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Town of Ayer Conservation Commission TOWN OF AYER

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 10/10/2019

Dan Popeland

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

7:09 PM – Open Meeting

- **Confirmation of Agenda**

- A Request for Determination of Applicability (RDA) for reclamation work on Route 2A was removed, the DOA having been signed on 8/22.
- BT moved to confirm the agenda as amended; JS 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- BT moved to accept the minutes for 9/26/2019 as written; JS 2nd.
 - Motion approved unanimously.

- **Announcements**

- The Nashua River Watershed Association (NRWA) is holding its 50th anniversary celebration on Saturday, Nov. 7, at Devens -- \$25/person, RSVP to NRWA's website

- **Discussion: Ayer Wetlands Bylaw, Fall Town Meeting Warrant Article 7**

- JG gave a short presentation on the updated version of the local bylaw, to replace existing General Bylaw XXVI (26).
- Wetlands and buffer zones provide free functions and services that vitally protect our shared environment and community:
 - water and groundwater quality preservation;
 - ALL of Ayer's drinking water, public and private, comes from local source waters;
 - protection and resilience from flood, drought, and storm damage;
 - pollution filtering and control;
 - wildlife habitat: fisheries, animals, plants;
 - recreation and aesthetic values.
- The cost to a community is much higher to try to reclaim or rehabilitate damaged resources than it is to provide better protection from the outset.
 - In addition, JG noted that such protection indirectly preserves the economic value of land and resources, which in turn likely impacts real estate values for local property owners.
- ConCom's goal is to strengthen the local bylaw to specifically address local resources and interests and provide better protection.
 - With Ayer having the highest development rate of towns in Massachusetts, and what's left of available land often located in more sensitive areas with wetlands and buffer zones, ConCom feels there is a need for a local bylaw that does more than mimic the minimum statewide standards of the Wetland Protection Act.
- Key additions include:
 - buffer zones, vernal pools, and intermittent streams are given increased protection;
 - formalized coordination with other town boards and the ability to write regulations;
 - the abutter notification zone is expanded from 100 ft. to 300 ft.;



Town of Ayer Conservation Commission

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

Minutes for **10/10/2019**

- a category of 'minor activities' is added to cover simpler homeowner projects that might not need ConCom review;
 - a provision to require bonds on large developments was added to ensure developers complete projects as permitted rather than leaving unfinished items to be paid for by homeowners or the town.
 - The updated bylaw does not:
 - impact existing conditions or structures;
 - allow the Commission to enter private property without prior notification and consent;
 - prevent new projects or development – just ensure they are done properly, with as much avoidance, minimization, or mitigation of wetland/buffer zone impacts;
 - prevent appeal challenges to Commission decisions.
 - Resident Laurie Nehring asked if the 14-day period for coordination with other town boards (Section 5D) was sufficient time to secure feedback.
 - GB said the Commission has a statutory requirement to open public hearings within 21 days of submission of an application.
 - If additional information is needed, ConCom can always continue a public hearing.
 - In addition, since the Commission schedules site walks for every Notice of Intent application, the public hearing process extends over at least two meetings before a final decision is rendered.
 - Ms. Nehring also asked for a better definition of intermittent streams, which CA will provide.
- **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 was present on behalf of the applicant.
 - Previously discussed on 9/26, at which time the outside consultant, Chase Bernier, of BSC Group, presented his findings.
 - The Hearing was continued to 10/10 to enable commissioners to review the BSC Group comments and GPR responses more thoroughly.
 - Mr. Pauling reviewed the changes made to the proposed Open Space Residential Development (OSRD) subdivision since the application was first submitted back in May, and following the stormwater and wetlands consultant/peer reviews performed by two BSC Group scientists.
 - A wet/attenuation basin had been planned in the northeast section of the development to absorb backyard runoff.
 - The peer review persuaded GPR that the trade-off between the proposed disturbance versus the benefits was not worth it.
 - As a result, GPR removed the attenuation basin.
 - The OSRD subdivision was also reduced from 20 to 19 proposed lots.
 - This still leaves 55.4% of open space, meeting the 50% minimum required by the OSRD Zoning Bylaw (Section 10.1).
 - To compensate for the loss of the basin, GPR expanded the forebay and infiltration basin to the northwest of the subdivision lots, and extended the drainage swale leading there by approximately 15 ft.
 - Changes made following hearings with the Planning Board include:
 - the entire paving of the cul-de-sac, per DPW's request;
 - the addition of a sidewalk;
 - changed road design to that of a crowned road, with an added catchbasin;



