



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **7/28/2016** – Approved 8/11/2016

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

7:11 PM – Open Meeting

- **Confirmation of Agenda**
 - TT moved to confirm the agenda as posted; BT 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - TT moved to accept the minutes for 7/14/2016 as written; BT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Kohler Place, Lot #1, Wright Road, Alfred Bergin, MassDEP # 100-0392**
 - J. Bergin was present on his own behalf.
 - The draft OOC Special Conditions section was reviewed.
 - A small correction is to be made to p. 2 of this OOC and the following two (100-0390 and 100-0391) to conform the Lot number in the documents section, under “Submitted for,” to the correct OOC Lot number.
 - Mr. Bergin asked about the wording on p. 5 of the documents section, where both a Conservation Restriction and a Declaration of Restriction are followed by the words: “NOT YET SIGNED.”
 - BD clarified that this designation, accurate given these documents are not yet ready to be signed, would not have a direct impact on the OOC or its recording.
 - BD then read into the record and reviewed the 7/20/2016 letter from Thomas W. French, Assistant Director of the Division of Fisheries & Wildlife, responding on behalf of the Natural Heritage & Endangered Species Program (NHESP, File No. 05-17870) to its review of the three submitted NOIs and site plans.
 - Because the project is within mapped Priority and Estimated Habitat of the threatened Blanding’s Turtle, NHESP imposed specific conditions back in 2011, when the original owners sought permitting approval.
 - On 6/14/2016, NHESP determined that construction at Kohler Place had “commenced without compliance with the conditions required by the Division by way of determinations issued pursuant to the MESA and rare species provisions of the WPA.”
 - Cooperating with the Division, construction work was voluntarily ceased by Mr. Bergin in order to bring the property back into compliance with the required conditions.
 - An email from Misty-Anne Marold on 7/13/16 to Mr. Bergin allowed construction to continue on Lot 2 (which does not require an OOC from ConCom) so long as the Applicant continues to make adequate progress in complying with the MESA provisions.
 - The 7/20/2016 letter made clear that the project must be in full compliance with the Division’s conditions before construction work can commence on Lots 1, 3 or 4.
 - The 5 conditions that need to be met are:



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **7/28/2016** – Approved 8/11/2016

- Proof of recording of the Recordable Plan (June 2011, David E. Ross Associates) must be submitted to the Division by 9/1/2016.
- The Applicant must submit a draft Declaration of Restriction (DR) to the Division for review and approval by 9/1/2016.
- The Division must receive proof of submission of the Conservation Restriction (CR) and associated application materials to the Executive Office of Affairs – Division of Conservation Services (EEA-DCS) by 9/1/2016.
 - Within 60 days of approval of the CR by EEA-DCS, the Applicant must also provide proof of recordation to the Division.
- A Certification of Monumentation, certified by a Massachusetts Registered Land Surveyor, must be presented to the Division by 9/1/2016.
- Working with Scott Smyers, of Oxbow Associates, the Blanding's Turtle Protection Plan must be modified and resubmitted to the Division for review and approval.
 - Because the turtle barrier was not properly installed during the 2016 nesting season, NHESP has required modifications to the plan that include:
 - potential nesting materials shall remain undisturbed through hatching season until 10/1/2016;
 - additional sweeps for hatchlings shall be conducted by Oxbow Associates;
 - temporary cover shall be provided within the site for hatchlings throughout the hatching period until they can be retrieved by Oxbow Associates.
- Because the Division is now barring any work except on Lot 2 and vehicle access to Lot 2, BD noted that the trees ConCom had previously asked to be taken down (abutting the erosion control line to Lots 3 and 4) cannot be taken down at this time until NHESP has given the go-ahead for work on Lots 1, 3, and 4.
- Mr. Bergin said that he now has the completed material for fulfilling the requirements for the Recordable Plan, the Declaration of Restriction, the Certification of Monumentation, and the Turtle Plan.
 - BD advised Mr. Bergin to go ahead and submit these 4 requirements to NHESP now.
 - The fifth condition, for the Conservation Restriction, requires that the Applicant and ConCom agree on, and sign, the CR before submission to the EEA-DCS.
 - The only changes to the draft CR, from the draft prepared but not completed by the original owners, is the change in ownership on the first page, and the inclusion of language describing an easement for the extension of the water line, as planned by the Town, on pp. 3-4.
 - BD asked CA to work with Town Administrator Pontbriand to get the draft CR to Town Counsel for review as soon as possible.
 - CA will emphasize that ConCom needs a response from Town Counsel prior to its next meeting on 8/11/2016.
- Acknowledging that the Applicant must meet the 5 NHESP conditions described above before the OOC can be acted on with active construction, BD asked for a motion to sign the OOC and close the Public Hearing for 100-0392 (Lot 1).



