOC to signify their understanding of the applied conditions.
 - The Public Hearing was reopened for 8 Hickory Way (Lot 37)(DEP # 100-0338).
 - This OOC has the added Special Condition permitting the developer, despite this being a riverfront area, to connect stormwater drainage to a nearby catch basin.
 - BD noted that since the last Commission meeting, the developer has installed haybales, as requested, to protect the unseeded slope.
 - GB moved to issue OOC as reviewed; TT 2nd.
 - Motion approved unanimously.
 - GB moved to close the Public Hearing for 8 Hickory Way; TT 2nd.
 - Motion approved unanimously.
 - The Public Hearing was reopened for 214 Old Farm Way (Lot 84)(DEP #100-0339)
 - GB moved to issue OOC with minor amendments; DB 2nd.
 - Motion approved unanimously.
 - GB moved to close the Public Hearing for 214 Old Farm Way; TT 2nd.
 - Motion approved unanimously.
 - The Public Hearing was reopened for 187 Old Farm Way (Lot 32)(DEP #100-0337)
 - GB moved to issue OOC as amended; TT 2nd.



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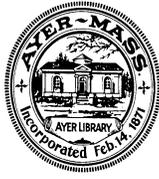
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- Motion approved unanimously.
- GB moved to close the Public Hearing for 187 Old Farm Way; TT 2nd.
- Motion approved unanimously.

- **Discussion (cont'd): Park Street business condos – Violation Notice**
 - The Commission summarized for the CA their observations from the site visit with Jim McNiff, representing the Park Street Business Association, on 11/6/10.
 - BD noted a large tree growing out of a bank, partially buried but still alive, likely indicating unauthorized activity in the wetlands within the last 5 years.
 - DB described the storage containers and old vehicles behind the condos, none of which appeared to be leaking fluids.
 - DB told Mr. McNiff to talk to the other owners and have all of this pulled back from the wetlands to the paved parking area.
 - The Commission also found numerous signs of recent excavation on the site walk, including a Bobcat on the property behind the electrical/audio building, with fresh dirt on its treads. Tracks led into the wetlands and digging has apparently been done near a culvert headwall.
 - BD noted that a pump has been put into a catch basin but it was hard to tell where the stormwater was being directed.
 - It is also an open question as to who did this work and who approved it.
 - GB mentioned pipes in the wetlands that could be groundwater-monitoring wells.
 - The plans for work done on the other side of the wetlands by FMC Corp. in 2000-2001 may be an additional source of information.
 - BD said the next step is to hear back from Mass DEP as to how best to deal with a violation problem of this sort.
 - CA planned also to give the gentleman who owns the electrical building a call about the apparent tree cutting and disturbing of the soils in the wetlands, but BD said to send a Violation Notice instead.

- **Discussion: Pondview Estates outstanding issues**
 - DB and CA will be attending a meeting on 11/19 to discuss outstanding issues with the Town Administrator and representatives from the Planning Board, DPW, and Pondview Homeowners Association.
 - They asked for input re issues and concerns from the rest of the Commission.
 - An “Operations and Maintenance” document has been distributed by Tom Roy of the Homeowners Association.
 - CA said the Homeowners Association would be asking the Conservation Commission what they must do in order to get a Certificate of Compliance for the development.
 - The developer, Hicks Corporation, has been dissolved, and the Association has been unable to successfully reach anybody associated with the developer; no monies exist for the developer’s lawyer, Paul Alphen, to participate any further.
 - DB brought up the condition of the detention basin on Rose Lane.
 - The basin is in bad condition, with large brush and saplings growing on its banks.

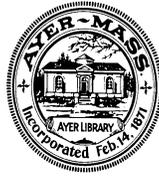


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- The Association plans to clean this (i.e. cutting trees and shrubs but leaving root systems in place), and DB raised concerns about impacting the basin's integrity.
- BD suggested a wait-and-see approach since the only other option is for the Association to start over.
 - Let them cut trees and do other maintenance, and watch for signs of the basin failing.
- DB also observed the outflow pipe in this basin as being only about 6" above the bottom of the basin.
 - It is unclear if this is because it is a very shallow basin or if this is because of long-term sediment buildup.
 - BD asked if there was a plan on record showing what the basin is supposed to look like, including its depth.
- CA said the Association has had a consultant looking at the basin but that they did not use the NOI/Planning Board plans.
- BD said that if the bottom of the basin is not in keeping with the plans, then this will need to be repaired in order for the basin to remain in compliance.
- BD recommended that any cutting/dredging of the basin should be done now before spring flooding becomes an issue.
- DB said an additional concern with this basin is that it did not have much water in it during the flooding this past spring, raising the question as to where the water went, and if proper stormwater connections were actually made.
 - This concern was expressed previously by DPW Superintendent Nason.
 - DB said an engineer for the project had said in the past that they had lost track of where several outflows went as well.
- CA noted that the remaining work that the Association needs to do in order to apply for a COC involve 1) maintaining and reporting on the turtle habitat; and 2) CR signage.
- DB brought up a recent complaint from the Homeowners Association that a nearby resident has been observed going onto the Pondview land that is subject to a Conservation Restriction and been harvesting trees.
 - Pondview residents believe this to be the person who operates a nearby farm.
 - BD asked the CA to write to this resident to make clear that no tree-cutting is to be done on this land.
- **Discussion: 15 Douglas Drive -- ponies in buffer zone**
 - BD is still trying to arrange a site visit with Henry Wysk, who contacted the Commission with concerns about the storage of ponies on a neighbor's property in proximity to a nearby brook.
 - CA said she suspects the wetlands in this area involve not just intermittent streams but marsh.
 - If some of the streams are actually perennial, rather than intermittent, this will increase the size of the buffer zone.
 - The Board of Health, in issuing its permit, may not have understood this situation fully.
 - BD sent an email to the BOH on 11/4/10 but has not had a reply.

