

RECEIVED
MAR 12 2019

TOWN OF AYER
TOWN CLERK

2:45pm
Aimee Copeland

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 2/14/2019

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

7:03 PM – Open Meeting

- **Confirmation of Agenda**

- BT moved to confirm the agenda as posted; JS 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- BT moved to accept the minutes for 1/24/2019 as written; JS 2nd.
 - Motion approved unanimously.

- **Announcements**

- The Nashua River Wild & Scenic Study Committee is pursuing two new initiatives:
 - One is a canoe access assessment project.
 - The second involves hosting network gatherings for conservationists and, especially, conservation agents.
 - On a related note, CA said that earlier today (2/14), the U. S. Senate voted to pass a Federal Lands package.
 - This package contains within it approval of the nomination of the Nashua River for 'Wild & Scenic' status.
 - The bill next goes to the House and, if passed there, to the President for signage into law.
- The Mount Grace Land Trust is hosting a Massachusetts Open Space Conference.
 - The free conference will take place on Saturday, April 27, at Mt. Wachusett Community College (Gardner).

- **Accounts Payable**

- W. B. Mason: \$27.84, for office supplies (binders and tabs).
 - BT moved to approve payment of \$27.84; JS 2nd.
 - Motion approved unanimously.

- **Public Hearing: Request for Amendment to Order of Conditions (OOC) (cont'd.) – 323 West Main Street, Ice House Partners, Liisa Marino, MassDEP # 100-0321**

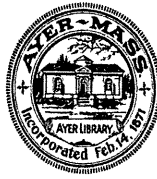
- Assessor's Map 38, Parcel 1
- Ms. Marino was present for the Hearing.
- CA said the OOC, which is about to expire, has been amended to accommodate the need for occasional tree-clearing.
 - Special Condition #50 has been amended to require that ConCom be notified in writing 21 days or more ahead of tree clearing work.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 2/14/2019

- The need to amend the OOC came about after the Federal Energy Regulatory Commission's inspection of the dam last year and their finding that 9 trees in poor condition needed to be taken down to prevent potential damage to the dam.
 - CA also did a site visit and confirmed the hazard presented by these trees (one of which recently came down on its own anyway).
- ConCom also had requested that Ms. Marino provide a plan for yearly land-based maintenance (mowing, clearing, mulching, etc.).
 - This plan has been provided and is attached to the OOC.
- BT moved to accept the Amendment to the OOC for MassDEP # 100-0321; JS 2nd.
 - Motion approved unanimously.
- BT moved to extend the now-amended OOC for 100-0321 for 3 years, to 4/23/2022; JS 2nd.
 - Motion approved unanimously.
- BT moved to close the Public Hearing for 100-0321; JS 2nd.
 - Motion approved unanimously.
- **Discussion: Presentation of Conservation Site Analysis for Open Space Residential Development (OSRD) off Shaker Road, behind (south of) Shaker Mill Pond**
 - Assessor's Map 36, Parcel 18 and Map 43, Parcels 3 & 4
 - Ron Strohsahl, of Oxbow Associates, Inc., presented the Conservation Analysis prepared by Oxbow for Aho Development Corp. for the Shaker Road parcels.
 - Previously, ConCom issued an Order of Resource Area Delineation (ORAD) on 10/11/2018, for MassDEP # 100-0433, to confirm wetland flagging on the parcels.
 - Mr. Strohsahl said that most of the flagging had been done in 2016 for a previous owner, with that flagging confirmed and an additional section of new flagging done in early 2018 for Aho Development.
 - The Conservation Analysis was done in compliance with Ayer's revised Zoning Bylaw (2018), Special Regulations Section 10.1, OSRD.
 - Lacking the guidance document that ConCom recently completed, Mr. Strohsahl modeled the Analysis on the method used in documenting rare species (MESA review) for Natural Heritage & Endangered Species Program (NHESP) permitting.
 - The Analysis includes photo documentation of existing and/or significant conditions at 18 different points on the 3 parcels.
 - In addition, Mr. Strohsahl evaluated the site for plant life as well as indications of wildlife activity.
 - Mr. Strohsahl also presented a geological history of the parcel area, noting the presence of kame deposits made during the time period of receding glaciers.
 - The retreat of the glacier and probable turbulent blowout of sedimentation left a large remaining deposit of sand.
 - Over thousands of years, the area vegetated.
 - The Shakers eventually moved into this area and used the land to farm as well as creating a mill for lumber (hence 'Shaker Mill Pond').
 - Remnants of the mill, granite walls and bridge, and old metal gears can still be seen on site, constituting anthropogenic features.
 - There is evidence the site was also quarried for sand as well as granite bedrock at some point, with big holes left that, over time, turned into wetland depressions.
 - These former extraction pits were flagged by Oxbow.