Town of Ayer Conservation Commission

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

Minutes for 10/10/2019

- street trees, per Planning Board denial of a requested waiver;
- drainage pipes at a minimum of 15", per Planning Board denial of a requested waiver.
- The total work in the buffer zone amounts to approximately 11,000 sq. ft. in a project site that is 9.88 acres in size.
- Following discussion at ConCom's 9/26 meeting, GPR submitted a new comment letter, dated Oct. 1, as well as a revised Notice of Intent.
 - Mr. Pauling said GPR still disagreed with the Commission's request for revisions to the NOI but thought it would be more costly to keep arguing the point.
 - Consequently, a revised NOI and narrative have been submitted to ConCom.
- GB asked Mr. Pauling to focus next on those points where GPR disagreed with BSC Group recommendations.
 - GPR disagrees with BSC Group's preference for the use of compost filter tubes rather than straw wattles backed by silt fence (BSC Group Comment #4).
 - Mr. Pauling said there is no regulatory requirement mandating the use of compost filter tubes.
 - In addition, the tubes are more costly, require specialized equipment and a larger team to install, and break down more quickly than wattles.
 - Left in the sun, the compost filter tubes last at best 3 months.
 - Per query from BT, Mr. Pauling said GPR would be willing to upgrade the straw wattles from 9" to 12."
 - Regarding erosion controls (BSC Group Comment #14), Mr. Pauling said GPR proposes full erosion controls on the downgradient of any site disturbances.
 - They feel that enclosing the balance of the site that is upgradient with construction safety/snow fencing, to demarcate the Limit of Work (LOW), is sufficient as erosion will not be an issue there.
 - Per MP's question, Mr. Pauling said GPR has now provided the most current information from the Assessor's Office re property ownership (BSC Comment #5).
 - Regarding BSC Comment #23, data sheets have been included in the revised narrative.
 - As for the unknown extent of the buffer zone on the property to the west of this parcel (BSC Comment #28), CA said that that wetland and buffer zone is located on the other side of a fence, on private property owned by Pepsi, and that ConCom could not confirm.
 - Mr. Pauling said that, looking at maps, the location of the estimated wetland and buffer zone appears to still provide an additional 20 ft. between the end of the buffer zone and this project.
 - In any case, that wetland/buffer system would still be protected by the project's erosion controls.
 - MP asked about proposed grading on the site, since Mr. Pauling described it as a "fill site" as elevations have to be raised in certain portions.
 - MP and CA both asked about the extent of exposed dirt during construction.
 - Mr. Pauling said the footprint of proposed disturbance is just under 5 acres, below the NPDES (National Pollutant Discharge Elimination System) review permitting threshold.
 - DPW acceptance of maintenance of stormwater structures is still undergoing discussion.
 - CA said the narrative still did not address how the performance standards and work in the buffer zone would protect the wetlands.



