

**AYER CONSERVATION COMMISSION**  
**Tuesday, November 14, 2000 - Minutes**  
**TOWN HALL, MAIN ST., AYER, MA**

**7:00P.M      OPEN SESSION**

Present: Thomas Poole-Chairman, Robert Eldredge-Vice Chairman, Ronald DeFilippo-Member and James Drapeau-Member.

Monthly Warrant: Nashoba Publications, Inc. - Invoices (Sept, Oct. & November)

**No. 1.    Eagle Scout Project Update:**

The board met with Michael Wells regarding recent completion of an Eagle Scout Project involving the construction of a pedestrian bridge constructed out of wood located on Conservation Land known as "Pind Meadow Trust" Off Groton Harvard Road.

The project was approved and funded by the Ayer Conservation Commission in August 2000. Michael gave a brief overview of the project which included a display depicting pictures during and after the construction.

The commission thanked Michael for his hard work and community service.

**No. 2.    Robert Prescott Order of Conditions (Lot 54 & 55)**

Ms. Gibbons, Asst explained that she has not received final approval from Kopelman & Paige, P.C. regarding the covenant agreement.

Mr. Prescott informed the commission that he met with the Town Administrator earlier today but still does not have an answer as whether or not the covenant as drafted is acceptable. He expressed frustration about waiting so long for the ORDER. He pointed out the that the 21 days has lapsed.

The commission informed Mr. Prescott that the Order of Conditions can not be released until the necessary legal review is concluded.

**Note:    A statement shall be added to the Order of Conditions which will require the Covenant Agreement to filed at the Registry of Deeds.**

**No. 3      Laurie Nehring/PACE**

7:15p.m.      The commission met with Ms. Laurie Nehring/PACE for a discussion on    several Town related projects:

**Stoney Brook/Merrimack Watershed Monitoring Program**

**Stream Team Survey** - Ms. Nehring informed the commission that surface water survey (sampling rounds) have been completed within the Town of Ayer. She stated that there is one site near Bennetts Brook which has large volume of shredded tires which is of concern and a site in Harvard involving junk cars was also addressed.

Ms. Nehring informed the commission that there were seven sitings of the "Blanding's Turtle" during the survey.

#### **Shepley Hill Landfill-**

Ms. Nehring explained that PACE received a grant for technical assistance during the clean-up of the former Fort Devens.

She pointed out that the data from the groundwater monitoring wells which were installed during the capping of the landfill still indicate high concentrated levels of arsenic. She explained that the data also indicates that the contaminated groundwater is flowing towards Plowshop Pond and nearby wetlands located within the Town of Ayer. Mr. Poole inform Ms. Nehring that the wetlands described are mainly influenced by surface water not groundwater.

The commission provided Ms. Nehring with a background history of possible sources of contamination of Plowshop Pond area (a/k/a Tannery Property).

#### **The Open Space/Preservation:**

The commission discussed potential land purchases to serve as Open Space & Recreation:

- Balcunas Property.
- J. Wesley Property (Groton-Harvard Rd & Oakridge Drive)
- Former San-vel Property (potential well site)

Mr. Poole stated that the conservation commission is interested in protecting wetlands and land immediately surrounding for environmental reasons. The agreed that the land they are interested in preserving would not be suitable for recreational purposes.

#### **No. 4 Revised N.O.I - Pondview Acres Subdivision**

The commission met Mr. Keith Murray, P.E. from Meisner Brem Corp. for a continue public hearing re: Notice of Intent Application for roadway.

Applicant: Mr. Robert M. Hicks

Mr. Murray explained that the commission requested the materials be submitted:

- Grading Plan for all the lots located within the 100 ft buffer zone
- Operation & Maintenance Plan detention basins

- Final comments from Tata & Howard regarding Stormwater Calculations & Detention Basin Design.

Mr. Poole stated that information being presented tonight does not provide the Commission with the necessary time to review and comment. Mr. Poole also expressed concerns that Tata & Howard, Inc. have not provided final comments on the Storm Drainage System and proposed operation and maintenance plan based upon the stormwater calculations.

Note: Comments from MADEP still outstanding, specifically water quality certificate & Tata & Howard's Final report.

Note: Mr. Murray agreed to grant the Conservation Commission a public hearing extension until December 14<sup>th</sup> for the purpose of scheduling a special meeting with the Ayer Planning Board and receiving final comments from DPW Supt and Tata & Howard, Inc.

