

Town of Ayer
Community Preservation Committee

Town Hall * One Main Street * Ayer, MA 01432

Minutes for 10/5/2011 - Approved 2/1/12

Location: Town Hall, 1st Floor

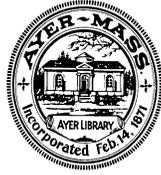
Members present: Alene Reich (AR) [Historical]- Chair, Gary Luca (GL) [BOS], Mark Fermanian (MF) [Planning Board], Scott Houde (SH) [FinCom], Janet Providakes (JP) [Housing], Beth Suedmeyer (BS) [At Large], Sarah Gibbons (SG) [Parks & Rec.], Jess Gugino (JG) [ConsCom]- Clerk

Not present: Vacancy [At Large]

APAC taped: NO

7:05 PM – Open Meeting

- **Public Hearing (cont'd): Town Hall Energy Efficiency Project: Emergency Generator**
 - Town Administrator Robert Pontbriand distributed copies of an additional letter of support from George Bacon, Chairman of the Ayer Historical Commission.
 - SH said because of the historical significance of Town Hall and the documents and records it houses, the application for CPA funds was a worthwhile venture.
 - JP agreed, adding failure to act now could result in an emergency where significant and irrevocable damage was done, at a point at which it was then far too late to act.
 - AR read an email expressing the opinion of Stuart Saginor, Executive Director of the Community Preservation Coalition, as to whether the project qualifies for CPA funding.
 - Mr. Saginor stressed the primary purpose of the generator must be for 'preservation' purposes, to protect the historic resource from injury or harm, rather than for maintaining the ability to keep Town Hall open for work or shelter.
 - After hearing this, BS asked if the size of the proposed generator would be doing more than maintaining the heating system and if the current generator was capable of powering the heating system.
 - Mr. Pontbriand responded that the current generator is only capable of powering a few lights, and that the proposed replacement generator is a base model and not the 'Cadillac' of generators.
 - Mr. Pontbriand pointed to Fire Chief Pedrazzi's observation of a 20-degree drop in internal temperature at Town Hall during just a 3-hour power outage during the 2008 ice storm.
 - In his letter of support, Chief Pedrazzi warned that a prolonged outage without the capacity to run heating could result in catastrophic damage to the contents and interior of Town Hall.
 - GL pointed out that the ability to run computers and keep Town Hall open for other purposes during an emergency outage would be useful but ancillary benefits.
 - AR said Mr. Saginor had indicated to her that he found it odd that Ayer voters voted against a capital exclusion article to purchase a new generator but then voted at Spring Town Meeting in support of weed treatment on a single pond (i.e. Flannagan Pond).
 - GL and SH said use of CPA funds for this is still a use of taxpayer money.

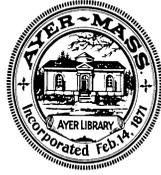


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- BS said Ayer CPC is the first line in making decisions regarding the appropriateness and priorities of proposals seeking CPA funding.
- AR stressed the purpose of CPA funds is not to bridge gaps in Town budgets and expressed frustration that Ayer CPC is currently feeling pressure to do just that.
- SH said that lessons were learned as a result of the ice storm of 2008.
 - In his view, supporting the Town Hall Generator proposal did not constitute 'supplanting' Town funds with CPA funds, but rather was in response to a new sense of urgency over the need to preserve the historic building and its contents.
- Resident Mary Spinner said Town Hall was also designated as an emergency shelter.
 - AR said this is not an allowable use under CPA guidelines.
 - Selectwoman Pauline Conley disagreed with AR's interpretation, noting the CPA has a housing component, and in emergencies Town Hall could provide temporary emergency housing.
- Resident Dave Bodurtha, former CPC member, expressed his view that it was not the intent for CPA funds to be used to fund projects that should be funded through Town budgeting processes.
 - He added that in his view there was also a disallowed maintenance component to the generator.
- AR said Mr. Saginor indicated that because the generator had been voted down, it was therefore NOT disqualified now from CPA funding.
- AR asked Mr. Pontbriand if use of the new generator would include normal operation of the building.
 - Mr. Pontbriand said it would power the heating system and all of the lights and also allow some continued use of computers.
 - AR observed that the proposed generator was, then, not for basic heating but would allow for full operation.
 - JG said if the new generator, in powering the heating system, allowed for overlap with other ancillary functions, this was acceptable to her.
 - SH said that, given the energy inefficiency of the Town Hall building (windows, masonry), it was unknown at what capacity, and for how long, the new generator might have to be employed during a prolonged outage of unknown duration, and that therefore it might in such a situation be possible that lights, computers, etc. would have to be shut off to enable the generator to sufficiently power the heating system long-term.
- MF said that if AR talked with Mr. Saginor, and if Mr. Saginor indicated CPC funds were applicable given the initial negative vote of the Town, then he was comfortable with the proposal and saw it as primarily a preservation project for Town Hall.
- MF moved to accept the proposal as presented by Mr. Pontbriand and to present it to Fall Town Meeting (FTM) on 10/24/11; GL 2nd.