Town of Ayer Conservation Commission

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

Minutes for 10/10/2019

- Mr. Pauling said that out of a 9-10 acre parcel, only a quarter-acre of disturbance in the buffer zone is proposed.
 - In addition, that disturbance is solely to construct the stormwater forebay and basin that will, in turn, protect the wetlands from runoff from the completed subdivision.
 - CA noted that that concise point should have been included in the narrative.
 - MP asked how successful the subdivision will be in saving some of the larger trees.
 - Mr. Pauling said efforts will be made around the Limit of Clearing to save trees, but noted that areas where fill will be brought in will make it difficult as building up the dirt level around a tree tends to kill it.
 - Resident Dave Bodurtha asked if any existing Conservation Restrictions (CRs) would be affected by the project.
 - Resident Laurie Nehring asked who will own the OSRD mandated open space – the town? A homeowner’s association?
 - GB said the disposition of the open space is in discussion with the Town Manager.
 - There being no further discussion, BT moved to approve the NOI and begin drafting an Order of Conditions (OOC); JS 2nd.
 - Motion approved unanimously.
 - BT moved to continue the Public Hearing to 10/24; JS 2nd.
 - Motion approved unanimously.
- **Request for Determination of Applicability (RDA) – 103 Oak Ridge Drive, John Delcore**
 - Assessor’s Map 28, Parcel 3
 - Mr. Delcore was present to describe his request to take down 2 hazard trees in his side yard, within the buffer zone to Flannagan Pond.
 - The hemlock trees are afflicted with blight and threaten a nearby shed.
 - Mr. Delcore expressed his willingness to replace the trees with new trees further away.
 - CA did a site visit and saw no issues nor need for conditions.
 - BT moved to issue a Negative Determination of Applicability (DOA); JS 2nd.
 - Motion approved unanimously.
 - Mr. Delcore noted that CA had been “hugely helpful” with the process for him.
- **Public Hearing: NOI – 20 Hibiscus Lane, David W. Badger, Lily Pad Trust, MassDEP # 100-TBD**
 - Assessor’s Map 7, Parcel 29
 - Neil Gorman, of David E. Ross Associates, was present on behalf of the applicant.
 - The project proposes construction of a single-family house, garage, and paved driveway, with associated grading and utilities.
 - Most of the project site is within the 100 ft. buffer zone to Long Pond.
 - The parcel is 84,090 sq. ft. in size, and has a peninsular shape, with Long Pond bordering to the south, west and northwest.
 - It is vacant and un-built Lot #7 as noted on the January 22, 1996 definitive subdivision plan for Pond View Estates.
 - Currently the parcel is wooded, with small shrubs and sparse undergrowth as well.
 - A drainage easement and detention basin, for the subdivision, is located on the southeast corner of the lot.
 - The basin drains to Long Pond.



Town of Ayer Conservation Commission

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

Minutes for **10/10/2019**

- Mr. Gorman will confirm that the basin is maintained by the Town, but assumed so since the Town accepted the road and holds the easement.
- The project is within a Natural Heritage & Endangered Species Program (NHESP) rare and endangered species area and the Petapawag ACEC (Area of Critical Environmental Concern).
 - A review letter, 9/25/2019, from the Division of Fisheries & Wildlife indicated the following findings:
 - per NHESP, the Division determined that the project “will not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species;”
 - per Mass. Endangered Species Act (MESA) review, the proposed project “will not result in a prohibited Take of state-listed rare species.”
- From the edge of Hibiscus Lane, the property slopes up to a high point on the northern property line, then gently slopes down to Long Pond.
 - The NOI proposes placement of the house and garage within a “saddle point” overlooking the pond.
 - Some fill would be needed at the front of the house to hide the foundation.
 - The back of the house would be walk-out.
 - The driveway will be within the easement area, furthest from the wetland resource area.
 - It would be paved, approximately 300 ft. in length, and have a 12% slope before leveling off.
 - Grading for the site would be done to direct stormwater flow toward the detention basin.
 - The house would be tied in to town water and sewer.
 - Approximately 15,000 sq. ft. of disturbance is proposed within the buffer zone.
- Abutter Joseph Harte, of 18 Hibiscus Lane, expressed dismay at the proposed disturbance to the property that includes numerous 75-ft. tall trees.
 - He suggested consideration of moving the house further to the north on the property, to better protect the peninsula and cove.
- Kelly Harte, of the same address, said she respects the right of anyone to use a buildable piece of land, but asked that its development respect the pond and protect as many trees as possible.
 - She also noted that the May 2016 pond report had singled out the unusually pristine condition of Long Pond.
 - (See ConCom on Town website, “Biological Survey, Assessment and Management Recommendations for Ayer’s Ponds,” Geosyntec Consultants.)
- Resident Dave Bodurtha criticized the 300 ft. paved driveway for the amount of uninterrupted impervious surface and suggested it be reduced.
- A site walk was scheduled for 9 a.m. on Saturday, 10/26.
 - GB asked that the center line of the driveway and the house corners be staked.
- BT moved to continue the Public Hearing to 11/7; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing: NOI – Wright Road, Lot 5A, Anthony McGuane, MassDEP # 100-TBD**
 - Assessor’s Map 15, Parcel 68
 - Neil Gorman, of David E. Ross Associates, was present along with applicant Anthony McGuane.
 - The current property owner, Joseph McGuane, was in the audience.
 - Joe McGuane’s house is downhill (west) of Lot 5A and abuts Sandy Pond.
 - The lot is ANR – Approval Not Required by the Planning Board, as it would front an existing roadway, Wright Road.