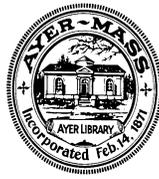


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- **CA Updates**

- The Americorps representative working with the Nashua River Watershed Association has asked to address the Commission about regional forestry grant opportunities that could benefit Ayer.
 - CA will see if the representative can attend the 12/16/10 meeting.
- An amendment has been made to the NOI for Spectacle Pond.
 - Tata and Howard will provide the CA with a copy.
- Upcoming agenda items include:
 - Further discussion of a joint CR for Sheply Hill with the Devens Enterprise Commission.
 - Calvin Moore, about his property at the corner of Taft and Nashua streets.
 - Steve Mullaney, representing Hannafords with an RDA for work on Fitchburg Road.
 - DPW Superintendent Dan Nason for further discussion of proposed stormwater upgrades on Groton-Harvard Road.
- CA asked about what dates the Commission would like to consider for an extra meeting dedicated solely to the discussion of Policies and Procedures.
 - After discussion, the Commission decided on 1/20/11 for this purpose.
- DB had raised his concern at an earlier meeting that the work done at the Central Avenue pumping stations never received a COC.
 - CA has this in her open-sites pile, but TT confirmed that a COC was signed by the Commission at its 9/24/09 meeting, when the CA was on personal leave.
- CA raised the issue of Commission jurisdiction over isolated wetlands.
 - The Mass DEP regulations for implementing the WPA has a special section exempting “isolated wetlands subject to flooding” from the jurisdiction of conservation commissions.
 - However, in recently re-reading the Town of Ayer’s Wetlands By-Law, the CA has noted that it refers to “any land subject to flooding” without mentioning the DEP exception.
 - This wording may mean that the By-Law in fact confers jurisdiction to the Ayer Conservation Commission over even isolated wetlands.
 - The Commission will consider this further as it may affect future rulings.
 - The Commission noted the confusion over the different versions in circulation of the Town’s By-Law.
 - DB said the By-Law on the Town’s website is not the official one.
 - CA will contact the Town Clerk’s office for an official stamped copy of what is actually on the books.
 - Given the upcoming RDA for Hannafords, which involves proximity to isolated wetlands, the CA asked if the Commission was comfortable moving forward on the RDA with this question of jurisdiction up in the air.
 - BD suggested contacting Steve Mullaney, representing Hannafords, over possibly delaying the application until the Commission has resolved this question; otherwise it would have to rule more conservatively.



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- **Member Updates**
 - DB:
 - With regard to the Bennett's Brook tax-taking, a member of the Board of Selectman has suggested offering abutting residents the opportunity to purchase pieces behind their properties.
 - This will likely be taken up at Spring Town Meeting.
 - DB recently circulated photos of drained wetlands at the end of Rosewood backing up to the rail trail.
 - The photos, which compare Google Earth views from 2008 and 2010, clearly show the removal of a beaver dam at the end of Rosewood, on property owned by James Woods Estate.
 - DB noted that the beavers are actively trying to re-erect their dam but someone is continuing to pull it apart.
 - CA recalled a resident's complaint about drained wetlands in this area during the summer but because of the severe drought, it was hard to discern the problem.
 - DB will send the photos to Joe Bellino, of Mass DEP, and will send a letter asking the property owner to come before the Commission.
 - BD said that the Commission will need the state's help on this.
 - GB:
 - Contact lists for large development sites should be available to Commission members in case things arise over weekends or during the week when the CA is not working.
 - DB suggested that no haybale inspection take place until the Commission has a verified list.
 - This will be added to the Commission's discussion of Policies and Procedures.
 - Dave Moulton, of the Stratton Hill development, should be urged to come before the Commission to finish off his planned CR in time for Spring Town Meeting.
- **Meeting Minutes Approval**
 - GB moved to approve the minutes from 11/4/10, with minor corrections; TT 2nd.
 - Motion approved unanimously.
 - GB moved to approve the minutes from 10/28/10, with one revision; DB 2nd.
 - Motion approved unanimously.
 - DB moved to approve the minutes from 7/8/10 as written; GB 2nd.
 - Motion approved unanimously.
- **10:30 PM – Adjourn Meeting**
 - GB moved to adjourn; DB 2nd.
 - Motion approved unanimously.