

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **12/10/2015** – 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),

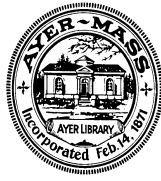
APAC taped: Yes

7:12 PM – Open Meeting

- BD summarized a pre-meeting discussion with resident Cheryl Vanvegthen, of 5 Mechanic Street Extension, who came in, unscheduled, to report flooding issues in her yard due to nearby beaver damming activity.
 - Her property abuts Nonacoicus Brook, and is in the vicinity of the DPW offices on Brook Street.
 - BD will email DPW Superintendent Mark Wetzel to see if he knows the exact location of the beaver dam.
 - If possible, BD will attempt to view the dam area and then will get back to Ms. Vanvegthen.

- **Discussion: Open Space purchase opportunity**
 - Steve Sifakis, on behalf of his mother, was present to discuss the possibility of his selling 5 undeveloped and wooded lots behind 27 High Street to the Town as Open Space.
 - According to the July 7, 1930 plot plan from the Middlesex South Registry of Deed (plan 738, Book 5477, page 572), the lots also abut undeveloped ‘Nonacoicus Brook Park’ which Mr. Sifakis said the Town owns.
 - Mr. Sifakis said his family would like to offer the parcels, totaling approximately 2 acres in size, to the Town first.
 - He would like to know if the Town is interested within the next few of months.
 - BD explained the process by which the Town acquires Open Space property, usually purchased with Community Preservation Committee (CPC) funds if approved by Town Meeting vote.
 - Properties under such consideration must be formally surveyed and appraised as well as undergo an environmental review.
 - JG said she had received emails from CPC Chair Janet Providakes and local residents expressing interest in the parcels.
 - One email suggested the property could be used to establish a walking path to connect downtown Ayer with the schools and Pine Meadow Pond Conservation Land.
 - From the audience, resident Jim Nehring spoke in favor of the Town considering the offer.
 - From the audience, Planning Board Chair Jeremy Callahan said his board had also been contacted and supports consideration of such a purchase.
 - BD scheduled a site walk at 9 a.m. on Saturday, 12/12, to evaluate whether ConCom would be interested in supporting moving forward in the process and potentially sponsoring an application for CPC funding.

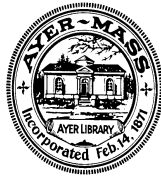
- **Public Meeting (cont’d.): Request for Determination of Applicability – Nashoba Hospital and Massachusetts Electric Company (MECO), d.b.a. National Grid**
 - Teresa Portante, of BSC Group, presented the RDA; Andrew Shelby, of National Grid, was present in the audience.
 - Access to the overhead power lines servicing Nashoba Hospital is currently very difficult and the existing lines are also vulnerable to outages.



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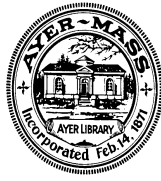
- The project proposes to re-route a portion of the existing ‘201 W 1 Line’ to a new location along Washington Street to improve service by connecting to existing pole P71 on that street.
- A small portion of the work is jurisdictional to ConCom and involves the installation of two new utility poles (P71-5 and P71-6) and associated conductor within the 100-foot buffer zone to Bordering Vegetated Wetland (BVW).
- The wooden poles will be dug to a depth of around 6 ft. and vegetative clearing will be done to establish a 10-ft. wide corridor for the overhead conductor.
- Approximately 10 sq. ft. of soil disturbance within the buffer zone is expected.
- Excavated soils will be backfilled after the pole installation.
- Because part of the work area is Priority Habitat, on 10/29/15, MECO submitted a Massachusetts Endangered Species Act (MESA) Project Review Checklist to the State.
- CA said the area has an exceptionally large stand of Japanese knotweed, an invasive, and suggested an invasive management plan.
 - Ms. Portante said they would be issuing an environmental report and would be required to clean equipment before leaving the site.
 - CA noted that the area is riddled with knotweed rhizomes and that, over time, knotweed undermines infrastructure.
- GB moved to issue a Negative Determination of Applicability (DOA) with the Special Condition that any excavated soils within the buffer zone will be left on site to prevent the spread of invasive knotweed.
 - To prevent the further spread of knotweed, CA suggested that any excess excavated soils related to the digging of all of the new poles, not just those in the buffer zone, be spread onto the known areas of knotweed within the buffer zone.
 - BD amended the Special Condition to include that requirement.
 - Motion approved unanimously and ConCom signed the DOA.
- **Public Hearing (cont’d.): Notice of Intent (NOI) – The Willows, Willow Road Development, MassDEP # 100-0387**
 - Erosion Control Specialist Desheng Wang, of Creative Land & Water Engineering, LLC, was present and distributed a letter, dated 12/10/15, with additional project information.
 - Also present were abutters Duncan Brown and Sheila Schwabe.
 - The NOI seeks an OOC for relocation of a Dover triplex for units 56-57-58 from an original location uphill in the development to an already-disturbed area to the west of units 95-96-97.
 - This area, like units 95-96-97, is within the outer riparian zone to Bennetts Brook.
 - The original location was found to have loose clayey soils, dating back to an old clay mining operation, unsuitable for supporting a building foundation as is.
 - The relocation was approved by ConCom under an amendment to the OOC (100-0288), dated 2/12/15, but appealed by abutters Duncan Brown and Sheila Schwabe.
 - MassDEP upheld the appeal and required the applicant to file separate NOI.
 - The applicant had previously also argued that the cost of building a foundation in the original location would be excessive.
 - Dr. Wang’s 12/10 letter includes Table 1 detailing foundation construction costs in buildings already constructed as well as cost estimates for the construction of the 56-57-58 triplex in the original uphill location.
 - Dr. Wang said the cost of building the foundation for this triplex in the original location would be nearly double the cost of the proposed relocation site.



