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TOWN OF AYER
TOWN CLERK

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 10/11/2018

Location: Ayer Town Hall, 1st Floor

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

APAC taped: Yes

7:05 PM – Open Meeting

- **Confirmation of Agenda**

- CA said that Steve Mullaney, of S. J. Mullaney Engineering, for personal reasons was not able to be present for the eight Pingry Hill (Ridge View Realty Trust) Public Hearings listed on the agenda.
 - Five of the continued Public Hearings would have to be re-opened in order to be continued again; the other three would not be opened at this time.
- BT moved to confirm the agenda as noted; JS 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- BT moved to accept the minutes for 9/27/2018 as written; JS 2nd.
 - Motion approved unanimously.

- **Announcements**

- The Nashua River Watershed Association will be holding its Annual Meeting at the Bull Run Restaurant, at 7 p.m., on November 1.

- **Accounts Payable**

- Solitude Lake Management: \$3000.00, for Task 5 – water lily treatments (Flannagan and Pine Meadow ponds, 8/27; Sandy Pond, 9/27).
 - BT moved to approve payment of \$3000.00; JS 2nd.
 - Motion approved unanimously.
- The Sun: \$540.14, 5 legal notices of Public Hearings, for which reimbursement checks have been received.
 - CA noted that she has not received \$93.21 reimbursement for the Cannongate Apartments RDA Public Hearing, so this amount was deducted from the \$633.35 bill.
 - CA will contact Cannongate again.
 - BT moved to approve payment of \$540.14; JS 2nd.
 - Motion approved unanimously.

- **Public Hearing: Notice of Intent (NOI) – 0 Rosewood Avenue, Riley Jayne Farm LLC, MassDEP # 100-0434**

- Assessor's Map 3, Parcel 48
- Tim Beauchemin, of Beauchemin Engineering, Inc., was present on behalf of the applicant.
- The NOI proposes construction of a new 4-bedroom house on a 24,000 sq. ft. lot.
 - This lot was split off from the parcel for 22 Rosewood Avenue (Parcel 3-49).



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- It is in proximity to wetlands as well as an unnamed stream flowing into James Brook.
 - The location of the proposed house is outside the riverfront buffer zone but inside the 100 ft. buffer zone to wetlands.
- No grading changes or filling are proposed.
- The only intrusion into the 200 ft. riverfront buffer would be the removal of a few trees as well as the removal of old chainlink fencing the runs across the property, including through the proposed house location.
 - The fencing would be removed up to a point approximately 50 ft. from the resource area.
- Additional tree clearing is proposed on the west side of the property, outside of the currently existing fence.
 - This would be for the front and rear corners of the proposed house on that side.
- The rest of the property where work will be done is already mostly cleared lawn.
- Nine-inch wattles are proposed for erosion controls around the work area.
- No soil pile will be stored on site.
 - Some excavated soil may be spread in the front of the proposed house, outside of the buffer zone, but the rest would be removed from site.
- Roof runoff would be handled with gutters and downspouts, draining to the back of the property.
- Because of renewed beaver activity in the area, and consequent new water impoundment, CA is not completely sure about the accuracy of the wetland flags.
- The applicant is hoping to have the foundation in before winter.
- BT asked that the plan be updated to include a deck or patio, if planned.
 - Mr. Beauchemin said an above-grade deck is planned.
- The earliest site walk that could be scheduled was for Saturday, Oct. 27, at 8 a.m., after ConCom's next scheduled meeting on Oct. 25.
 - To facilitate a faster turn-around for an expected Order of Conditions, GB asked CA to have a provisional draft OOC ready for ConCom's Nov. 8 meeting.
- BT moved to continue the Public Hearing to 11/8/2018; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing: Abbreviated Notice of Resource Area Delineation (ANRAD) – Shaker Mill Pond, Daniel Aho, Aho Development Corp., MassDEP # 100-0433**
 - Assessor's Map 36, Parcel 18
 - John Boardman, of Places Associates, Inc., was present on behalf of the applicant.
 - ConCom performed a site walk to review flagging on 9/22/2018.
 - The ANRAD asks ConCom to confirm the wetland flagging as well as that the area south of Shaker Mill Pond qualifies as having a 100 ft. buffer zone to wetlands rather than a 200 ft. buffer zone to riverfront.
 - Bennett's Brook enters into Shaker Mill Pond from its western end.
 - The pond was created by impoundment, having been dammed by the Shakers a very long time ago.
 - Water exits the pond at the eastern end, at the site of the old mill where a few metal parts can still be seen.
 - At this point, Bennett's Brook resumes, as noted on USGS maps.



