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TOWN OF AYER

TOWN CLERK

1:52pm lf

## **Town of Ayer Conservation Commission**

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

Minutes for 9/26/2019

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**

- **Confirmation of Agenda**

- The Request for Determination of Applicability (RDA) discussion with John Delcore was postponed to ConCom's next meeting on 10/10.
- BT moved to confirm the agenda as amended; JS 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Approval of Meeting Minutes**

- BT moved to accept the minutes for 8/22/2019 as written; JS 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Announcements**

- The Mass. Association of Conservation Commissions (MACC) is holding its one-day fall conference on Saturday, October 19, at Devens Conference Center.

- **Public Hearing (cont'd.): Notice of Intent (NOI) – John Carroll Reserve subdivision, 54 & 56 Littleton Road, LR Properties, LLC, MassDEP #100-0436**

- Assessor's Map 36, Parcels 2, 21, 22 & 24, Littleton Road
- Nick Pauling, of Goldsmith, Prest & Ringwall (GPR), and Chase Bernier, of BSC Group, were present.
  - Cal Goldsmith, also of GPR, was in the audience.
- The original application to ConCom and the Planning Board was for an Open Space Residential Development (OSRD, Section 10.1 Zoning Bylaw) subdivision with 20 house lots, with the OSRD requirement that a minimum of 50% be designated open space.
  - Since the last Public Hearing with ConCom on 7/11, the outside peer review was done by BSC Group, with Mr. Bernier doing the Wetland Resources review for ConCom, and Katie Moniz doing the Stormwater Management Review for the Planning Board.
- At GB's direction, the Commission heard from Ecological Scientist Bernier first.
- Mr. Bernier went through the 32 comments detailed in his 8/23/2019 letter to ConCom and the Planning Board.
  - His site walk took place in early August and the 32 comments were based on the initial NOI and plans, not subsequent revisions.
  - Among the highlights:
    - Issues regarding legend errors in the application/plan, scale of the plans (1" to 50' where 1" to 40' is required), lack of contact information, unrevised parcel ownership listings, deed listings, references to Acton when Ayer is meant, etc. were noted.



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- No tree protection plan was provided (#8);
  - The current Site Layout & Utilities Plan does not accurately depict the proposed drainage channel as part of the stormwater system and should be revised accordingly (#10);
  - Per ConCom's request on 7/11 and confirmation from MassDEP, the filing fee category was amended from Category 2a to Category 3a (#s 16 and 17);
  - While the application lists the provision of methodology information such as BVW (Bordering Vegetated Wetlands) data forms, used for resource area delineation, that information wasn't actually provided in the application and BSC Group recommends its inclusion (#19);
  - BSC Group recommends the application include more detail as to the breakdown of the open space area (i.e. what portions are proposed for stormwater basins and drainage channel), and confirming that the 50% requirement is met without the inclusion of the land to be used for stormwater structures (#s 21 and 22);
  - The narrative should be revised to include descriptions of on-site existing conditions as well as proposed impacts to wetland resource areas and associated buffer zones as well as more information on proposed stormwater management areas, including construction, vegetation and maintenance detail (#s 23 and 24);
  - Performance standards under the Wetland Protection Act are not discussed in the narrative (#25);
  - BSC Group recommends more detail be provided on construction sequencing, and that it be designed to minimize areas of exposed soil during construction (#26);
  - The application does not include depiction of all wetland resources within 200-feet of the proposed work, as required by Ayer's NOI checklist, and BSC Group notes a BVW area off-site and west of the project area, and whose eastern 100 ft. buffer zone line is very close to the western boundary of the project (#28);
  - A detailed landscaping plan should be included (#30);
  - Per the Conservation Analysis done by ConCom last winter, BSC Group recommends more information on wildlife and habitat, as well as information as to what metrics the applicant used to determine the high, medium, and low conservation priority areas (#s 31 and 32).
- ConCom then heard from Mr. Pauling, with GPR's responses to various of the BSC comments.
    - The number of house lots has been reduced from 20 to 19, and an attenuation (wet) basin to the northeast has now been removed entirely.
    - A drainage swale leading to the sediment forebay and infiltration basin, to the northwest, has been extended by 15 ft.
    - As a result, the amount of open space that does not include stormwater structures is approximately 55.4%
    - The closest distance of work to the wetland line is 65 ft., near flag 12.
    - Changes made via the Planning Board include the addition of a catchbasin, a sidewalk to the western side, and more street trees (the Planning Board denied a waiver to reduce trees).
    - At its 9/24 meeting, the Planning Board voted to approve the subdivision site plan pending a few outstanding items.
    - A tree protection plan (#8) was included in the site plan approved by the Planning Board.