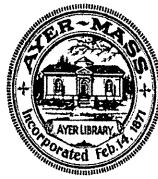


Town of Ayer Conservation Commission

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

Minutes for 2/14/2019

- While they are not regulated under the Wetlands Protection Act or Ayer's bylaw, they likely qualify as federal jurisdictional wetlands regulated by the Army Corps of Engineers.
- The parcels do not contain prime agricultural land.
- They are not located in an ACEC (Area of Critical Environmental Concern), are not priority or core habitat, and do not contain mature forests or vernal pools.
- The Analysis states that the areas designated as high priority for conservation are those areas adjacent to Bordering Vegetated Wetlands (BVW) and the bank area to Shaker Mill Pond – which also includes the mill remnants.
- In evaluating a potential vernal pool, no evidence of egg deposits or caddisfly larval casings were observed.
- The area supports generally expected suburban wildlife, with evidence of deer, coyote, muskrat, fox, beaver, etc.
 - No indication of the presence of rare species was observed.
- Mr. Strohsahl stated his opinion that Shaker Mill Pond, Shaker Road, and the golf course basically isolate and box in the area, inhibiting wildlife migration.
 - Because of this, he suggested there was no necessity to place the open space into a formal Conservation Restriction.
 - GB suggested some wooded areas to the east and to the south might provide wildlife corridor connectivity through these parcels.
- In the Analysis, Oxbow used a 2013 Orthophotograph of the area to color-designate habitat priority levels of high, medium, and low, to provide a basis for determining which open space should be recommended for preservation to meet the requirements of the OSRD bylaw.
 - The red shaded area (highest priority) includes the entire 100 ft. buffer zone to the pond (including the mill area) as well as another area of BVW south of the existing access road.
 - The southern BVW patch also encompasses a strip of exposed bedrock with a greater-than-25% slope escarpment.
 - Of significance in one of the orange shaded areas (medium priority) is a rocky outcrop feature.
 - Trees in red and orange areas are what you would expect – hemlock, red and white oak, white pine, cherry – with no noteworthy species observed.
 - The green shaded area (lowest priority) indicates already degraded areas – the existing access road and areas currently being used for material storage and a shed.
- BT raised concern over how the pond could be protected from stormwater drainage, given the parcels slope down to the pond, and how the sandy soil and bedrock would combine to augment faster drainage with less time for filtration.
- ConCom discussed the logistics and timetable for developing its recommendation to the Planning Board.
 - Because the Commission walked the site for the ORAD on 9/22/2018, another site walk was not deemed necessary.
 - Mr. Strohsahl was asked to provide estimates of the acreage amounts within each of the red, orange and green shaded areas.
 - The total acreage of the parcels is approximately 19.7 acres.
 - John Boardman, of the engineering firm Places Associates, has estimated that 9.85 acres are the minimum number of acres required by the OSRD bylaw for the open space set-aside.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 2/14/2019