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- ConCom members held a lengthy discussion as to whether Shaker Mill Pond nevertheless had enough riverine characteristics so as to require the imposition of a 200 ft. buffer zone to riverfront.
 - Per CA's conversation with MassDEP Circuit Rider Judy Schmitz, ConCom reviewed a section of the MACC (Mass. Assoc. of Conservation Commissions) Handbook:
 - Page 16.24.2.4. *When is a River Not a River? A Look at Lakes, Ponds (versus Riverine Characteristics), and Culverts, and Named Rivers.*
 - Ms. Schmitz said that determining whether there is flow goes a long way toward helping determine which buffer zone should apply.
 - Accordingly, CA performed the 'bag of oranges' test, on 10/10, observing that the oranges that were thrown in had lined up in about 20 minutes, indicating some flow, though they had only traveled approximately 20 ft.
 - This is a test that DEP says can hold up in court.
- BT noted the section in the MACC reference that read:
 - "Recent MassDEP decisions give further insight into other primarily riverine attributes that are considered critical. Making these determinations will often, if not always, require an expert."
- ConCom then proceeded to evaluate Shaker Mill Pond according to the 7 riverine attributes then described:
 - The presence of a channel within the waterbody.
 - ConCom members were in agreement that this was indicated.
 - GB also remembered that when a sewer line was run under the pond years ago, the presence of a channel had been indicated.
 - Historic changes such as dams and control structures.
 - ConCom members agreed the presence of the old Shaker Mill qualified.
 - Surface or subsurface withdrawal.
 - There does not appear to be withdrawal, though BT raised the question as to whether the nearby golf course may draw water from the pond to irrigate the greens.
 - CA will check into this.
 - Residence time (the length of time between when water enters and exits the lake or pond).
 - ConCom members agreed that this was unknown, though observed flow does not appear to be swift.
 - The ratio of the watershed size to the impoundment or pond size.
 - This is unknown.
 - More pronounced unidirectional flow through the center of the waterbody as compared to other areas.
 - ConCom members agreed this was the case.
 - The morphology of a waterbody, with roughly parallel banks, as opposed to a more rounded shape (a riverine characteristic).
 - ConCom members agreed the banks of Shaker Mill Pond were roughly parallel.
- Mr. Boardman argued that the Wetlands Protection Act does not provide clear standards to decide the matter and noted that the current USGS quad map, designating where Bennett's Brook is a brook, and Shaker Mill Pond is a pond, should be the deciding factor, per his reading of the WPA.
 - 310 CMR 10.58 (2) h defines riverfront areas in relation to ponds accordingly:



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- “A water body identified as a lake, pond, or reservoir on the current USGS map...is a lake or pond, unless the issuing authority determines that the water body has primarily riverine characteristics.”
- Mr. Boardman said it would be an unnecessary imposition of regulations on Aho Development to impose a riverfront buffer zone.
 - Aho has tried to develop a responsible plan for a 25-house subdivision (yet to be submitted via NOI), leaving a 50 ft. buffer to the pond.
- He also noted that, except along the bank of the pond, the woods in this area are not pristine as it had previously been clearcut a number of decades ago.
- GB said the two key questions before the Commission were:
 - if the area in question was riverfront requiring a 200 ft. buffer zone or wetlands (pond) requiring a 100 ft. buffer zone
 - then, if deemed riverfront, where would the channel bank be defined as the point from which the 200 ft. buffer would be extended?
 - On this, GB said he would lean toward using the middle of the pond (presumed center of the channel) as the river edge.
 - Another option would be to use the mean high water mark.
- BT and JG were of the opinion that defining the resource correctly by establishing whether the pond had enough riverine characteristics to require a riverfront buffer zone, via an outside consultant, was important.
- GB and JS noted that, if not for the existence of other dams, several of Ayer’s ‘ponds’ would turn into streams (eg Flannagan, Pine Meadow, Grove, Plow Shop).
- ConCom understands from the most recent plan sketch that the next step will be for Aho Development to submit an NOI for a 25-house subdivision.
 - BT said it was unfortunate that an already-in-process design had been established prior to the ANRAD.
- CA said that houses on this side of Shaker Mill Pond will have a topography that slopes down to the resource area.
 - This is in contrast to the flat topography on the other side of the pond, on Littleton Road/2A, where Aho Development is close to completing the construction of 8 new houses.
- GB identified the immediate options before the Commission were to vote on whether to hire an outside consultant, or have the Commission vote on whether to accept the Pond as a pond and not riverine, or whether to punt questions raised during the discussion back to MassDEP one more time.
 - Mr. Boardman said the applicant was trying to work with the Town and do something responsibly.
 - An Environmental Analysis is in process.
 - If the Commission insisted on an outside consultant, they would counter with a different consultant’s opinion.
- VOTE: BT moved that the Commission require an outside consultant review to help define the resource area; JG 2nd.
 - Motion disapproved 3-2 (nay votes: GB, JS, MP; aye votes: BT, JG).
- GB asked for an unofficial poll of the Commission as to whether Shaker Mill Pond is to be considered a pond (with 100 ft. buffer zone) versus a riverine pond (with 200 ft. riverfront buffer zone).
 - BT and JG supported the pond as having riverine attributes.

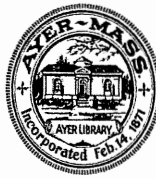


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- GB, JS, and MK supported the pond being treated as a pond only.
 - VOTE ON THE ANRAD: JS moved to issue an ORAD (Order of Resource Area Delineation) approving the resource area as delineated on the south side of Shaker Mill Pond, including acceptance of the pond as a pond warranting a 100 ft. buffer zone; MP 2nd.
 - Motion approved 3-2 (aye votes: GB, JS, MP; nay votes: BT, JG).
 - For clarification, the wording on the ORAD should include phrasing confirming the resource area as shown on the plan, with the exception of the flags shown on the north side of the pond which were not included for consideration in this ANRAD.
 - VOTE: JS moved to close the Public Hearing for 100-0433; MP 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – 252 Woodland Way (Lot 138B), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0432**
 - Assessor's Map 36, Parcel 180
 - The Public Hearing was reopened but neither the applicant nor applicant's representative were able to be present.
 - BT moved to continue the Public Hearing for 100-0432 to 10/25/2018; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Request for Amendment to Order of Conditions (OOC) – 169 Woodland Way (Lot 71A), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0413**
 - Assessor's Map 36, Parcel 113
 - The Public Hearing was reopened but neither the applicant nor applicant's representative were able to be present.
 - BT moved to continue the Public Hearing for 100-0413 to 10/25/2018; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Request for Amendment to OOC – 143 Hemlock Drive (Lot 146A), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0410**
 - Assessor's Map 36, Parcel 222
 - The Public Hearing was reopened but neither the applicant nor applicant's representative were able to be present.
 - BT moved to continue the Public Hearing for 100-0410 to 10/25/2018; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Request for Amendment to OOC – 165 Hemlock Drive (Lot 78B), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0411**
 - Assessor's Map 36, Parcel 120
 - The Public Hearing was reopened but neither the applicant nor applicant's representative were able to be present.
 - BT moved to continue the Public Hearing for 100-0411 to 10/25/2018; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Request for Amendment to OOC – 77 Woodland Way (Lot 68), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0408**
 - Assessor's Map 36, Parcel 110