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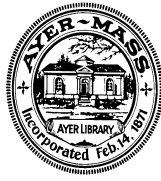
- CA said that ConCom’s file on the project, which dates back to 2005, is missing some key documents, including supplemental material to the original NOI for 100-0288 as well as revised site plans.
- Dr. Wang’s 12/10 letter notes in the history of the project that the original application in 2005 proposed 94 condo units as well as 5 ANR (Approval Not Required) lots on Willow Road.
 - Subsequently, during the 2005 review process, the development plan was amended to reduce the ANR lots to 2, with 3 additional condo units added, totaling 97 units, as compensation.
 - Documents detailing this change are missing from ConCom’s file.
 - Also missing are detailed documentation on the purpose of the mitigation area to the west of unit 95, where the relocation of units 56-57-58 is proposed and which is under dispute with abutters.
- A September 14, 2005 letter from Epsilon Associates was also reviewed.
 - Epsilon had been retained by ConCom in 2005 to review the NOI application for the development and their report contained some critical points regarding riverfront area performance standards as it related to the location of units 95-96-97 and whether that area could really be regarded as “previously developed.”
- Dr. Wang also provided historic photos of the area in question and argued that the triplex, with its additional stormwater treatment, would be a significant improvement to preexisting conditions and add protection from erosion and sedimentation to Bennetts Brook.
- In dispute is the original intention of the area west of unit 95 for mitigation purposes.
 - Some documentation suggests the area was intended for invasive species mitigation, but abutter Duncan Brown argues that area was intended as mitigation for units 95-96-97.
 - BD reviewed a copy of the minutes from 10/13/2005 which referenced a restoration drawing (not in file) showing changes that included “removal of invasive species and replanting to native species in pond area and in area near unit 95 to the West.”
 - When the 3 additional condo units were added in 2005, they were located in the outer riparian zone, which Mr. Brown said would require mitigation.
 - Assuming the original mitigation was for invasive species, Dr. Wang said that while they initially proposed a 4900 sq. ft. area for invasive mitigation at a different location in the development – to replace the 4408 sq. ft. to be used for the new building -- they were now proposing a 2:1 mitigation area of approximately 10,000 sq. ft.
- BD summed up things thus far:
 - the proposed relocated units 57-58-59 were moved an additional 5 ft. away from the end of unit 95 during the hearings held in January 2015;
 - documentation has been provided establishing what the applicant argues is a significant difference in the cost of constructing the foundation at the original location compared to the proposed relocation site;
 - the proposed mitigation for the 4408 sq. ft. new triplex has now been increased to approximately 10,000 sq. ft. instead of 4900 sq. ft.
- BT asked what would happen to the outflow pipe from unit 95, located in a corner of the parcel, and Dr. Wang said it should be able to remain in the same place.
- Duncan Brown raised several objections to the proposed NOI:
 - Mr. Brown noted that the original application had a single entrance for Longview into the development from Willow Road.
 - The Fire Department and ZBA instead required a second entrance – now Longview ‘Circle’ – onto Willow Road.



