



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249

Minutes for 2/22/2018

Location: Ayer Town Hall, 1st Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Jon Schmalenberger (JS, Member), Jo-Anne Crystoff, (CA, Conservation Administrator)

APAC taped: Yes

7:08 PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm the agenda as posted; BT 2nd.
 - Motion approved unanimously.
- **Discussion: General Conservation Commission Issues, with MassDEP Circuit Rider**
 - The Commission was pleased to meet and welcome Judy Schmitz, the MassDEP Central Region Circuit Rider, and to discuss a range of ConCom topics, highlighted below:
 - Of ponds, dock licenses, and Resource Management Plans
 - As background, ten years ago the State began enforcing M.G.L. Chapter 91, the waterways licensing program formally established in 1866.
 - Owners of docks, floats, and other water-dependent shoreline structures on “Great Ponds,” built after October 1990, were to be required to secure and record licenses.
 - Dating to the Colonial Ordinances of 1641-47, Great Ponds (as well as tidelands, rivers and streams) were recognized as public resources to be shared by all in the Commonwealth.
 - A Great Pond is defined as a pond or lake that contains more than 10 acres in its natural state.
 - Sandy Pond and Long Pond are both Great Ponds in Ayer.
 - Adding another important layer of complication, Sandy and Long ponds are also both located in the Petapawag ACEC (Area of Critical Environmental Concern).
 - Most Great Ponds in Massachusetts, Ms. Schmitz said, are not located within ACECs.
 - ACEC designation increases environmental oversight through elevated performance standards and lowered thresholds for review.
 - When the State began requiring enforcement of Ch. 91 ten years ago, it allowed a window of opportunity for dock licenses *on Great Ponds located within ACECs* to be secured through the Conservation Commission review process.
 - Ayer’s ConCom chose generally to employ the RDA (Request for Determination of Applicability) process rather than the more costly and detailed NOI (Notice of Intent) process.
 - This window of opportunity expired at the end of 2009.
 - Thereafter, Ch. 91 licenses for docks, etc. on Great Ponds located within ACECs requires either a permit approved by MassDEP after having been processed through the local Harbormaster – or through the Conservation Commission, provided the community has had a “Resource Management Plan” (RMP)



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formally accepted by the State's Department of Conservation & Recreation (DCR).

- Ayer does not have a Harbormaster nor does it have an RMP, and so the Commission wished to review the Ch. 91 and RMP processes with Ms. Schmitz.
- Ms. Schmitz distributed copies of the "Areas of Critical Environmental Concern: Resource Management Plan Guidelines 2017."
 - Again, this document clearly states on p.11 that "a State-approved RMP allowing private water-dependent structures within an ACEC is required for any private structure built after October 4, 1990."
- Ms. Schmitz said that there are not many State-approved RMPs, describing the acceptance process as somewhat mysterious as well as cumbersome.
 - Currently DCR only has one person, Nancy Putnam, who handles RMPs, indicating that the State's resources for approving RMPs have dwindled over the past ten years.
- Ms. Schmitz said that Ms. Putnam indicated to her that DCR ideally prefers RMPs to cover a whole ACEC rather than within the limits of a single municipality.
 - The Petapawag ACEC extends north from Ayer to the New Hampshire border, and includes land that is also located in the towns of Groton, Pepperell, and Dunstable.
 - Ms. Schmitz said most ACECs in the State have not come up with RMPs yet.
 - An exception is the Pleasant Bay ACEC on Cape Cod.
 - The towns of Orleans, Chatham, Harwich, and Brewster formed the Pleasant Bay Resource Management Alliance and together prepared a 111-page+ RMP approved by DCR.
- Ms. Schmitz said it might nevertheless be possible for Ayer to do a smaller town-wide RMP project focusing on Sandy and Long ponds and their watersheds.
 - Ms. Schmitz said that, as an official body, ConCom does not need to hire a professional but could under its own authority submit an RMP to the State.
 - The "Biological Survey, Assessment and Management Recommendations for Ayer's Ponds (May 2016)" report prepared by Geosyntec Consultants, commissioned by ConCom with assistance from Ayer DPW, would certainly contribute valuable information toward the formation of an RMP application.
 - She did suggest that ConCom form a subcommittee to do this, drawing on other local and regional groups for assistance: Planning Board, Town Planner, Nashua River Watershed Association, Montachusett Regional Planning Commission, etc.
- Ms. Schmitz said there is one small loophole for a dock (in an ACEC/Great Pond) that did not require a Ch. 91 license:
 - A floating dock, with a ramp that extends to the shore, does not require a license.
 - It would, however, still need an Order of Conditions (OOC) from ConCom for the ramp.
 - After discussion, though, the difficulty with this as a loophole is that a floating dock/ramp would not work well on a pond like Sandy Pond with such a shallow gradient rather than sharp drop-off.
- BD and BT asked whether it was worth the time and resources for Ayer to develop an RMP if the only reason to do so was to allow new docks on its Great Ponds.