- Mr. Strohsahl was thanked for his time and input.
- ConCom took a break from further discussion of this in order to handle another matter for which someone was in attendance (see following Enforcement Order discussion), then returned to discuss the recommendation to be made on the basis of this Conservation Analysis.
- Without having the requested acreage figures yet, ConCom will be likely to recommend the following to the Planning Board for preserved open space:
 - The entirety of the 100-ft. buffer zone alongside Shaker Mill Pond, including the mill area, should be maintained as high quality open space.
 - The other red patch (BVW and associated buffer zone) should also ideally be preserved.
 - The Planning Board should be made aware of the 'glacial erratic' outcropping (in the orange area, noted above) as an attractive feature to be preserved.
 - (CA also noted such natural features tend to be good selling features and add value to developments.)
 - The Commission also recognized the geological significance of the top of the hill, adjacent to the golf course parking area and immediately east of the south BVW patch.
 - If possible this area should be left undeveloped.
 - ConCom could consider some give-and-take from the western side of the buffer zone to the southern BVW as a means of doing this and keeping close to the 50% open space requirement.
 - Other comments to be made to the Planning Board:
 - The historical remnants of the old Shaker mill should definitely be preserved.
 - The open space along Shaker Mill Pond (and the mill foundation) should be given the permanent protection of a formal Conservation Restriction.
 - CA also noted there may be an issue with the proposed roadway as the Planning Board has indicated it is unlikely to approve a 1000 ft. cul-de-sac.
 - Town Planner Mark Archambault has asked to see two other design options, for a 600 ft. and for a 700 ft. cul de sac.
 - It was agreed that should a request be made to the Planning Board by the Applicant for a Special Permit to allow for a conventional subdivision rather than an OSRD subdivision, the Commission would strongly recommend against this.
- Based on this discussion, CA will prepare a draft recommendation and circulate for comment.
 - As with the previous Conservation Analysis recommendation and in light of time constraints on the part of the Planning Board, GB will okay the final.
- **Enforcement Order (EO) – 0 Central Avenue, John Hillier, Central Avenue Compassionate Care, Inc.**
 - Assessors Map 26, Parcel 353 and Map 27, Parcel 98
 - The EO was issued because Mr. Hillier has clear-cut the trees in the area adjacent to (immediately west of) the Compassionate Care building at 31 Central Avenue in order to create an expanded off-street parking area and alleviate Central Avenue parking congestion (including from the commuter rail).
 - CA counted at least 38 freshly-cut tree stumps.
 - An intermittent stream runs across the parcels.
 - The tree-clearing was done within the buffer zone to this stream, and without ConCom notification, review, or permitting.



Town of Ayer Conservation Commission

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

Minutes for 2/14/2019

- The stream is part of a water system flowing from further uphill (Washington Street area).
 - It also takes in stormwater runoff from the street, thereby functioning both as an intermittent stream that is part of a wetland system as well as what Mr. Hillier regards as simply a drainage ditch.
- JG referred to the ConCom minutes for 3/14/2013, when Mr. Hillier previously received an EO for attempting to use heavy equipment to clear the same land without permitting.
 - ConCom had informed Mr. Hillier then that the 'ditch' was a jurisdictional intermittent stream and could not be unclassified as such just because Mr. Hillier held a differing opinion.
 - JG also said that Mr. Hillier had been informed in 2013 that his plan to expand parking was not unfeasible, but he would have to engage the services of a wetland specialist and submit an engineered plan under the Notice of Intent review process.
 - No further action was taken by Mr. Hillier until the recent unpermitted tree-clearing took place.
- Mr. Hillier now has a meeting set up for the following Tuesday (2/19) with Goldsmith, Prest & Ringwall (GPR).
 - For now, GB said Mr. Hillier could proceed with creating parking only in those areas clearly outside of the 100 ft. buffer zone.
 - In response to Mr. Hillier's question as to what he should do to protect the intermittent stream, GB said that GPR would be the best guide for that once he's met with them.
 - Mr. Hillier said he still wasn't sure what the permanent usage of the area would be.
- ConCom is requesting an engineered plan.
 - GPR should also be able to advise Mr. Hillier whether the plan needs to be submitted for ConCom review under an NOI or whether an RDA would suffice.
- Mr. Hillier also referred to ongoing street drainage issues along Central Avenue.
 - BT recommended working with the DPW to address these street drainage issues.
- ConCom will expect Mr. Hillier's project to be on its 3/14/2019 agenda.
- GB asked for a motion to ratify the Enforcement Order.
 - BT so moved; JS 2nd.
 - Motion approved unanimously.
- JG afterwards expressed frustration that 1) the clearing had been done without permitting even though the 2013 EO had made clear permitting would be necessary; and 2) the intermittent stream classification was not a simple matter of opinion and therefore open to debate.
 - GB agreed while also noting that an individual of course has the right to appeal ConCom's decision with the State (MassDEP).
- **Request for Certificate of Compliance (COC) (cont'd.) – Lot 3, Orion Park Drive, Foresite Engineering, Scott Hayes, MassDEP @ 100-0292**
 - Assessor's Map 7, Parcels 5 & 7
 - The engineer has not responded, and matters are still being sorted out.
- **Discussion: Solitude Lake Management Summer 2019 ponds treatment contract proposal review**
 - Following discussion at ConCom's previous meeting, Solitude has submitted a revised contract proposal for 2019 treatments totalling \$25,250.
 - The use of Clipper was not permitted.