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- This resulted in ‘opening up’ the riverfront area for potential development.
- This is where units 95-96-97 were then located, and it is to the west of unit 95, also inside the 200 ft. buffer zone to riverfront, that the relocation of the 57-58-59 triplex is proposed in the current NOI.
- Mr. Brown cited a report by David E. Ross Associates, dated Nov. 22, 2005.
 - CA located this report and will circulate copies to ConCom members for discussion at the next Hearing in January.
- Mr. Brown disagrees with the applicant and Dr. Wang’s assertion that the area in question was previously disturbed, prior to the passage of the Riverfront Protection Act of 1996.
 - Dr. Wang said the prior pre-1996 disturbance constituted a preexisting condition and means this area is exempt from the law provided construction does not make the area worse.
 - Mr. Brown disagreed with the assessment of prior disturbance, arguing that only a dirt road existed in the area prior to the development going in.
- Mr. Brown said the proposal also exceeds the 10% alteration allowed under 310 CMR 10.58.
 - BT asked Dr. Wang for clarification as to how the numbers estimating the land subject to alteration/impact were calculated.
- Mr. Brown argued that the parcel planned for the triplex was already intended as mitigation for the buffer zone disturbance caused by 95-96-97.
- Mr. Brown said the cost savings from building a foundation at the new location compared to the original would be only around \$11,000 and in his opinion did not constitute a reasonable economic justification for the relocation.
- BD said ConCom will review the Nov. 22, 2005 Ross Report, just made available to ConCom, along with Dr. Wang’s Dec. 10, 2015 letter, prior to the next meeting on this application.
- From the audience, Planning Board Chair Jeremy Callahan said the relocation of the triplex has been cleared by his board and the ZBA.
 - This week, the Planning Board also sent a ‘Certificate of Good Standing’ to the developer, reflecting the performance improvements in recent years.
 - Mr. Callahan said his board has no problem with this project going forward.
- CA had several comments:
 - ConCom is missing clear records of the math used to determine the size of the original mitigation areas and the reasoning behind them;
 - if there was a specific reason the area west of unit 95 was selected for mitigation, it would be good for ConCom to know this;
 - it has been a decade since the original NOI, with mitigation measures, was approved and yet no mitigation has been done during that time period.
 - BD noted that OOCs written at that time did not require immediate mitigation work at the beginning of a project; since then, ConCom has begun incorporating staging requirements into its OOCs.
 - Dr. Wang added that given the instability of the steep clayey upper slopes in the development, it wouldn’t have been a good idea to do mitigation lower down until the upper slopes were stabilized, as they now are.
- GB moved to continue the Public Hearing to 1/14/2016; TT 2nd.
 - Motion approved unanimously.



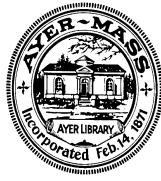
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- **Discussion: Request for Certificate of Compliance (COC) – 26 Hemlock Drive (Lot 58), Pingry Hill, Crabtree Development, MassDEP # 100-0358**
 - Steve Mullaney, of S.J. Mullaney Engineering, was present.
 - CA performed a site inspection on 12/8 and found multiple problems and violations of the conditions in the OOC.
 - The as-built accompanying the COC request does not conform to the approved plan under the OOC.
 - The existing house has a smaller footprint but was moved further into the buffer zone.
 - Instead of 5900 sq. ft. of buffer zone disturbance, 10,900 sq. ft. were disturbed.
 - The distance of work to the wetland was reduced, with the closest point of disturbance to BVW being 7 ft.
 - The driveway was built at the south end of the house, not the north end.
 - BD expressed grave disappointment that developer Rick Roper did not come before ConCom to amend the OOC before making these changes.
 - Mr. Roper was unable to attend tonight's meeting for personal reasons.
 - BD scheduled a site walk for ConCom at 8 a.m. on Saturday, 12/12.
 - Further discussion of the request for COC was deferred until ConCom's next meeting on 1/14/2016.