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- The original dock licenses granted in 2008-2009 cover a 15-year period, and therefore will begin to expire around 2023.
- It is unclear what procedure the State will require for license renewal.
- JG also noted that the Town holds a Ch. 91 license for structures used at the Town Beach on Sandy Pond – which will have to be renewed at the end of its license period.
- If the State requires a new application for renewals, Ms. Schmitz said it would be wise if Ayer began work on an RMP well in advance since the process, even if successful, can take so long.
- BD said, as a first step later in the spring, ConCom should inventory the licensed docks on its Great Ponds as well as hold a public meeting focused on this topic.
 - It should also notify pond abutters of the restrictions on their putting in docks, etc., without a Ch. 91 license.
- Ms. Schmitz also described the State's new simplified dock license form that issues a 'general permit' if structures meet qualifications to be eligible.
 - i.e. if overall square footage of a dock was less than 300 sq. ft., an application form would not need to specify dimensions for a particular dock.
 - Still, even the simplified dock license form is immaterial for new licenses if Ayer does not have an approved RMP.
- Vernal Pools
 - Ms. Schmitz noted that Ayer appears to have a number of potential vernal pools and should see if any of them are certifiable.
 - Protection of vernal pools was one of the goals in the creation of the ACEC designation.
 - Vernal pools cannot be filled in once certified.
 - Evidence for certification of a vernal pool (amphibian populations, evidence of breeding/egg masses, wet/dry periods, etc.) can be collected within a single year.
 - Documentation of vernal pools within the Petapawag ACEC would add to the viability of an RMP.
- Shoreline plant management
 - The question was raised as to what extent homeowners on the shores of Ayer ponds are legally permitted to control shoreline vegetation.
 - This question was raised in conjunction with an Ayer resident who, last summer, attempted to clear established vegetation (e.g. native species like cattails) along his shoreline by covering with a tarp.
 - Ms. Schmitz said such clearing needs to be permitted by ConCom through the Notice of Intent (NOI) process.
 - In any case, even with permission, a homeowner is only allowed to alter 10% of the bank or land under water.
 - To clarify, this 10% figure cannot be cumulatively added to year after year – it is a one-time alteration limit.
 - Removal of another 10% the following year, or on, is not legal.
 - Ms. Schmitz also referred to a growing year-round usage of air bubblers to keep shore bottoms clear by residents on some ponds in the Commonwealth – but noted the safety issues where ice would be thinner near their operation, creating safety risks for ice fisherfolk and others enjoying winter recreation.



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o OOO issues

- In general terms, ConCom described the situation of an OOC issued in 2005, and extended multiple times both by ConCom and the State's Permit Extension Acts.
 - Wetlands for the area in question changed over the decade+ time period, even though the actual work proposed in the original NOI has yet to be done.
 - o Ms. Schmitz confirmed that when an OOC is extended, this also extends the validity of the wetland lines as accepted in the original OOC, regardless of changes since.
 - However, she suggested ConCom look into the 401 Water Quality Certification.
 - o Work permitted under the original OOC may go forward but if, due to changes over time, that work now involves filling of wetlands, a 401 permit may now be needed to avoid a violation.
- In addition, Ms. Schmitz said a request to amend the original OOC should also have been copied to MassDEP.
- As a general rule, she said that an Amendment to an OOC is not appropriate if the changes involve greater wetland/resource area impacts.
 - Instead, the original OOC should be closed out (with a Certificate of Compliance, work not having been done), and a new NOI should be submitted.
- ConCom also has the ability to not accept an Amendment to OOC application prior to opening a Public Hearing, if it so chose.

o Filing, hearing, and timeline requirements

- The Wetlands Protection Act (M.G.L. ch. 131, § 40) specifies that a commission "shall hold a public hearing on the proposed activity within twenty-one days of the receipt of said notice."
 - Where this deadline cannot be met for various reasons, including quorum issues, commissions generally should seek written confirmation of an applicant's acceptance of going beyond the 21 day period.
- Ayer ConCom, which meets twice a month, has been challenged by over-full agendas over the past few years.
 - Though she did not recommend this, Ms. Schmitz said some commissions handle this by allotting a rigid 15 minutes per application Hearing/Meeting.
 - If a decision cannot be made within that 15 minutes, the Hearing is continued to the next meeting.
 - o This is both inefficient for commissions and can drag out the application process substantially for individual applicants – but it is an option.
 - o BD said this is not a solution which Ayer ConCom would find acceptable.
 - The other recourse is for Ayer ConCom to limit its agendas to allow for reasonable meeting lengths (e.g. adjourning by 10 PM) and, where applicable, have applicants sign a written agreement accepting a delay in the initial hearing scheduled beyond the 21-day limit.
 - o If applicants do not like this, they can apply directly to the State (MassDEP).
 - However, with short-staffing and limited resources, Ms. Schmitz said this would likely take months, a period far longer than a commission delay would entail.



