

**Town of Ayer**  
**Community Preservation Committee**

Town Hall \* One Main Street \* Ayer, MA 01432

Minutes for 4/3/2013 - Approved 6/5/2013

Location: Town Hall, 1<sup>st</sup> Floor

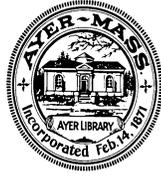
Members present: Janet Providakes (JP) [Housing]- Chair, Mark Fermanian (MF) [Planning Board], Beth Suedmeyer (BAS) [At Large], Jason Mayo (JM) [Parks & Rec.], Barry Schwarzel (BES) [Historical], Jess Gugino (JG) [ConsCom]- Clerk

Not present: Gary Luca (GL) [BOS], Michael Pattenden (MP) [FinCom], Vacancy [At Large]

APAC taped: NO

**7:05 PM – Open Meeting**

- **Discussion: Kohler Place, Open Space acquisition purchase possibility**
  - Ed Cornellier, representing Sandy Pond Investment Trust, was present, along with his brother Terry Cornellier.
  - The status of a crossing easement across a narrow abutting strip that lies between the end of Wright Road and the 24-acre undeveloped Kohler Place parcel was discussed.
    - The Conservation Commission has asked for written legal documentation upholding the crossing easement before considering supporting the sponsorship of a potential purchase.
    - The easement was the subject of litigation several years ago in a suit brought by Mr. Cowley, the owner of the narrow strip and abutting property.
    - Attorney J. Connolly, of Wakefield, represented the Sandy Pond Investment Trust, and Kopelman & Paige, as Town Counsel, represented the Town of Ayer in the suit.
    - The case was dismissed by Superior Court via a “stipulation of dismissal with prejudice.”
    - Mr. Cornellier said the original deed of the sale of the strip by the family trust decades ago, to a different owner before the current one, contained the language specifying the crossing easement.
      - The property, of which the strip is a part, has been sold a few times since.
      - Mr. Cornellier said that somewhere along the way, it appears that the language supporting the crossing easement was dropped from the deed of the abutting property.
      - He said it was his understanding that this could not have been done legally.
      - Mr. Cornellier showed CPC a copy of the original deed of the abutting property after it acquired the strip.
        - This deed is on record in Cambridge, and did show language upholding a crossing easement for the Kohler Place parcel.

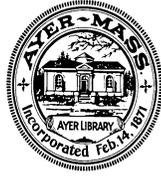


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- Mr. Cornellier said it was his understanding that Mr. Cowley did not perform a thorough title search before buying his property and the strip.
  - A title search would have revealed the language in the original deed affirming the crossing easement.
- Mr. Cornellier has spoken to Attorney Connolly who has verbally said that ‘dismissal with prejudice’ means the case over the crossing easement cannot be brought back before the Court, even by a new owner if the abutting parcel/strip is sold.
  - CPC members reiterated that to pursue discussion of a purchase, the Town needs something in writing that is legal and definitive.
  - Mr. Cornellier said Attorney Connolly could issue an ‘Opinion of Title’, but that this would cost the Trust around \$1000 – more if Attorney Connolly were to come before CPC.
    - Mr. Cornellier did not want to spend additional funds at this time.
- Mr. Cornellier has discussed the matter with Town Administrator Robert Pontbriand.
  - Since Kopelman & Paige represented the Town in the same suit and was privy to the same information and court decision, Mr. Cornellier suggested a written opinion from Town Counsel might be satisfactory to meet the Town’s need for legal documentation to support the crossing easement.
  - Mr. Pontbriand had asked Town Counsel (Kopelman & Paige) to come out last week, and again early this week, to discuss this but Town Counsel has not been able to make it yet.
  - MF agreed that an opinion from Kopelman & Paige was needed, along with an updated map which Mr. Cornellier said he would provide.
  - JP will call Mr. Pontbriand to check in on what is happening with Town Counsel.
- On matters related to Kohler Place, Mr. Cornellier corrected a misunderstanding that a tannery had once been located uphill from the parcel, potentially triggering the need for a Phase II environmental review if a purchase is pursued.
  - Mr. Cornellier said that a prior owner of the uphill land had used land fill taken from the site of the old burned down tannery near Grove Pond and used it to construct a road back in the 1960s.
  - Mr. Cornellier noted that the Conservation Commission did not have any objection to this back then.
    - JG noted, in turn, that the Conservation Commission did not yet exist, as the Massachusetts Wetlands Protection Act was not passed until 1972.
- JP kept Mr. Cornellier’s 77-page copy of documents related to the litigation for photocopying and will return it to Mr. Cornellier on the following day.



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- **Approval of Minutes**
  - BS moved to approve the minutes for 3/6/2103 as written; JM 2<sup>nd</sup>.
    - Motion approved 5-0. (MF abstained)
  
- **Discussion: Upcoming Warrant for Spring Town Meeting**
  - The draft of CPC articles 33, 34, and 35, circulated via email by GL, was reviewed.
    - Article 33 – Community Preservation Act – contained the allocations/set-asides of CPA revenues to the various CPA categories.
    - Article 34 – CPAC Transfer of Funds – asked for the transfer of \$30,000 for general open space purposes.
    - Article 35 – CPC Reduction in Membership – asked to amend the Bylaw to reduce the size of CPC by eliminating required membership from representatives of the BOS and Advisory Committee (FinCom).
  - On discussion, Article 34 was reworded:
    - “To see if the Town will vote to transfer from Community Preservation Fund FY2014 estimated annual revenues the sum of \$30,000, more or less, and reserve said sum for future appropriation by the Community Preservation Act Committee for general open space and recreation purposes, including revisions to the Town's Open Space & Recreation Plan and expenses associated with due diligence for open space acquisition; or take any action thereon or in relation thereto.”
  - BAS asked that the order of Articles 33 and 34 be reversed.
    - If Article 34 failed to pass, the \$30,000 would need to be re-allocated, which was the purpose of Article 33.
    - The current Article 33 could be amended to take this into account if the order were reversed.
  - CPC members agreed to ask for a re-ordering of the Warrant Article to:
    - Article 33 – CPAC Transfer of Funds (\$30,000)
    - Article 34 – Community Preservation Act (set-asides/allocations)
    - Article 35 – CPC Reduction in Membership
  - MF moved to approve the change in order of Articles 33 and 34, and to approve the change in wording of the CPAC Transfer of Funds Article; JM 2<sup>nd</sup>.
    - Motion approved unanimously.
  
- **8:00 PM – Adjourn Meeting**
  - MF moved to adjourn; JG 2<sup>nd</sup>.
    - Motion approved unanimously.