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- Regarding the change to the drainage swale, CA asked how the wetlands downgradient might be affected.
  - Mr. Bernier said there was not as much concern regarding impact if outside the first 50 ft. in the buffer zone.
- Mr. Bernier also said that his comments were based on the initial NOI and plans, not on subsequent revisions made by GPR – which would be outside the scope of work covered by the current consultant contract.
  - Some discussion followed as to whether ConCom was interested in having the applicant spend another \$4400 in consultant fees to have Mr. Bernier respond to GPR revisions and comments.
  - BT and others on the Commission felt they did not need additional input from BSC Group, just time to review the comments and changes in more depth.
- Regarding the question of who will hold the Conservation Restriction (CR) on the open space, CA recommended that ConCom not hold it, nor was the Planning Board interested in holding it.
  - North County Land Trust said they would not agree to hold the CR because of the number of backyards bordering the open space, the lack of public access except over a driveway easement, and the difficulty in monitoring.
- The issue of ConCom being provided with an updated narrative and NOI, per BSC's recommendation, was discussed.
  - CA noted that the issuance of a Certificate of Compliance (COC) is based on referencing the NOI and OOC, and if the NOI on file is inaccurate, this creates problems.
  - Mr. Goldsmith, from the audience, objected as additional costs to clients.
- Similarly, Mr. Pauling questioned the necessity of providing the missing data forms (comment #19) as just generating more paper.
  - Mr. Bernier said the data forms help determine if a wetland line is correct, and if the Commission asks for them, they should be provided.
    - Especially if the application indicates they were provided.
- BT moved to continue the Public Hearing to 10/10 while ConCom members review the new information; JS 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Discussion: Enforcement Order (EO) – 0 Central Avenue, John Hillier, Central Avenue Compassionate Care**
  - John Hillier was present, along with Kyle Burchard, of GPR.
  - The EO was issued for the unpermitted clearing of the lot acquired by Mr. Hillier and adjacent to Compassionate Care, including disturbance to the wetland drainage system that crosses the lot.
    - Since the EO was issued in February, Mr. Hillier has had wetland scientists survey and flag the area, identifying wetland soils and plants, as well as having had erosion controls installed.
    - Mr. Hillier continues to describe the area as just a drainage ditch largely absorbing street flow from Central Avenue, the wetlands as having occurred by “happenstance,” and the wetland area as “low quality” and “low value.”
      - JG provided Mr. Burchard with a copy of *The Public Spirit* article (Sept. 18, 1947), discovered by CA, describing the unnamed ‘brook of the week’ – the very same wetland system originating from the hill on Washington Street, flowing downhill under Highland and Central avenues, crossing this lot and turning east



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under the railroad tracks and Groton-Harvard Road before draining into Balch Pond.