- **Discussion: Request for COC – 23 Hemlock Drive (Lot 61), Pingry Hill, Crabtree Development, MassDEP # 100-0354**
 - Steve Mullaney, of S.J. Mullaney Engineering, was present.
 - According to the as-built, the house was shifted a few feet back and north, taking it more outside of the buffer zone and reducing buffer zone disturbance by 9%.
 - The house depth was increased to 33 ft. and the rear yard depth reduced by 9 ft.
 - The extent of driveway in the buffer zone was also reduced.
 - A line of boulders in the back yard demarcates the limit of lawn.
 - Mr. Mullaney thought this lot was missing the OOC requirement of boulder demarcation but CA said this house had them.
 - [At ConCom's 12/12 site walk, the boulder line was confirmed, and noted as missing on the adjacent lot (53 Hemlock, lot 63).]
 - CA's concern with this lot was that the depth of the backyard appeared to be greater than 25 ft.
 - Mr. Mullaney said the area that was widened is outside the buffer zone and nonjurisdictional.
 - ConCom will perform a site walk on 12/12/15 and re-discuss the COC on 1/14/2016.

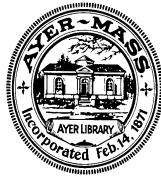
- **Discussion: Request for COC – 53 Hemlock Drive (Lot 63), Pingry Hill, Crabtree Development, MassDEP # 100-0356**
 - Steve Mullaney, of S.J. Mullaney Engineering, was present.
 - The footprint of the house was reduced 10% and the driveway 7%.
 - Mr. Mullaney said the boulder demarcation line was in place but CA said it was missing on this lot [CA's observation was confirmed on 12/12 site walk.]
 - Regarding the house with the missing boulder line, Mr. Mullaney thought the reason the boulders were missing was because the homeowner did not want them.



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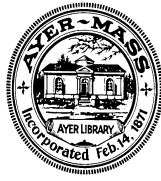
- BD said that the boulder line was supposed to have been installed by the developer, presumably prior to the house being sold.
 - Mr. Mullaney suggested as solution that a Public Hearing be held to reconsider the Special Condition requiring boulder demarcation, and substitute instead a Special Condition requiring signage barring the extension of lawn beyond that point – as was done with OOCs for two Holly Ridge lots this past year.
 - CA noted the six broken conditions from the OOC were minor, but included the homeowner having signed an Affidavit, which has not yet been done.
 - Mr. Mullaney said this was one of the lots for which Attorney Eliopolous attempted to get a signed Affidavit but that the homeowner has not complied or has refused.
 - Mr. Mullaney said they are aware that ConCom will likely not issue a COC without the Affidavit required by the OOC.
 - Mr. Mullaney is waiting to hear back from Attorney Eliopolous on this matter.
 - ConCom will revisit the COC request on 1/14/2016.
- **Discussion: Request for COC – 50 Snake Hill Road (Lot X-1), Pingry Hill, Crabtree Development, MassDEP # 100-0269**
 - Steve Mullaney, of S.J. Mullaney Engineering, was present.
 - No as-built plan was required by the OOC for this property but an as-built photo was provided anyway.
 - All work on this lot was moved outside of the buffer zone.
 - No Affidavit was required for this lot.
 - CA's inspection found no issues.
 - GB moved to approve and issue a COC for 100-0269; TT 2nd.
 - Motion approved unanimously and the COC signed.
- **Discussion: Geosyntec draft of Comprehensive Survey of Ayer Ponds**
 - An invoice for approximately \$16,000 has been received from Geosyntec.
 - BD reviewed the 5-point plan decided on at ConCom's 12/3 special meeting to review the draft:
 - Chuck Miller will look into finding funding for 2016 weed treatments;
 - BD will compile a list of revisions/changes ConCom would like Geosyntec to make in the draft;
 - ConCom and Dam & Pond Committee will develop a 5-year management plan based on the Geosyntec draft and submit it to Geosyntec for review;
 - following Geosyntec review, ConCom and Dam & Pond Committee will meet with the BOS and present a management plan;
 - both boards will seek to have a line item added to the Town's annual budget for consistent operating funds for both weed treatments and regular water quality testing.
 - Meanwhile, BD recommended deferring approval of the Geosyntec invoice until after the report has been updated and finally approved.
- **CA Updates**
 - 10 Amandrey Way (MassDEP # 100-0152)
 - While going through the files, CA discovered an outstanding request for a COC for this property, previously approved by ConCom but never completed.
 - After CA talked to the homeowner, it appears that the homeowner was supposed to get back to ConCom with information after the original request and never did.