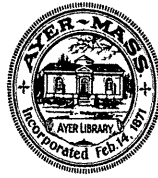


Town of Ayer Conservation Commission

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

Minutes for 2/14/2019

- CA talked to Misty Ann Marold, at NHESP, who said they have been asking that the company that manufactures Clipper share its research data with them, but nothing has been shared to date.
 - NHESP will therefore not approve the herbicide's use in an ACEC pond.
- In preparing its contract, Solitude cut back on spring pre-treatment surveys to cut costs, relying more heavily on the post-treatment fall surveys from the previous year.
- ConCom appears to have nearly \$33,000 remaining in pond treatment funding from previous Town Meeting votes.
- CA will ask Town Manager Robert Pontbriand if the project needs to be put out to bid, even though Solitude is clearly the only company providing this service in this area.
 - It was thought that, based on the previous year, this would not be necessary and the Town could go ahead and proceed with Solitude.
- GB asked for two motions:
 - BT moved to submit the Solitude contract to Town Manager Pontbriand for review and approval; JS 2nd.
 - Motion approved unanimously.
 - To provide consistency in funding for treatment the following year (2020), BT moved to request \$30,000 in new funds for pond treatment at Spring Town Meeting 2019; JS 2nd.
 - Motion approved unanimously.
- **Discussion: Kohler Place Conservation Restriction**
 - GB asked for a motion to postpone this discussion until ConCom's next meeting on 2/28.
 - BT so moved; JS 2nd.
 - Motion approved unanimously.
- **Discussion: Ayer Wetlands Protection Bylaw Revision**
 - Discussion of the Bylaw will also be postponed to ConCom's 2/28 meeting.
 - CA confirmed with Assistant Town Manager Carly Antonellis the timeline within which the revision must be complete if it to be ready for Fall Town Meeting (2019) vote.
 - August 22 would be the deadline for submitting a final draft to Ms. Antonellis.
 - This then provides enough time for review and approval by the Board of Selectmen and Town Counsel in time to be included in the Warrant for Fall Town Meeting.
- **Conservation Commission Office Updates**
 - Paige-Hill School Oil Spill Clean-up (MassDEP # 100-0425)
 - The clean-up team (Trident Environmental, Omni Environmental) have begun the process of demobilizing – disassembling the basin, removing the temporary road.
 - To date, 700 tons of contaminated soil have been removed from the site.
 - CA said there is the reasonable concern that new soils brought in to already-replicated areas will migrate during heavy storm events.
 - Upon request of outside consultant Paul McManus (EcoTec), Greg Morand, of Omni Environmental, provided a monitoring plan.
 - CA is waiting for feedback from Mr. McManus as to whether this plan is adequate to monitor soils until April, at which point wetland seed mix can be spread to then stabilize the soil.
 - Conservation Commission resource area signage