- Mr. Hillier said he wanted to improve the lot to make it a usable urban lot.
    - He indicated he would like to install a culvert to carry the water across the property (from the headwall on the west where the water enters from under Central Avenue, to the culvert pipe that opens at the eastern side of the lot to carry water under the railroad tracks.
    - He said he'd like to replace the flagged wetlands on the lot elsewhere in town, either through replicated wetlands or comparable services/goods for the Town of Ayer.
      - He did ask if replication could take place outside of Ayer and was swiftly told no.
  - GB asked Mr. Hillier why the trees on the steep slope on the south edge of the lot, running up to the East Main Street overpass, were cleared, given that slope is not usable for any other purpose.
    - JG repeated that question, noting that driving east through the center of town, the removal of those trees created an unsightly gap and did not help the town in any way.
    - JG also reiterated that the EO Mr. Hillier was given by ConCom in 2013, and subsequent discussion on 3/14/2013, clearly identified the 'ditch' as part of an intermittent stream/wetland system, and that Mr. Hillier was clearly advised then that, in order to do work on the lot, he had to submit an NOI with an engineered plan.
      - Instead, Mr. Hillier went ahead and cleared the lot this past year without engaging ConCom in the process, leading to the issuance of a second EO in February of this year, 2019.
  - Moving forward, BT asked Mr. Hillier what his plan was.
    - If he is allowed to pipe the water via culvert across his property, Mr. Hillier said he was hoping there was another site in town where he could do mitigation of the lost wetland area, or where he could offer something else useful to the town.
    - GB said ConCom might be able to identify some problem areas elsewhere in town but can't be involved in developing a plan.
    - Mr. Burchard said he had a plan in mind for the parcel, though Mr. Hillier had not made any final decisions as to how he wants to use this parcel.
      - Submission of a plan, however, is dependent on coming up with a solution for how to mitigate the wetlands and for that they would appreciate guidance from ConCom.
    - CA will look into state regulations regarding piping an intermittent stream as well as the impact of essentially putting a stream in a pipe.
    - As for continuing to park cars in the cleared area on this lot, GB said that was fine for now but that no new clearing can be done at present.
    - Resident Dave Bodurtha said that replication elsewhere should be at a more than 1:1 ratio, especially given that permissions are being sought after the fact, in the wake of clear violations.
  - ConCom will await Mr. Hillier's submission of a plan in the near future as well as CA's research into what the State will allow in terms of piping an intermittent stream.
- **Public Hearing: NOI – Off Shaker Road – “Pond View,” Open Space Residential Development, Aho Development Corp., MassDEP # 100-0437**
    - Assessor's Map 36, Parcel 18, and Map 43, Parcel 3
    - John Boardman, of Places Associates, was present on behalf of the applicant.



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- As background, ConCom issued an ORAD (Order of Resource Area Delineation) on 10/11/2018 for these parcels.
  - The project was then submitted to the Planning Board as an 'Open Space Residential Development' (OSRD) subdivision.
  - On 2/14/2019, ConCom finalized its Conservation Analysis of these parcels, for submission to the Planning Board as part of the OSRD process.
- The current plan proposes 23 individual lots.
  - The Planning Board issued a Preliminary Subdivision Approval that required the development to maximize the distance between Shaker Mill Pond and house lots as much as possible, as well as preserve a 'glacial erratic' boulder outcrop and provide an access path to it.
  - The revised plans showed most of the development is located outside of the 100 ft. buffer zone to the pond, as recommended, except for the entrance area off Shaker Road which is unavoidable.
  - In addition, a few house lots are in the buffer zone to an isolated wetland area south of the pond.
    - This area likely developed into a wetland after gravel or sand mining many decades ago, with the resulting manmade pit left to develop wetland features.
    - The buffer zone to this area was considered by ConCom to have less ecological value than the buffer zone to Shaker Mill Pond, through which Bennett's Brook flows.
    - In calculating the OSRD's minimum required 50% set-aside of open space, the pond buffer zone was therefore given greater priority than the isolated wetland.
- JG asked for the square footage total for buffer zone disturbance for this project.
  - Mr. Boardman said he would provide that figure.
- No stormwater basins will be located in the open space or buffer zone areas.
- A number of abutters were present and offered comments.
  - Kathleen Shields, of 157 Shaker Road, was concerned about how water and sewer would be brought in to the development from underneath Shaker Road.
    - Ms. Shields was concerned about the impact on the area hydrology as well as impact on the environment and wildlife, especially given the proximity to Bennett's Brook and Shaker Mill Pond.
      - Recurrent flooding in this area has been a problem, with the Fire Department having had to pump out her well in the past.
    - She also expressed concern over the viability of the proposed turn access from Shaker Road into the development.
      - Eighteen-wheelers routinely make deliveries to the golf course along an existing gravel access road.
      - The gravel road will be replaced with the subdivision's road, and will maintain required access to the golf course.
    - Ms. Shields also asked where snow will be plowed, given that currently both Ayer and Harvard have been plowing snow into the entry corner of the proposed subdivision.
  - Daniel and Melissa Tracey, of 149 Shaker Road, Harvard, were concerned about the grade to Shaker Mill Pond and the impact of increased runoff from 23 homes and yards on a sensitive pond/brook area.