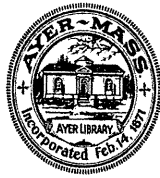


Town of Ayer Conservation Commission

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

Minutes for 10/10/2019

- Its northern border also runs alongside Sandy Way.
- The lot line along the western property line is in the process of being changed with the Planning Board, with landed to be added from Joe McGuane in order to meet Zoning requirements.
- The existing state of the lot is wooded and undeveloped, with mature oak trees, white pines, maple saplings, and underbrush.
 - The lot has a 12-20% slope running downhill from the east to the west.
 - This slope runs further uphill to the east from Wright Road, and slopes further downhill to the west, beyond this lot, to Sandy Pond.
 - Almost the entirety of the approximately 13,681 sq. ft. lot is within the buffer zone to vegetated wetlands and an intermittent stream running east to west parallel to the northern border of the property.
- The NOI proposes construction of a single-family house, garage, driveway, and screened porch.
 - The nearest edge of the house to the wetlands would be approximately 30 ft.
 - Two boulder or interlocking concrete block retaining walls are proposed on the north and on the south sides of the proposed house.
 - The longer northern retaining wall would be just outside 25 ft. buffer zone line.
 - In addition, a recharge trench is proposed along a portion of the northern retaining wall to collect and recharge stormwater run-off from the driveway.
 - The amount of disturbance is well under the 40,000 sq. ft. threshold that triggers a NPDES permit requirement.
 - A foundation drain would outlet toward the rear property line and into a rip-rap apron, to slow the velocity of run-off
 - A 1500 sq. ft. mitigation area is proposed to the south and west. (Note: NOI narrative mistakenly says 'east')
- MP asked about using a rain garden rather than a recharge trench for run-off filtering.
 - Mr. Gorman said rain gardens require more complicated maintenance from homeowners than is likely to be successful.
 - He also said they are unlikely to succeed unless in an already wet area.
 - CA said the recharge trench would be open stone and that would require annual maintenance as well to clear debris.
 - Nevertheless, Mr. Gorman said the trench would be easier for a homeowner to maintain than a rain garden.
- BT asked if calculations had been done about the impact of clearing and the placing of a foundation on groundwater flow rates.
 - Mr. Gorman said those calculations are triggered for larger projects of 4 or more house constructions.
- Scott Murray, of Sandy Way, lives downhill of the project and had two concerns.
 - First, he noted that Sandy Pond is gradually eutrophying and that a substantial amount of silt comes down the intermittent stream/wetland system into the pond.
 - Would this accelerate the run-off into the pond or would it add other mitigation?
 - Mr. Gorman said that right now stormwater run-off, especially from Wright Road, is going into the stream without any treatment at all.
 - The project, with the proposed retaining wall and recharge trench, would not be expected to increase the run-off of silt.

