



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 4/26/2018

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

7:15 PM – Open Meeting

- **Confirmation of Agenda**

- With changes in the ordering of items, GB moved to confirm the agenda as amended; BT 2nd.
 - Motion approved unanimously.

- **Discussion: Stewardship Report for Autumn Ridge Conservation Restriction (CR)**

- Steve Smith, the volunteer Steward for the CR, distributed copies of his annual report.
 - Also present were residents from Autumn Ridge Farm, some of whom are also members of the Board of Trustees: Margaret Pfeiffer, Chuck Francis, and John Marian, as well as abutter Beverly Smith.
- Autumn Ridge Farm was built on land obtained from the Smith Family, a large portion of which was turned into a CR.
 - The CR includes land with extensive walking trails, Pine Meadow Marsh and Rock Meadow Pond.
 - Public access is allowed on the southern portion of the walking trail area, near Porcupine Hill.
- The “Monitoring Visit Report, January 25, 2018” summarizes observations made of the CR on four different occasions in 2017: 11/23, 11/25, 12/2, and 12/9.
 - A number of survey markers from the GPR 2005 survey are damaged or missing and unlocatable, indicating the need to a new survey at some point.
 - BD suggested it might be possible to do a survey of several CRs in Ayer at the same time, for cost efficiency.
 - The “upper beaver dam” which backs up Rock Meadow Pond is in good shape, with the installed beaver deceiver working well; recent activity indicates that the beavers are now rebuilding the “lower dam” as well.
 - The Autumn Ridge Board of Trustees has decided to allow restricted hunting on the public access portion of the CR.
 - They are emulating the Town’s regulations for Pine Meadow Conservation Land, which allows two weeks for shotgun and bow hunting for deer.
 - With the help of Chuck Francis, sign upgrades for the trails are underway.
- Mr. Smith asked the Commission to support funding the printing of an additional 500 Ayer Greenway Committee brochures which provide a map of trails in the Pine Meadow Conservation area and the connected public portion of the Autumn Ridge CR.
 - Mr. Smith maintains the brochure stock at two trail distribution points, one at the Groton-Harvard Road trailhead, and the other at the Oak Ridge Drive trailhead.
 - He observed that more brochures are used from the Oak Ridge location.



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- In addition to the brochures (\$310), Mr. Smith also asked for funding for a new 20x30 color map for the kiosk (\$51.67) as well as ten 8.5x11 black-and-white laminates (\$25), for a total of \$386.67.
- GB moved to approve the Commission's funding of these requests, for \$386.67; BT 2nd.
 - BD noted this would be charged to ConCom's line 57000, "other charges and expenses."
 - Motion approved unanimously.
- **Discussion: Conservation Fund Policies & Procedures (P&P)**
 - Town Administrator Robert Pontbriand, and Community Preservation Committee (CPC) Chair Janet Providakes were present.
 - Creation of the CF was approved by Fall Town Meeting (2017), along with the transfer of \$500,000 into the Fund from CPC.
 - Before turning to the P&P, Mr. Pontbriand updated the Commission:
 - The updated Open Space & Recreation Plan has now gone to the State; the Town is awaiting comments;
 - The updated Master Plan is poised to go to the State following the upcoming Planning Board meeting on 5/8.
 - The Land Use committee is moving forward with developing an inventory and prioritization list of open space parcels.
 - They are being given technical assistance from the Montachusett Regional Planning Commission, thanks to an MRPC grant which CA and Town Planner Marc Archenbault secured on behalf of the Town.
 - BD then summarized discussion points from ConCom's 2/8/2018 meeting, after which CA prepared a draft version of P&P now to be reviewed.
 - ConCom drew substantially from the P&P Guidelines of the Georgia (VT) Conservation Reserve Fund.
 - The draft document was reviewed and heavily edited, with highlights noted below.
 - The CF can be used for technical assistance (site work, appraisals, legal assistance, land surveys) to landowners, but this provision will include the note that these funds would be reimbursed to the CF by the landowner should the conservation objective not be achieved.
 - Care was taken with the steps outlined in the Review Process for Funding Decisions section.
 - Step 1 involves either a landowner contacting ConCom or ConCom contacting a landowner about a significant conservation project or parcel.
 - Step 2 will mandate that, upon receipt of an application ("Project Review Request" form), the Commission will perform a review within 30 days to determine if it is eligible and whether ConCom wishes to move it forward in the process.
 - It was noted that this would be similar to CPC's two-step application process, the first step of which is an eligibility review.
 - No specially-advertised Public Hearing is required for this step, although it would take place during a regular Commission Business Meeting which is open to the public in any case.