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- The Conservation Analysis did not include wetland impact information for the proposed project.
  - They were also concerned about the running of utilities underneath Shaker Road.
  - Ms. Tracey recommended an independent evaluation of the impact of this much activity on the wetlands.
  - A third abutter (name not recorded) said Shaker Road was already being undermined from existing wet conditions, when the groundwater is high.
  - Resident Dave Bodurtha asked if the project's scope encompassed a former culvert in the brook near the Shaker Road entrance.
    - The DPW removed the failing culvert several years ago but continues to clear beaver activity.
      - CA said the DPW had recently gotten an emergency beaver permit for this purpose.
      - Ownership of that land is uncertain.
    - Mr. Boardman said the project did not propose any work in that wetland/culvert area.
  - As for the water-sewer service, Mr. Boardman said the DPW preferred the route underneath Shaker Road.
    - While the DPW issues permits for utility connections and working in a public way, Places Associates will also be preparing a separate NOI for the water/sewer work where it is located in the buffer zone, for ConCom review and permitting.
    - He expected that NOI to be prepared in the next 2-3 weeks.
  - GB said ConCom would prefer to do a site walk for both NOIs (the subdivision as well as the water/sewer work) at the same time.
    - A combined site walk was scheduled for Saturday, October 26, at 8 a.m.
  - BT moved to continue the Public Hearing to 11/7/2019; JS 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Meeting (cont'd.): Request for Determination of Applicability (RDA) – 8 Standish Avenue, Ronald Krieser**
  - Assessor's Map 15, Parcel 46
  - A Negative Determination of Applicability (DOA) having been voted on 8/22, ConCom members signed the DOA.
- **Public Meeting (cont'd.): RDA – Old Towne Village, Old Towne Road and Daybrook Drive, Massachusetts Electric Company (MECO)**
  - Assessor's Map 35, Parcel 1A-1/2A
  - A Negative Determination of Applicability (DOA) having been voted on 8/22, ConCom members signed the DOA.
- **[A continued RDA for Reclamation work on Route 2A was removed from discussion as the DOA had previously been signed on 8/22.]**
- **Request for Certificate of Compliance (COC) – 31 Pingry Way, Mariel Rheingold, Esq., MassDEP # 100-0130**
  - Assessor's Map 37, Parcel 40



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- CA did a site visit and found no issues of concern.
- BT moved to issue a Partial COC for 100-0130; JS 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Discussion and Formal Approval of Town Meeting Warrant Article – Updated Ayer Wetlands Bylaw**
  - JG updated the bylaw draft to include all of Town Counsel's edits.
  - BT moved that ConCom approve the revised draft for submission to the Board of Selectmen (BOS) and inclusion in the Warrant for Fall Town Meeting (10/28/2019); JS 2<sup>nd</sup>.
    - Motion approved unanimously.
  - JG will be making a short presentation on the bylaw to the BOS on Tuesday, 10/1, and circulated a draft for CA to turn into PowerPoint slides.
    - ConCom members have until Tuesday noon to get comments to CA on slide draft.
- **Conservation Commission Office Updates**
  - ConCom Resignation
    - BT will be resigning from the Commission, effective at the end of November.
  - Mosquito spraying
    - CA received a complaint from a resident concerned about mosquito spraying being done by her neighbor as well as the State.
      - CA forwarded to both the Ayer and Nashoba Boards of Health.
  - Rosewood Avenue Extension
    - CA was finally able to successfully contact Mike Lotti, of Industria Engineering, regarding the replication area (or lack thereof).
      - She'll be forwarding Mr. Lotti various photos showing the changing levels of water in the brook over the course of the last few months.
      - The changing water levels make it uncertain whether the originally proposed replication area would be likely to succeed.
- **10:18 PM – Adjourn Meeting**
  - BT moved to adjourn; JS 2<sup>nd</sup>.
    - Motion approved unanimously.

**Minutes Recorded and Submitted by Jessica G. Gugino, Clerk**

**Date Minutes Approved by Conservation Commission:** 10/10/2019

**Signature Indicating Approval:** Jessica G. Gugino