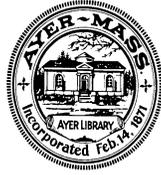


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- Motion approved unanimously.
- BS said that at some future meeting, CPC members needed to discuss how to handle applications that present too much extraneous information and justifications that are irrelevant to CPA criteria and distracting to the process of considering a proposal.
- **Public Hearing (cont'd): Pond Weed Control Projects**
 - GL's application calls for funding 1) a long-term pond weed control management study for all of Ayer's ponds (\$10,000); and 2) Article 38, the unfunded citizens petition for weed treatment on Flannagan Pond that passed at Spring Town Meeting 2011.
 - GL distributed a handout of information, including an opinion written earlier in the afternoon by Town Counsel Lauren F. Goldberg on certain questions raised as to the validity of this application.
 - Questions raised had to do with whether funding Article 38 involved "supplanting" previously appropriated funding; whether weed treatment constituted "maintenance" or "rehabilitation" versus "preservation"; and issues related to private ownership of the pond.
 - GL said Town Counsel's opinion was that this did not involve supplanting because a funding source had not been specified at Town Meeting, leaving Article 38 unfunded and the Town in default.
 - Given that the language of Article 38 was to "raise and appropriate or transfer from available funds," Ms. Goldberg wrote that an 'available fund' justifiably could be the Community Preservation Fund.
 - To address any possible confusion, Ms. Goldberg suggested the warrant article be worded to rescind Article 38 as voted on 5/9/11, and then to reword it so as to appropriate or transfer CPA funds in the amount specified in GL's application.
 - GL therefore moved to approve the proposal as amended; JG and MF 2nd; discussion followed.
 - BS asked if GL had a more thorough application than the one presented on 9/7/11.
 - GL said no.
 - BS said considerable questions remained unanswered, including a budget outline and a project description; referring to the previous Public Hearing, BS said this proposal, in contrast, presented too little information rather than too much.
 - BS also noted that supporting letters from other boards, commissions or committees had not been solicited for this proposal.
 - GL said the project description was as stated in Article 38.
 - AR read Article 38 into the record:
 - **ARTICLE 38: FLANNAGAN POND VEGETATION CONTROL**
To see if the Town will vote to raise and appropriate or transfer from



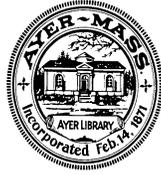
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available funds the sum of \$35,000.00 or other sum or sums of money for a pond weed control program under the control of the Conservation Commission, for weed control in Flannagan Pond (aka Fletcher's Pond), spot weed control Flannagan Pond (AKA Fletcher's Pond), monitoring or[sic] previous years weed control in Flannigan Pond (AKA Fletcher's Pond), and mobilization of hydro-raking equipment, or take any action thereon or in relation thereto.

- AR stated her opinion that she found the application for CPA funding to be insulting to what CPC is doing here.
- AR said the Town has a pattern of maintenance for Flannagan Pond that comes out of the General Fund, and that the CPA does not cover maintenance.
 - JG disputed that there was a regular pattern of maintenance.
 - JG referred to the example of other towns that have used CPA funds for invasive weed control and that did not consider this to be ordinary maintenance.
- BS said it was a significant question as to whether this proposal fit as a priority for Ayer CPC given the plan adopted by CPC on 4/1/2009.
 - BS also questioned whether it was both appropriate and premature to consider this funding proposal given the BOS's formation of a new Pond and Dam Management Committee.
- Dave Bodurtha, in the audience, said Flannagan Pond had probably been treated 5 or 6 times over the last 20 years.
- SH said that perhaps there was once a pattern of previous maintenance but that clearly that pattern of maintenance has now been broken.
 - The quality of the water and wildlife habitat for Flannagan Pond is now threatened as a result.
 - Flannagan Pond needed, therefore, to be protected from 'injury and harm', making it a preservation issue rather than a maintenance issue.
- JG said that Aquatic Control Technologies (ACT) had drawn up a maintenance plan in 2005 or 2006, but that, except for treatment of Flannagan Pond in 2007, this plan had not been followed.
 - JG therefore agreed with SH that the maintenance chain had been broken.
- MF said there seemed to be general agreement that Flannagan Pond needed to be treated, but that the question was whether it was appropriate to pay for this with CPA funds.
 - If Town Counsel said it was okay, MF was comfortable agreeing.
- BS referred to an email earlier in the day from Mr. Saginor underscoring that preservation did not include maintenance or rehabilitation and noting the potential closeness of the project to these two terms.
 - GL expressed his view that this was a case of preserving what was there.
 - AR said that sounded like trying to capture it in time.