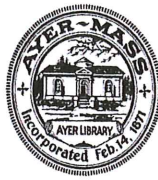


Town of Ayer Conservation Commission

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

Minutes for 2/14/2019

- Graphic designer Kim Becker provided two options for new signage.
 - ConCom members were in unanimous agreement on the preferable option, but without design flourishes, and with pre-cut holes for mounting on posts.
- In the near future, CA anticipated that at least 34 round signs will be needed to meet OOC requirements for lots in Pingry Hill and also at 231 Snake Hill Road.
 - CA will see what the cost of the signs will be, but it was thought that ConCom should initially order at least 100.
 - Developers will be required to reimburse ConCom for the cost of the signs, though it was also considered whether a modest handling fee should be added.
- ConCom letter in support of DPW application for Municipal Vulnerability Preparedness state grant
 - The draft letter, prepared by CA and JG, was reviewed.
 - BT moved to sign the letter of support and submit it; JS 2nd.
 - Motion approved unanimously.
- North County Land Trust Strategic Conservation Planning Meeting
 - CA attended this meeting recently and is continuing efforts to solidify networking connections.
- Robert Houde Eagle Scout Bridge
 - On 2/7/2019, the Nashoba Valley Voice published a photo and article documenting Mr. Houde's successful Eagle Scout project on Pine Meadow Conservation Land.
- Lots 7 & 8 Littleton Road (Rte. 2A), Mill Corp. (MassDEP #s 100-0406 and 100-0407)
 - John Boardman, of Places Associates, contacted CA to say that MassDOT (Dept. of Transportation) disapproved the use of a rain garden between lots 7 & 8, possibly because it was in conjunction with a shared driveway.
 - MassDOT wants stormwater captured on the street itself.
 - Mr. Boardman had a preliminary sketch of what DOT would approve, and asked to be on ConCom's next agenda.
 - CA informed him that this looks like it will require Amendments to the OOCs, not a field change.
- Ayer Green Residences
 - The area initially approved by ConCom for Ayer Solar II in 2017 (MassDEP # 100-0403) is now being considered for Massachusetts chapter 40b affordable housing instead.
 - Comments from various departments were requested for the Board of Selectmen meeting on 2/19.
 - CA submitted 4 comments:
 - 1) the area is located within the Petapawag ACEC (Area of Critical Environmental Concern);
 - 2) according to NHESP's new maps, there may be some rare or endangered species in the area;
 - 3) underlying soils in the area include 'Freetown muck', which might be of concern for drainage;
 - 4) altering this landscape from forest to a large area of impervious surface will require that stormwater calculations need to be looked at very carefully.
 - It was added by ConCom members that stormwater flow from a solar panel array, with no significant impervious surface except for the



Town of Ayer Conservation Commission

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

Minutes for 2/14/2019

mounting poles, is a very different thing from the impact of a residential development.

- **Member Updates**

- JG noted that an email was received earlier in the day from Steve Mullaney, of S. J. Mullaney Engineering, Inc., regarding submission of an NOI for 10 Fox Run Drive (Pingry Hill).
 - This parcel had, per Planning Board agreement, been offered to the Town a number of years ago but was not accepted at Town Meeting.
 - Conditions have since changed, with a enforcement settlement between the developer and the EPA resulting in an immediately adjacent parcel on Snake Hill Road (just to the north) going to the Town.
 - Further, the EPA parcel itself immediately abuts the new community dog park on Snake Hill.
 - This means that the 10 Fox Run Drive parcel is no longer an isolated parcel, having connectivity to two additional Town-owned parcels.
 - CA and/or JG will ask Town Manager Pontbriand whether it is possible to bring the question of acceptance of this parcel up before Town Meeting one more time.

- **Executive Session (approximately 10:00 PM)**

- Executive Session pursuant to MGL, Chapter 30A, Section 21A, Exemption #6 (to consider the purchase, exchange, lease or value of real property)
- JG moved to go into Executive Session to consider the purchase, exchange, lease or value of real property, and to reconvene in Open Session for the purpose of adjourning from the regular meeting; BT 2nd.
 - Chair GB stated that to discuss these matters in Open Session would be detrimental to the Town's negotiating strategy.
 - A Roll Call vote was taken: JG Aye; BT Aye; JS Aye; MP Aye; GB Aye.
 - Motion approved unanimously.

[EXECUTIVE SESSION, not recorded for these minutes]

- **10:24 PM – Adjourn Meeting from Executive Session**

- JG moved to close the Executive Session and return to Open Session for the purpose of adjourning from the regular meeting; BT 2nd
- A Roll Call vote was taken: JG Aye; BT Aye; JS Aye; MP Aye; GB Aye.
 - Motion approved unanimously.

- **10:25 PM – Adjourn Meeting**

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

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

2/28/2019

Signature Indicating Approval: _____

Jessica G. Gugino