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- With this information in hand, BD asked CA to institute a new system whereby Ayer ConCom uses one meeting a month to hear applications (NOIs, RDAs, COC requests, Extensions, etc.), and uses the second meeting to focus on Commission-related work (policies & procedures, pond management, bylaw review, etc.).
 - In addition, BD asked CA to limit the number of applications heard at a single meeting to 5, for starters, and see how that goes.
- Sewer and grinder pump issues
 - ConCom asked for input from Ms. Schmitz about a recent incident in which a sewer grinder pump on a resident's property overflowed, spilling toilet paper and sewage onto the property.
 - This property is also within buffer zone to wetlands.
 - ConCom has issued an Enforcement Order to the homeowner, which it will be hearing at a subsequent meeting.
 - However, in the process of CA discovering this problem, the lines of municipal responsibility became instantly complicated.
 - Neither the DPW, Building Inspector, nor Board of Health thought this was within their jurisdiction to respond to.
 - Ms. Schmitz said, in her opinion, the BOH or Building Inspector should be more involved in such a situation.
 - A gray area exists in between where water/sewer leaves the house (inspected by the Plumbing Inspector under the Building Inspector), and where it actually connects to municipal structures at the street (overseen here by DPW).
 - CA will ask the Building Inspector for more details as to where each plumbing-related inspection 'ends'.
 - She was also asked to contact the Town Administrator to see if the Town would like to develop greater clarity in responding to situations where open sewage is suddenly found to be leaking into a private yard.
 - The question of whether Title V regulations might apply was also raised.
- RDAs
 - The question was asked as to whether RDAs require the running of a legal ad in the newspaper.
 - Ms. Schmitz said no, although many towns do require use of a legal ad.
 - Listing on the agenda is technically sufficient.
 - The idea of providing ConCom meeting packet information (i.e. RDA, NOI applications) on the Town website or in DropBox was discussed.
- Wetland replication and buffer zone restoration
 - GB asked for feedback on how ConComs should review proposed wetland replications.
 - Ms. Schmitz said the number one factor is often elevation.
 - Replication areas that are at a higher elevation than the filled area tend not to be successful.
 - A successful replication area should be relatively flat, not on a slanted slope where water will easily run off.
 - When looking at a proposed 1:1 replication, Ms. Schmitz said the calculation for this is based only on the bottom contours, and should not include side slopes.
 - For buffer zone restorations, Ms. Schmitz said that in too many cases, contractors propose the use of wetland rather than upland plants.



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- Unless the restoration area is actually wetland, upland plants should be used.
- Habitat protection
 - BD spoke of ConCom instituting the requirement for a shrub/habitat break where lawn transitions to forest.
 - This is a good idea but without a bylaw addressing this, ConCom can only suggest, not require.
- Thanks!
 - ConCom members were very appreciative of the time, details, and materials Ms. Schmitz was willing to share with them.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 2/8/2018 as “fabulously written”; BT 2nd.
 - Motion approved unanimously.
- **Conservation Commission Office Updates**
 - Draft Policies & Procedures for Conservation Fund
 - CA distributed a draft document and commissioners will review for comment and discussion at a future meeting.
 - 2018 Pond Treatments
 - CA received only one price proposal for weed treatment on the ponds this year.
 - The bid from Solitude Lake Management was for \$39,947.
 - CA also circulated emails received from 3 other companies that she contacted.
 - None of them submitted bids for this year’s treatment, although one of them indicated it might another year.
 - This meets the requirement laid out by the Town Administrator that the Commission attempt to solicit at least 3 bids.
 - ConCom will discuss this, and steps to move forward, at a future meeting.
 - Pleasant Street/Riley Jayne Farm/Trevor Trail
 - CA met on site with Nick Pauling, of Goldsmith, Prest & Ringwall, to discuss the ongoing water issues.
 - Silt has made its way into the wet water quality swale, but has not gone beyond the silt fencing into the wetlands.
 - There is therefore no violation yet since only clean water is making its way into the wetlands.
 - Mr. Pauling knows the area will need to be cleaned out when weather is more favorable.
 - Right now it is a water problem, but not yet a siltation problem.
 - BD said it is expected that this will change in the future, as more work is done on the site.
 - To deal with this, BD asked CA to visit the site weekly, once or twice, and to document with photos.
 - The photos and observations, dated, should be sent to Mr. Pauling/GPR on a weekly basis.
 - This will effectively put the site on notice and document the situation as it unfolds.



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○ Upcoming priorities

- In addition to the weekly communication to GPR re Trevor Trail/Riley Jayne Farm, BD asked CA to:
 - investigate why ConCom's accounting summary shows a \$14,000 deficit.
 - This likely refers to when Kait Rimol was acting as Interim CA, but the funds to cover her were to be taken from the Commission's wetland fund, not from its regular budget.
 - put a blurb on the Commission's website detailing the new procedure going forward, whereby ConCom will use one of its two monthly meetings to hear applications, and the other to conduct Commission business.

○ Upcoming meetings

- The 3/8 ConCom meeting will be for applications.
- The 3/22 meeting will focus on preparations for holding a meeting to discuss the ponds, Ch. 91 licensing issues, and a Resource Management Plan.
 - The Pond & Dam Committee should be invited to this planning meeting as well.

• **10:27 PM – Adjourn Meeting**

- GB moved to adjourn; BT 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

3/15/2018

Signature Indicating Approval: _____

Jessica G. Gugino