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TOWN OF AYER

Handwritten signature: Anna Gopalan

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 6/20/2019

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

7:05 PM – Open Meeting

SPECIAL PUBLIC MEETING: Public Input on draft new Wetlands Protection Bylaw

- **Introduction**

- GB opened the Public Meeting with a short Power Point slide presentation:
 - Introduction: Why we need a new bylaw
 - The Wetlands Protection Act (WPA)(MGL ch. 40, stn. 8c) set minimum statewide protection standards for wetlands.
 - Ayer's current bylaw (Article XXVI) merely repeats some of the WPA's standards, adds nothing new, and is therefore functionally useless.
 - GB said the WPA is regarded as a baseline and that the courts look to cities and towns to regulate more strictly.
 - Massachusetts courts have therefore supported the principle that local bylaws must be substantially stricter than the WPA to be valid.
 - On that basis, the courts have tended to uphold such local bylaws when decisions have been appealed (e.g. The Appeals Court in Parkview Electronics Trust, LLC v. Conservation Commission of Winchester, MA [2016]).
 - Resource Area Functions provided by wetlands and their buffer zones
 - Includes flood protection, habitat, recreational and scenic values.
 - What's new in this draft bylaw?
 - Provides clarity regarding what resource areas are to be protected;
 - Adds in a new category of "minor activities" (to be defined in regulations) that don't require Commission review, to ease conditions for simple projects, especially by homeowners;
 - Expands abutter notification from 100 ft. to 300 ft.;
 - Grants the Commission the right to write regulations (to define minor activities, set performance standards, and more).
- GB then opened the meeting to the public for questions and comments.
 - Approximately 17 Ayer residents were in attendance.

- **Questions and Comments**

- John Cadigan commended the draft and asked what resources were used to draft the bylaw.
 - JG said the Mass. Association of Conservation Commission's (MACC) model bylaw was used as a basis, along with looking at a variety of other town bylaws, especially Groton's and Harvard's.



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- ConCom members were also able to draw on suggestions from MACC conference workshops they had attended.
- Jonathan Kranz pointed to a diagram illustration in the bylaw, showing the importance of the buffer zone, and asked if more was being done to protect the buffer zone.
 - JG said one of the things that was new in this bylaw draft was the inclusion of the buffer zone, vernal pools, and intermittent streams as resource areas for protection under the jurisdiction of ConCom.
- Mr. Cadigan asked if the paragraph detailing an exemption for agricultural activities was necessary.
 - This exemption is granted in the WPA and is included in the MACC model bylaw.
 - Ayer has such limited agricultural activity that keeping the exemption will not put resource areas at any greater risk.
- Mr. Cadigan asked if Jurisdiction Section 2C wasn't "too reactive" in its wording.
 - JG explained that it had to be reactive as it dealt with activities in non-jurisdictional areas that are not subject to permitting requirements.
 - The paragraph states that if such activities were to create issues in nearby jurisdictional resource areas – as in, say, the flow of construction sediment from nonjurisdictional land onto jurisdictional land – then the Commission would be entitled to respond with some sort of enforcement to address the situation.
- Marion Stoddart, now an Ayer resident and whose activism led to the clean up of the Nashua River and the founding of the Nashua River Watershed Association, spoke in support of the bylaw draft.
 - From her own experience, she noted that it is much easier, and cheaper, to protect a resource than to restore it.
 - In addition, she emphasized the point underscored in the bylaw draft, that all of Ayer's drinking water comes from its local wetland resources.
 - She also appreciated the collegial and regional approach, via coordination with other boards as well as with other towns where land falls within the 300 ft. abutter notification zone.
 - This collegiality is of importance in working to protect, say, important wildlife corridors that cross town lines.
- Perry Goldstein asked for the Commission's views on the removal of invasive species along the shores of Ayer ponds.
 - GB said ConCom is in favor of such removal and JG added that the Commission intended to provide more detail on this and other appropriate pond behavior in its regulations, if the bylaw is approved.
- Ken Diskin addressed Section 3, Presumptions.
 - 3B details a stricter standard (i.e. applicants proving by a preponderance of evidence that there is no practicable alternative) for activities proposed in the Riverfront area.
 - Couldn't this same standard be applied in 3A as well, for activities in the buffer zone?
 - MP and JG both responded.
 - Given how many residential properties fall partly or even entirely within the buffer zone, ConCom does not want to place such an unduly high standard that residents might instead seek to sneak in work rather than consult with work with the Commission.
 - ConCom is also interested in applying more stringent standards to previously untouched resource areas than to already disturbed and in-use land.