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- If the project meets eligibility, then Step 3 requires a certified fair market appraisal of a property as well as a Phase I, 21E (Environmental Assessment and Due Diligence) be completed.
- Step 4 involves ConCom and CPC together negotiating a price for the property (or project).
 - Mr. Pontbriand recommended adding in language that the Commission and CPC reserved the right to convene in Executive Session, pursuant to M.G.L, for the purpose of negotiating a price.
- Step 5, if a price is agreed upon, then the Commission will hold two Public Hearings for the project within a 21 day period.
- Step 6, at the conclusion of the second Public Hearing, the Commission will take a vote and make a final decision on the project.
 - Mr. Pontbriand said that if more information is required before making a final decision, the second Public Hearing can simply be continued.
- The Guidelines for Project Evaluation section, as well as the Benefits section, were reviewed and edited.
- The Project Review Request form was edited as well.
 - It will now include a line asking for the most recent fair market assessed value of a parcel or project.
- CA will prepare a new draft for final review at ConCom's 5/24 Business Meeting.
- Related
 - As added information, Mr. Pontbriand noted that the current Treasurer (and Town Clerk), Susan Curtain Copeland, placed the money in the CF in a Bartholomew Fund as a safe, interest-bearing home.
 - Ms. Copeland will cease being Treasurer on 7/1, when a new Treasurer will start.
 - The new Treasurer will administer the CF in consultation with the Commission.
- Town Meeting
 - Spring Town Meeting (5/14) will have Article 18, seeking to transfer \$5000 into the CF.
 - Mr. Pontbriand noted this amount was a pittance, but that he was optimistic that a more substantial contribution to the CF could be made at Fall Town Meeting.
- **Discussion: Chapter 91 Dock Licenses for 'Great Ponds'**
 - Town Administrator Pontbriand remained present for this discussion.
 - Both Sandy and Long ponds are considered 'Great Ponds' by State law.
 - In addition, both are located within the Petapawag ACEC (Area of Critical Environmental Concern), which means the State exercises increased environmental oversight through more stringent review thresholds and elevated performance standards for state permitting.
 - Ch. 91 was previously discussed in depth at ConCom's 2/22/2018 meeting with MassDEP Circuit Rider Judy Schmitz, and twice during its 3/22/2018 meeting.
 - Mr. Pontbriand shared the Commission's frustration with the confusion over Ch. 91, and the difficulty in getting clear answers or guidance from MassDEP.
 - During the 2008-2009 period when the State announced its intention to begin enforcing Ch. 91 regulations, the Commission used the RDA process to review applications.
 - The result was that 18 temporary-dock license applications (all on Sandy Pond) were accepted by MassDEP.



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- Following the expiration of MassDEP's 2009 deadline, it was made clear by MassDEP that no further dock licenses could be granted for Great Ponds within ACECs without either a local Harbormaster or a state-accepted Resource Management Plan (RMP).
 - An RMP would cost tens of thousands of dollars to prepare and there is no guarantee it would be accepted by the State.
- With there being interest on the part of a few Sandy Pond residents to put in new docks, as well as the need to renew existing dock licenses in a few years, the Commission has been attempting to gain more clarity on Ch. 91.
 - Mr. Pontbriand noted that people are likely to get emotional and passionate about activities in their own backyards, such as putting in a temporary dock.
- While MassDEP has also indicated that it is unlikely to enforce Ch. 91 now, it still leaves the Commission with a substantial mess to try to resolve, as well as to determine the most prudent course going forward.
 - BD's opinion is that if a dock is connected to the land, then it is within the Commission's jurisdiction at that point.
 - Homeowners with unlicensed docks should be told their docks are illegal and need to be removed.
 - Failure to do so would lead to the Commission reporting them to MassDEP.
 - While the initial round of dock licenses in 2008-9 involved applications passing through ConCom's RDA process, JG noted that unless there is digging or disturbance of the ground within or near a resource area, the Commission usually does not require project review.
 - At the shore-end, temporary docks generally rest on the ground and no digging takes place.
 - BD said it was also in the interest of the Town to not allow a free-for-all of unregulated activity.
 - CA noted that an RMP could theoretically limit the number of docks allowed on a pond, although other issues then arise, such as deciding who could or could not get a dock.
 - JG suggested as an alternative writing a letter to illegal dock owners informing them of their liability should the State decide to take up enforcement, which can include a substantial fine.
- CA said there was also confusion in that Nancy Lin, of MassDEP, suggested the Commission could perhaps 'permit' a dock (through the RDA or NOI process), even though it could not 'license' one.
 - JG recalled the point made by Andrea Langhauser, of MassDEP, back during the 2008-9 process, that should someone, like a boater, have an accident involving a dock, the legal liability for the dock owner would likely soar if it is found that the dock is unlicensed.
 - So to permit a dock without licensing it could put the Town, as well as the homeowner, in a vulnerable position.
 - BD said he did not want the Commission to legitimize illegal docks.
 - He suggested that every dock, whether on a Great Pond or not, should be required to go through the RDA process.
- The following next steps were mutually agreed upon:



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- the Commission, through CA, and perhaps involving Mr. Pontbriand, meet in person with Ben Lynch, who heads MassDEP's Ch. 91 program, to try to gain more clarity on what can be done, or should be done, etc.;
 - this should include a further understanding of what the State's enforcement policy is;
 - the Commission notify current dock license holders regarding license expiration dates and the renewal process;
 - it was noted (by JG as well as another license CA observed) that the current licenses do not appear to note an expiration date;
 - it was also noted that apparently the expiration date is not 15 years from the date of the license issuance, but some fixed date determined by the State, also a matter lacking clarity;
 - the Commission further explore the RDA approach to temporary docks in general;
 - the Commission and Town should work toward developing a coherent plan;
 - the Commission, through CA, should contact MACC as well as other towns in a similar situation (i.e. Groton) to see how they deal with temporary docks in their ponds.
- **Conservation Commission Office Updates**
 - Pingry Hill Enforcement Order (EO)
 - CA issued an EO, with a Cease & Desist (C&D), on 4/16/18 because of loss of control of stormwater onsite, with infiltration of run-off sediments into wetlands.
 - CA has also been meeting with Dr. Desheng Wang, the erosion-control specialist for the subdevelopment.
 - CA reported that the previous problems with the site have now been fixed, with wetlands cleaned out, and shredded hay or ground up stumps used in areas to hold soils in place.
 - CA noted the weak point for the project during another major rain event remains the outlet pond and lack of completion of numerous stormwater basins.
 - BD then said the contractor needs to provide ConCom with a schedule for completion and inspection of the basins, ideally by the end of May.
 - GB moved to ratify the EO due to lack of control on the site; BT 2nd.
 - Motion approved unanimously and the EO was signed.
 - BD asked for a motion to lift the C&D in this area pending receipt of an acceptable schedule for completion of the basins by Monday, 4/30, with CA acting on behalf of ConCom to determine if the submitted schedule is sufficiently close to ConCom's requirement so as to be acceptable.
 - GB so moved; BT 2nd.
 - Motion approved unanimously.
 - It was noted that if similar problems happen on site due to loss of stormwater control, then the Commission could very well limit future work until a dry season.
 - Diamond Pier Foundation System, with Pin Pile Technology
 - CA circulated a brochure illustrating this technology, used for decks, etc., and relayed Building Inspector Charlie Schultz's question as to whether construction projects using this technology would need an RDA.
 - BD said that with no ground excavation, an RDA would not be needed.
 - 77 Woodland Way (Pingry Hill) (MassDEP # 100-0408)



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- CA had the Commission review an email dated 4/19/18 from Steve Mullaney, of S.J. Mullaney Engineering, asking if CA could authorize a “proposed field change” or whether ConCom action was necessary.
 - The proposed “activity shift” increases the size of the house and moves it further east, out of the buffer zone, reducing the overall buffer zone activity from construction of the house and yard (5000 sf. to 4000 sf.).
 - BD, with agreement from the rest of the Commission, said the changes were significant and therefore needed to be formalized through an Amendment to the OOC.
 - The Commission potentially could hear this at its next meeting on 5/10.
 - CA will convey this to Mr. Mullaney.
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- **10:58 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: _____

5/10/18

Signature Indicating Approval: _____