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **7/28/2016** – Approved 8/11/2016

- GB so moved; TT 2nd.
 - Motion approved unanimously and the OOC was signed.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Kohler Place, Lot #3, Wright Road, Alfred Bergin, MassDEP # 100-0390**
 - J. Bergin was present on his own behalf.
 - The same conditions and discussion as applied to Lot 1 also apply to Lot 3.
 - Given those conditions and restrictions, GB moved to sign the OOC and close the Public Hearing for 100-0390 (Lot 3); TT 2nd.
 - Motion approved unanimously and the OOC was signed.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Kohler Place, Lot #4, Wright Road, Alfred Bergin, MassDEP # 100-0391**
 - J. Bergin was present on his own behalf.
 - The same conditions and discussion as applied to Lots 1 and 3 also apply to Lot 4.
 - Given those conditions and restrictions, GB moved to sign the OOC and close the Public Hearing for 100-0391 (Lot 4); TT 2nd.
 - Motion approved unanimously and the OOC was signed.
- **Public Meeting: Request for Determination of Applicability (RDA) – 59 Shirley Street, John Ford**
 - The homeowner, who is interested in installing a deck, again did not show up for the meeting.
 - CA noted that the homeowner's check, to pay for the legal ad, has been received.
- **Public Hearing (cont'd.): NOI -- Ridge View Heights Phase V, Woodland Way (Pingry Hill), MassDEP # 100-0393**
 - Steve Mullaney, of S. J. Mullaney LLC, was present on behalf of the applicant, Rick Roper, of Ridge View Realty Trust.
 - Mr. Mullaney and CA have reviewed and edited the draft Special Conditions.
 - GB moved to sign the OOC and close the Public Hearing for 100-0393; TT 2nd.
 - Motion approved unanimously.
 - Mr. Mullaney said work will begin as soon as the appeals period, following recordation, is over.
 - The developer is negotiating the contract with a new outfit, Arthur Pyburn out of Lynnfield.
 - Mr. Mullaney noted that the Planning Board will be concluding its hearing on this phase of the development, including the proposed 36 house lots, at its 8/4/16 meeting.
- **Discussion**
 - CA circulated copies of an NOI for construction of a single-family house on Washington Street (Map 13, Parcel 36) which will be officially discussed at the opening of its Public Hearing on 8/11/16.
 - On brief perusal of the submitted plan, BD said that the wetland flagging was incomplete.
 - Given that the entire lot is jurisdictional, wetland flagging needs to be done, and indicated on the plans, for the westernmost part of the property running to 'C1'.
 - CA will communicate this to the applicant so that the application can be made acceptable for the 8/11 Hearing.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **7/28/2016** – Approved 8/11/2016

- **Unscheduled Discussion**

- Eagle Scout Robert Houde and his father, Scott, showed up to talk about a couple of questions regarding Robert's project to build a bridge, on Town conservation land, across the stream running into Pine Meadow Pond.
- Using slides, Robert showed where he would like to place the bridge, to one side of a rock crossing, where it is further away from a tree and root system on the bank.
 - ConCom members agreed that this was a good location.
 - It was noted that the bank on one side of the stream is about 2-3 ft. higher in elevation than the bank on the other side, and that this will need to be factored in to the bridge design.
- Robert asked if there were limitations on what could be done with footings.
 - BD said there shouldn't be, and described two kinds of footing, one that 'floats' and another that is a poured in place cement footing.
- Robert was encouraged to talk to engineer Calvin Goldsmith, of GPR, whose card and offer of help he already has.
- TT suggested finding ways to minimize impediments for hikers and bikers, designing the bridge so that there is no big step up/down on either end.
 - Robert said he had been thinking of having a ramped approach to each end of the bridge.
- Engineering and design issues, like how best to stabilize the bridge, its length (20-30 ft. range), carrying load, what materials would be best, are all subjects best talked over with Mr. Goldsmith.
 - Once a design is done, Robert plans to talk to Calvin Moore, of Moore Lumber, who had previously offered to contribute to the project.
 - TT also suggested Robert seek feedback from the Town Building Inspector after he has a plan for the structure, given that it will be a structure built for public use on Town land.
- BD signed a document for Robert indicating ConCom's approval of the project.