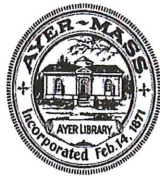


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- Mr. Cadigan suggested including reference in the bylaw to federal regulations, such as those put forth by the Army Corps of Engineers or for the protection of rare and endangered species.
 - CA said ConCom only rarely has to deal with a federal wetland or a project requiring Army Corps certification.
 - None of that would be cut out or superseded by the new bylaw.
 - In addition, state entities such as Fish & Wildlife and the Natural Heritage & Endangered Species Program (NHESP) are both deeply entwined within the permitting process where other state standards, outside of the WPA, also apply.
 - Mr. Diskin suggested the inclusion of a reference to the Town's stormwater regulations and bylaw.
 - Listening to these suggestions, ConCom will look into including a paragraph referencing state and federal standards as well as tying into other Town bylaws.
- JG brought up the issue of site inspections (Section 11, Enforcement; Site Inspections).
 - In 2017, when ConCom last worked on drafting a new bylaw, a number of residents had expressed concern over the possibility a Commission would infringe on residents' rights by entering onto private property without permission.
 - The WPA itself simply states that a Commission, its agents, officers, employees, etc. "may enter upon privately owned land for the purpose of performing their duties..."
 - ConCom's draft bylaw inserts a higher standard on behalf of residents' constitutional rights of privacy, stating that such entrance would be at reasonable times and "with the prior notification and consent of the property owner."
 - If such consent wasn't given and there were legitimate and important grounds for the need to enter onto private property, the Commission could seek an administrative search warrant through the courts.
- CA showed additional Power Point slides detailing how wetlands work and their benefits.
 - Wetlands provide a vast number of "ecosystem services" that have an economic value for communities as well: floodwater storage and regulation, carbon storage, water quality, cultural benefits (scenic, recreation) and so forth.
 - Mr. Cadigan agreed, saying wetlands were worthy of protection, and noted the catastrophic effects of flooding in areas like Texas, where wetlands were not preserved.
 - Mr. Kranz applauded the bylaw effort and observed that there is not much developable land left in Ayer that does not touch on wetlands.
- Rebecca Jones asked if the bylaw would help address protection of the aquifer from the railroad.
 - A number of years ago, the Town was in a dispute – which it lost – with Pan Am Railroad regarding its activities over the Spectacle Pond Aquifer.
 - From the audience, Julia Corenzwit, of PACE (People of Ayer Concerned about the Environment), correctly responded that railroad enterprises were protected under federal transportation and commerce law.
 - A local bylaw unfortunately cannot challenge or supersede that.
- David Bodurtha asked for the timeline of how the bylaw draft would now proceed.
 - GB addressed this, saying that ConCom's next two meetings (June 27 and July 11) would reserve time on the agenda for additional public comment and input.
 - Comments can also be left on ConCom's bylaw page on the website, or addressed to CA Crystoff by email, phone, or visit.
 - Comments can be received until mid-August.
 - The Commission will produce a final draft document by August 15 for submission to Town Counsel.



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- An additional informational public meeting will then be held on October 10 to review any changes made by Town Counsel.
- On October 28, the bylaw will be presented to Fall Town Meeting for a vote to adopt.
- **7:55 PM – Adjourn Meeting**
 - There being no further questions or comments, GB asked for a motion to adjourn.
 - BT so moved; JS 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

6/27/2019

Signature Indicating Approval: _____

Jessica G. Gugino