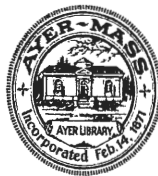


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- The Public Hearing was reopened but neither the applicant nor applicant's representative were able to be present.
- BT moved to continue the Public Hearing for 100-0408 to 10/25/2018; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing: Request for Amendment to OOC – 259 Woodland Way (Lot 142A), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0418**
 - Assessor's Map 36, Parcel 184
 - With neither the applicant nor applicant's representative able to be present, the Public Hearing as advertised was not opened.
- **Public Hearing: Request for Amendment to OOC – 237 Woodland Way (Lot 76A), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0417**
 - Assessor's Map 36, Parcel 118
 - With neither the applicant nor applicant's representative able to be present, the Public Hearing as advertised was not opened.
- **Public Hearing: Request for Amendment to OOC – 219 Woodland Way (Lot 75A), Richard Roper, Ridge View Realty Trust, MassDEP # 100-0416**
 - Assessor's Map 36, Parcel 117
 - With neither the applicant nor applicant's representative able to be present, the Public Hearing as advertised was not opened.
- **Conservation Commission Office Updates**
 - Pingry Hill
 - CA recently had a pre-construction meeting with Luke Pyburn regarding 150 Woodland Way (Lot 135B, MassDEP # 100-0279).
 - One of the Special Conditions for this lot was to augment the existing stone wall to a height of 2-1/2 ft.
 - Some additional grading might be necessary on this lot, and this may or may not have an impact on the wall.
 - In addition, while the Pyburns are behind on stormwater basin completion, CA reports that all of the basins, even if unfinished, are functioning.
 - Nothing is therefore threatening the wetlands at this point.
 - Regarding recently Amended OOCs for Pingry Hill, CA is having to make some adjustments following discussion with Denise Child, MassDEP Wetlands Section Chief for the Central Region.
 - Mr. Mullaney had wanted the Amended OOCs to reflect the dates when the Amendment request was received, the Public Hearing opened, and the Amended OOC was issued.
 - Ms. Child said that an Amended OOC does not extend the term of the original OOC.
 - Therefore, the dates used in an Amended OOC should reflect those pertaining to the original OOC.
 - Page-Hilltop Oil Spill Clean-up (MassDep # 100-0425)



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- A pre-construction meeting was held on Friday, 10/5, reviewing clean-up plans, including the areas impacted at the Nashua Street Extension subdivision, and the Pleasant Street Extension/Trevor Trail (Riley Jayne Farm) subdivision.
 - Present at the meeting were representatives from Trident Environmental Group (Bill and Tim), Omni Environmental Group (Stephan Landry), Brian Snow (Riley Jayne Farm LSP for Calvin Moore), Paul McManus (outside consultant from EcoTec), and CA.
- Erosion controls are in and access agreements are in place.
- Trident is starting to stage equipment for the project, and the temporary roadway for equipment passage will be started next week.
- CA asked Mr. McManus to review the wetland replication plan submitted by Ducharme & Dillis.
 - Mr. McManus found that details in the plan for handling and restoring stream channels were light.
 - CA asked Mr. McManus to provide the language he would prefer for incorporation into the plan.
- 29 Jonathan Drive (MassDEP # 100-0395)
 - CA performed a site walk in response to the developer (Robert Pace Sr.) having submitted a Request for a Certificate of Compliance (COC).
 - CA reports that the rain garden is complete, looks great, and is functioning as intended.
 - The retaining wall put in last year, following an Enforcement Order, is also holding up well.
 - However CA also reports that the homeowner has already taken down and stacked many of the erosion controls, prior to issuance of the COC.
 - She also has been stacking rocks at the back of her property to create a channel for stormwater within the buffer zone and beyond the Limit of Work specified in the OOC.
 - CA will therefore invite the homeowner to also attend the Commission's meeting at which the COC request will be considered.
- **9:22 PM – Adjourn Meeting**
 - JG moved to adjourn; BT 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

10/25/18

Signature Indicating Approval: _____

Jessica G. Gugino