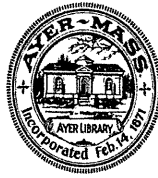


Town of Ayer Conservation Commission

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

Minutes for 10/10/2019

- Second, he asked about the potential impact of the project on his own shallow-dug well which is just 40 ft. off the edge of the stream.
 - How would the project impact his drinking water?
 - A site walk was proposed for 10 a.m. on Saturday, 10/26.
 - GB asked that the house corners be staked, along with the recharge trench, retaining walls, and lot corners.
 - JG asked that the major mature trees, outside of the house footprint but proposed to be taken down, be indicated in some manner.
 - BT moved to continue the Public Hearing to 11/7; JS 2nd.
 - Motion approved unanimously.
- **RDA – 5 Mountain View Avenue, Christopher Hill**
 - Assessor's Map 22, Parcel unassigned but at end of Mountain View Avenue, on Sandy Pond
 - Mr. Hill was present.
 - JG recused herself, being a neighbor of Mr. Hill and having helped him prepare the RDA, but remained for the purposes of continuing to record the minutes.
 - Fifty-eight feet from the paved end of Mountain View Avenue, along a deeded right-of-way, is a stone retaining wall with roughly 5 ft. wide stone steps leading down to the beach and the pond.
 - A town sewer manhole is above the retaining wall, which rises approximately 3 ft. 8 in.
 - Mr. Hill described the stairs as treacherous and a hazard.
 - The uneven stones have shifted over time due to sheet flow of stormwater from the road.
 - He proposes to replace the stones in the stairway with 5 ft.-wide pieces of granite curbing, rising 6-1/2 in. x 14 in. deep, with a 2 in. overlap.
 - The new stairs would rise approximately 42 in., with a depth of around 84 in.
 - The existing stones would be removed by hand, and the material underneath tamped down by shovel as necessary.
 - The removed stones would be used to buttress up the top of the retaining wall, in areas where the sheet-flow has also caused some wash-out.
 - A mini-excavator above the retaining wall would be used to place the granite curbing.
 - It would be a single-day project.
 - CA saw no issues on her site visit and agreed the existing stairs were treacherous.
 - BT moved to issue a Negative DOA; JS 2nd.
 - Motion approved 4-0 (JG abstained, having recused herself).
- **Discussion: Dave Bodurtha, Pine Meadow Conservation Area**
 - Mr. Bodurtha raised the issue of a resident's private use of sheds located on Town property on the Tooker portion of Pine Meadow Conservation Land.
 - The Tooker parcel was acquired in 2010 and included two shed structures, a 3-sided pole barn and a large shed, both very close to the back yard property line for 102 Oak Ridge Drive.
 - Their use has been an issue for a number of years as the original resident at that address began using the sheds for private use shortly after the Town acquired the land.
 - This private use continued when new residents bought the property.
 - In 2016, ConCom visited the site and spoke to the new homeowners.
 - Neither the Town nor ConCom have been using the sheds.
 - At that time, ConCom made inquiry to the Town about their use and whether leasing the sheds to the homeowner was an option given liability concerns.



Town of Ayer Conservation Commission

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

Minutes for **10/10/2019**

- ConCom did not hear back and the issue fell to the backburner as ConCom turned to other priorities.
 - Mr. Bodurtha is re-raising the issue now and cited Town Manager Pontbriand's concerns over liability.
 - JG also spoke to Mr. Pontbriand recently and said her understanding was that the Town would like the sheds to go away, either through demolition or, perhaps, through letting the residents move them onto their property as they are not of use to the Town.
 - Mr. Bodurtha said he thought the sheds provided an opportunity for the Commission to do "group" programs of some sort, promoting conservation issues.
 - The Commission scheduled a site visit on Saturday, 10/26, to re-assess the situation.
- **Conservation Commission Office Updates**
 - With the Mondopad screen not accessible, updates were kept to a minimum.
 - CA said Mike Callahan, of Beaver Solutions, will be coming next week to install a beaver deceiver at the stream that runs into Pine Meadow Pond.
 - Beaver activity has flooded trails and impounded a substantial amount of water.
 - The DPW will pay for the deceiver.
 - ConCom can do an NOI for the work after-the-fact.
 - **9:47 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:

10/24/2019

Signature Indicating Approval:

Jessica G. Gugino