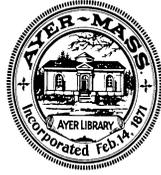


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- GL disagreed and said he thought it was more preserving from injury, harm or destruction, which is accepted CPA language.
 - BS questioned whether this was what would be accomplished, and expressed concern over the obvious need for repeat funding of this pond.
 - Selectwoman Pauline Conley said this was clouding the distinction between preservation and maintenance and asked that the proposal be allowed to be decided by voters at Fall Town Meeting.
- JP expressed support for the proposal going onto the FTM warrant, looking at it as a chance to get the pond back to where it was while then taking the time to look for other sources of funding for future treatments.
 - JP said waiting for the Pond and Dam Management Committee to get up and running could take a couple more years, losing valuable time to prevent the decline of this pond.
- AR asked what the original state of the pond was, referring to its origin as a flooded wet meadow.
 - Resident Chuck Miller said it has been a pond for the last 150 years.
 - SH agreed, saying it was a moot point now.
 - BS disagreed, saying the status of the pond was relevant as Flannagan Pond requires a much larger treatment operation and repeated maintenance.
 - AR agreed, saying Ayer was trying to preserve something that was not natural.
 - Mr. Miller said the Town had not funded pond treatments for years, that the Conservation Commission had had its hands tied, that the citizens had therefore taken the initiative to get something passed, and that while the BOS did form a Pond and Dam Management Committee, it still had yet to meet – and meanwhile the immediate crisis continues on Flannagan Pond.
- BS said \$35,000 was available in UDAG funds to treat Flannagan next spring, and that she thought this proposal to fund Article 38 was therefore premature.
 - The real question was whether CPA funds were an appropriate source of funding.
- SH reiterated his view that the maintenance pattern has been broken, and that this proposal was a first step; to let things continue as is would make preservation of Flannagan Pond much more costly in a couple more years.
 - SH also noted that Article 38 needed to be funded at FTM regardless of whether there were UDAG funds to treat the pond in 2012.
- JG agreed, saying that when the Conservation Commission sought estimates a couple of years ago, the proposed cost for treating Flannagan was around \$11,000; in just two years the cost went up to \$28,000 and another few years would lead to much higher costs.
 - JG also said the goal in her view was to bring Flannagan Pond back to a level where regular maintenance became possible, something that would require more than one year of heavy-duty treatment.

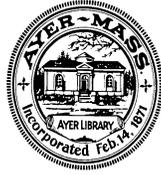


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- JG cited the 2009 Ayer CPC plan voted on in April 2009, noting its many references to water resources as a key characteristic of Ayer's character and identity, including the "chain of ponds bisecting the town."
- Resident Dave Bodurtha said his concern was that the Town had an out-of-balance budget (due to the unfunded Article 38) and now appeared to be attempting to adapt the proposal to fit CPA criterion.
 - Mr. Bodurtha said the problem, in his view, is that the Town does not want to fund weed treatment through its regular budget and was turning to CPA to balance its budget, a slippery road.
 - Mr. Bodurtha added he had not seen a vote from the Conservation Commission in support of this proposed warrant article.
 - An unidentified resident agreed with Mr. Bodurtha, saying this was a Town budget issue and not a CPA issue.
- BS said she had two questions for the CPC: 1) whether it was comfortable with the thoroughness of the application as a defensible document for a vote this evening; and 2) whether it considered this project to be a priority given Ayer CPC's planning process undertaken several years ago.
 - At that time, the priority for Open Space funds was identified as acquisition.
 - JP said that she agreed that all applicants were required to fill in a detailed application and that the current application did not meet that criteria.
 - However, JP continued that something needed to be done for Flannagan Pond now, in its current crisis, or it would cost much more later on.
 - GL said in phrasing his proposal as one to fund Article 38, he hadn't thought the application needed more.
 - JP spoke of the need for budget breakdowns in applications, among other things.
 - AR reiterated that the form had to be filled out properly by every applicant.
 - AR said she was not comfortable with approving the proposal for Town Meeting and that in her view it made the Town vulnerable to being sued.
 - Selectman Jim Fay expressed his view that the proposal was eligible for CPA funding, and that even if the application was inadequate, it would be a grave error not to approve it for vote at FTM.
 - AR noted that the reason the discussion on this topic was so hot was the various questions that had been raised as to the appropriateness and legality of the proposal for CPA funding.
- AR called the vote.
- The motion passed 6 to 2, with dissenting votes from AR and BS.
- The motion having passed, BS asked what language would be used in the warrant article.
- GL suggested the funds (\$10,000 and \$35,000) be put in the administrative care of the Conservation Commission.



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- Mr. Bodurtha said that the original plan to issue an RFP for the treatment of Flannagan Pond with UDAG funds in spring 2011 had been dumped at the last minute onto the Conservation Commission, with its extremely limited resources and without them having been asked, setting that Commission considerably behind in its regular work. Mr. Bodurtha cautioned against putting wording into the warrant article that put more work onto that Commission at this time.
 - JG agreed with Mr. Bodurtha and said that if a Pond and Dam Management Committee had been formed, whether it has met yet or not, it should more properly be tasked with administrating these funds if passed at FTM.
 - The wording was changed accordingly.
- **8:55 PM – Adjourn Meeting**
 - SH moved to adjourn; MF 2nd.
 - Motion approved unanimously.