#### **No. 5 Oxbow Associates/Request For Determination**

7:50p.m. The commission met with Mr. Brian Butler from the Oxbow Associates, Inc. regarding a Request for determination of Applicability for a project involving the installation of a gas main under Nashua River.

**Representative: Mr. Brian Butler**

The Towns of Shirley & Harvard received Notice of Intent Applications and Order of Conditions have been issued for this project. Mr. Butler explained that the project extends into the 100 ft buffer area located within the Town of Ayer, therefore, requiring a RDA submission.

Note: Letter of non-impact from Patricia Huckery/Mass Wildlife & Fisheries has been issued for this project.

The commission unanimously agreed to issue the following NEGATIVE determination as follows:

"The work described in the request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent"

Mr. Murray stated that he will not be including the grade plans as part of the submittal.

presented this evening as request by the commission as part of the Notice of Intent.

#### **No. 5 Guilford Rail Syst, Inc. - Req. for public hearing extension**

Ms. Gibbons, Asst. informed the commission that Ms. Cynthia Scarano called to inform the commission that Ms. Patricia Huckery/Mass Wildlife & Fisheries has not completed the project review as of date, therefore, she has respectfully requesting a public hearing extension until January 2001.

No. 6. Notice of Intent Application - Groton-Harvard Rd Landfill Closure

Mr. Drapeau informed the commission that he met with the new Superintendent of Public Works, Mr. Michael Madigan on behalf of the Conservation Commission to discuss the concerns relative to the existing drain line which will be located under the proposed landfill.

Mr. Madigan agrees with the commission that the storm drain line is a concern and will not to be relocated.

**Note: This matter has been setback pending further advisement from DPW and Tata & Howard, Inc.**

No. 7. Ice House Partners, Inc. - Restoration of West Main Street Dam

The commission reviewed the documents submitted by John Grady - Grady Research Inc. which included Request for Certificate of Compliance to the Town of Shirley.

Also provided was a copy of the final as-built drawing and an inspection report from Dept. of Environmental Protection regarding seepage reduction

**Note: The documents provided by Mr. Grady were for informational purposes only and no action is required.**

9:15p.m. MEETING ADJOURN



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Central Regional Office, 627 Main Street, Worcester, MA 01608

concom file

MARGARET PAUL CELLUCCI  
Governor

JANE SWIFT  
Lieutenant Governor

BOB DURAND  
Secretary

LAUREN A. LISS  
Commissioner

Robert M. Hicks, Inc.  
124 Main St.  
Westford, MA 01886

RE: Wetlands/Ayer - BRPWW11  
314 CMR 9.00  
Water Quality Certification  
Transmittal # 21004006  
D.E.P. # 100-216  
Pond View Acres

Dear Mr. Hicks:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The Department understands the proposed project to involve the filling of 3,500 square feet of Bordering Vegetated Wetlands (BVW) associated with the construction of a 38-lot residual subdivision. In order to mitigate the BVW filling, the applicant proposes a wetland replication area adjacent to lot 7 totaling 5,250 square feet. Based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

<http://www.state.ma.us/dep> • Phone (508) 792-7650 • Fax (508) 792-7621 • TDD # (508) 767-2788

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## WATER QUALITY CERTIFICATION

Transmittal # 21004006

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1. Work shall be conducted in accordance with the plans identified below which accompanied the Water Quality Permit Application submitted September 1, 2000, with the latest revision dated November 30, 2000. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Water Quality Certification Application, the conditions shall control. Plans Entitled:

- ROADWAY NOTICE OF INTENT OVERVIEW PLAN, PONDVIEW ACRES, AYER, MA," PREPARED FOR ROBERT M. HICKS, INC., 124 MAIN STREET, WESTFORD, MA 01886.

4 sheets, Scale: 1" = 100' Hor.(page 1) 1" = 40' Hor. (pages 2,3,4)

Date: July 26, 2000, with latest revision dated November 30, 2000

Prepared by: Meisner Brem Corp.

Signed and stamped by Jeffrey Brem, R.P.E.