- **CA Updates**

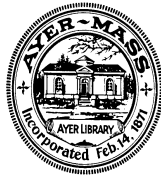
- Dock Licenses
 - In talking with Andrea Langhauser, of MassDEP's Waterways/Chapter 91 program, CA learned that the State's two Permit Extension Acts from several years ago also had an impact on dock licenses.
 - The original 15-year dock licenses, most of which were issued in 2009, also required docks/floats to be built within 4 years of the issuing/recording of the license.
 - Not only do the Permit Extension Acts extend the life of the dock license 4 years, it also affects the internal license deadline for the acceptable building period by adding 4 years to that as well.
 - BD asked CA to get this information **in writing** from MassDEP.
 - Once confirmed, ConCom will notify dock license holders of this new information.
- Sandy Pond 3 Conservation Restriction
 - A 7/28/2016 email from David Paulson, of NHESP, to Frederick Dunn, representing Sandy Pond Estates (NHESP 01-8646;CMP # 004-037) summarized the actions that need to take place to rectify outstanding conditions of the CMP and complete the CR.
 - Earlier in the summer, CA visited the development to perform the baseline documentation now required by NHESP for CRs.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **7/28/2016** – Approved 8/11/2016

- CA discovered at that time that the CR bounds of the project as built were not at all in compliance with those described in the draft CR.
 - CA said NHESP wants the CR to go through and will tweak it on paper to match the new reality.
 - However, CA's part-time schedule does not allow him the time to do the baseline documentation and CA asked for ConCom advice on how to proceed.
 - BD asked CA to submit the draft CR to Town Counsel at this time for review.
 - ConCom will plan to do a site walk on 8/13 and will start this documentation.
 - BD asked CA to contact Dave Murray, of Sandy Pond Estates, and have him notify property owners that ConCom members will be walking on their properties on the 13th.
 - BD asked CA to put this on the agenda and bring all the CR paperwork to ConCom's meeting on 8/11, in advance of the site walk.
- 25 Wright Road
 - CA performed a site visit and noticed some erosion problems to the sides of the property which he pointed out to the homeowner, Tim Dolan.
- Intern
 - CA is waiting to hear back from Town Administrator Pontbriand and Kevin Johnston, of Benefits & Payroll.
- **Committee/Member Updates**
 - Open Space & Recreation Plan Committee
 - JG said OSRP is currently reviewing and editing its Goals section.
 - JG asked that OSRP receive feedback from the boards it is designating "Responsible Parties" for goals prior to finalizing the document.
 - ConCom is designated a 'Responsible Party' for a large number of the goals.
 - JG also suggested to OSRP that support for increasing the hours of the CA position would be an excellent goal since this would affect the capability of ConCom being able to respond more effectively to OSRP goals.
 - Pond & Dam Committee
 - JG has invited both DPW Superintendent Mark Wetzel and Pond & Dam Chair Chuck Miller to ConCom's 8/11 meeting.
 - With ConCom's permission, JG will talk with Mr. Pontbriand about next steps to be taken to extend CA hours to full time.
 - BT is reviewing and compiling a spreadsheet summarizing the history of pond treatments since 1995, based on the stack of materials BT received from CA.
 - This will aid in developing and arguing for a management plan to the Town.
 - BT moved to use remaining pond management money to treat Sandy Pond, Flannagan Pond, and Pine Meadow Pond in spring 2017; JG 2nd for discussion.
 - JG agreed with BT that excessive weed growth is apparent on Flannagan Pond, and is also becoming an increasing problem under the surface on Sandy Pond.
 - A number of questions need to be resolved before this motion can be acted upon:
 - How much money remains that has already been designated for pond treatment?
 - The Town Accountant will be asked for this information.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **7/28/2016** – Approved 8/11/2016

- Mr. Pontbriand will be asked if this money, whatever its amount, can be spent on any of the named ponds or just Flannagan Pond (based on earlier Warrant Articles)?
- BT moved to withdraw her motion to a later time; JG 2nd.
 - Motion approved unanimously.
- **Discussion: Updating the Ayer Boilerplate OOC Special Conditions**
 - CA has received numerous suggestions and feedback from several engineers and consultants (Rob Oliva, of David E. Ross; Steve Mullaney, of SJ Mullaney Engineering; and Desheng Wang, of Creative Land & Water Engineering).
 - Mr. Mullaney has suggested streamlining the document by putting ConCom's jurisdictional limits (100 ft. buffer zone to wetlands, 200 ft. buffer zone to riverfront) at the beginning, and therefore not having to repeat the same detail multiple times throughout the document.
 - A review of the document was begun.
 - The wording for 'Adm 3' was revised to read:
 - "The wetland boundaries referenced in this Order are valid for a period not to exceed 3 years from [date] and are only valid for the particular project associated with DEP File # 100-0XXX."
 - Due to the lateness of the hour, further review will take place at subsequent meetings.
- **10:07 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.