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- At CA's request, ConCom members signed the COC.
- FY 2017 Budget and Fixed Assets
 - CA received a request from Town Accountant Lisa Gabree for ConCom to submit a "level funded budget" by 12/18/15.
 - CA will replicate the FY2016 budget and submit.
 - CA will also submit ConCom's Fixed Assets sheet to the Town Accountant.
 - BD explained that these are generally always the same and that last year's submission can be replicated.
- CA's Jurisdictional Properties Map
 - CA has nearly finalized his draft.
 - It would cost approximately \$380 for a bulk printing of 10 large-scale maps.
 - These maps could potentially be distributed to the Building Inspector, Library, Fire, Police, and Schools.
 - BD asked CA to complete his changes for final review on 1/14/2016, and to find out the additional cost if the maps were laminated.
- 98 West Main Street
 - In response to a resident phone call, CA had construction buckets at this site removed.
- 95 Fitchburg Road
 - This address has asked for a new permit to allow a 10,000 gallon tank of fuel on site.
 - CA requested that an RDA be filed.
- 2015 Five Year Review Report for Former Fort Devens
 - CA circulated a Nov. 3 letter from Lynne Jennings, Chief of the Federal Facilities Superfund Section, Environmental Protection Agency (EPA), to Robert Simeone, BRAC Environmental Coordinator for Devens BRAC Environmental Office.
 - (BRAC Office = Base Realignment and Closure Office)
 - The EPA requests informal dispute resolution in protest of the Army's "premature" issuance of a final document that did not adequately address comments issued by EPA and that EPA argues failed to comply with basic requirements of the Comprehensive Five-year Review Guidance (OSWER No. 9355.7.03B-P, June 2001).
 - PACE (People of Ayer Concerned About the Environment) has been invited to this meeting.
- Autumn Ridge
 - In CA's file review, he noted that Autumn Ridge has an outstanding COC request.
 - BD detailed some of the history of the project which has had multiple changes in ownership.
 - BD asked CA to contact Building Inspector Gabe Vellante for information on the latest ownership and to then reach out to find out when the project will be ready for COC review.
- Long Pond
 - In light of Geosyntec's identification of Long Pond as unusually pristine with excellent biodiversity, CA has passed on a suggestion that ConCom consider petitioning the State to change the name of the Petapawag ACEC (Area of Critical Environmental Concern) to the Petapawag and Long Pond ACEC.
 - This might strengthen the ability of the Town to protect this pond from adverse development effects.
- Borrego Solar installation



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- CA is keeping an eye on this project as it moves forward.
- There have been issues with erosion control knock-downs at the road entrance from Park Street.
- Sandy Pond CR
 - CA has heard nothing new from Dave Murray, of Sandy Pond Estates, since ConCom met with him on 11/12/15.
- 78 Sandy Pond Road, Hagel LLC, MassDEP # 100-0386
 - CA observed that more tree and brush clearing took place on this lot than permitted under the OOC.
 - CA will issue an Enforcement Order and Cease & Desist until the homeowner or representative comes before ConCom in January.
- **Approval of Meeting Minutes**
 - GB moved to approve the minutes for 11/12/15 as written; TT 2nd.
 - Motion approved unanimously.
 - GB moved to approve the minutes for 12/3/15 as written; BT 2nd.
 - Motion approved unanimously.
- **Member Updates**
 - JG observed new silt fencing around a wetland area adjacent to 71 Sandy Pond Road.
 - A large pile of woodchips has been placed inside the silt fencing.
 - CA will take a look at this.
 - JG showed photos of a squatters camp, with rough lean-to and garbage debris, on Pine Meadow Pond, coming straight down from the Groton-Harvard Road trailhead.
 - BD asked JG to have the police take a look.
 - BT asked for input on a letter she'll be sending to Nashoba Analytic to get price quotes on water testing.
 - BD made a few edits and approved it as good to go.
- **10:18 PM – Adjourn Meeting**
 - JG moved to adjourn; GB 2nd.
 - Motion approved unanimously.