2. **PRIOR** to construction, erosion and sedimentation controls shall be properly installed and maintained between all work areas and the wetland areas that are to remain undisturbed to prevent the flow of silt and sedimentation into any wetlands or waterways. Such controls may consist of silt fences, haybales, sand bags, silt curtains, etc., and shall remain in place until all disturbed areas have been permanently stabilized to prevent erosion or scouring. The installation and placement of all erosion and sedimentation control devices and measures shall be supervised by an individual competent in such matters.
3. This project could result in a violation of water quality standards adopted by the Massachusetts Division of Water Pollution Control. Therefore, reasonable care and diligence shall be taken by the contractor to assure that the proposed activity will be conducted in a manner, which will minimize violations of said standards.
4. There shall be no other fill or any other material discharged or deposited into Waters of the Commonwealth other than that fill and construction material necessary to complete the project shown on the above plans and described in the PERMIT APPLICATION on file with the Department (Transmittal # 21004006).
5. Any water from the project work area **shall at all times** be effectively filtered or settled to remove silt and turbidity **prior** to being discharged to any Waters of the Commonwealth.
6. Total wetlands proposed to be altered as a result of the project shall not exceed 3,500 square feet of Bordering Vegetated Wetlands (BVW). To mitigate for the filling of BVW, the applicant proposes a wetland replication area of 5,250 square feet.

# WATER QUALITY CERTIFICATION

Transmittal # 21004006

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7. The BVW proposed to be altered shall have at least 75% vegetative cover after one complete growing season. The applicant, or their Representative, shall submit a report in writing to the Department after one complete growing season which summarizes the extent of vegetative cover, percent abundance of wetland plant species, and steps to achieve the required 75% vegetative cover should it not be achieved in the aforementioned timeframe.
8. The restoration of BVW altered from construction activities shall be supervised and monitored by a wetlands scientist or specialist. That person shall also prepare and/or validate the report required in condition # 7 above.
9. The Department shall be notified in writing of any changes in plans for this project which may affect Waters of the Commonwealth. The Department will determine whether the changes will require a revision to this Certification or the filing of a new Water Quality Certification Application.
10. Areas of construction subject to this Water Quality Certification shall remain in a stable condition at the close of each construction day. Erosion controls shall be monitored at this time, and maintained or reinforced if necessary.
11. Sedimentation and erosion control devices shall be placed throughout the projects construction to completion according to acceptable standards. D.E.P. recommends those guidelines found in the document titled Massachusetts Erosion and Sedimentation Control Guidelines for Urban and Suburban Areas (March, 1997) prepared for the Massachusetts Department of Environmental Protection and prepared by the Franklin, Hampden, Hampshire Conservation Districts, 243 King Street - Room 39, Northampton, MA 01060;. Placement shall be directed on site by a competent individual experienced in such matters in order to accomplish maximum control of products of erosion.
12. During construction for this project, the on-site foreman, design engineer, construction manager, and environmental scientist/professional shall have a copy of this Water Quality Certificate on site. Said individual(s) shall familiarize him or herself with the conditions of the Water Quality Certificate, and adhere to said conditions.

END OF CONDITIONS

## Water Quality Certification Appeal Rights:

### A) Appeal Rights and Time Limits

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required: (a) the applicant or property owner; (b) any person aggrieved by the decision who has submitted written comments during the public comment period; any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or (d) any governmental body or private organization with a mandate to protect the environment which has submitted written comments during the public comment period. Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to: Docket Clerk, Office of Administrative Appeals, Department of Environmental Protection, One Winter Street, 3<sup>rd</sup> Floor Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office at: DEP-Wetlands Program, 627 Main St. Worcester, MA 01608

### B) Contents of Hearing Request

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

- (a) the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- (b) the complete name of the applicant and address of the project;
- (c) the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- (d) if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- (e) a clear and concise statement that an adjudicatory hearing is being requested;
- (f) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- (g) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

### C) Filing Fee and Address

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 4062  
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.



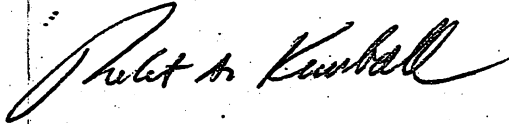
WATER QUALITY CERTIFICATION

Transmittal # 21004006

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If you have further questions on this decision, please contact Mr. Joseph R. Bellino at (508) 792-7650, extension 3709, or myself, at extension 3722.

Very truly yours,



Robert A. Kimball, P.E.  
Environmental Engineer  
Bureau of Resource Protection

Date: DEC 19, 2000

100216WQC  
RAK/MPJ/JRB

Cc: Ayer Conservation Commission

Meisner Brem Corp.  
6 Lancaster County Rd.  
Harvard, MA 01451  
Attn: Jeff Brem

Dana Samuelson - CERO

Site File