

RECEIVED  
JAN 24 2020

TOWN OF AYER  
TOWN CLERK

12:19 pm lf

## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249  
Minutes for 1/9/2020

Location: Ayer Town Hall, 1st Floor

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

Not Present: (Commissioner Vacancy)

APAC taped: Yes

### **7:05 PM – Open Meeting**

- **Confirmation of Agenda**

- GB moved to confirm the agenda as posted; MP 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Approval of Meeting Minutes**

- GB moved to accept the minutes for 12/19/2019 as written; MP 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Announcements**

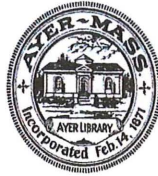
- On Sunday, January 26, at 2 p.m., The Groton Center (163 Main Street) will host a showing of the film "The Work of 1000," chronicling the successful efforts of environmental activist Marion Stoddart to save the dying Nashua River.
  - Filmmaker Susan Edwards will introduce her award-winning documentary.
  - The film will be followed by a conversation with Marion Stoddart, State Senator Jamie Eldridge, and Wildlands Trust Executive Director Karen Grey.
  - The event, free to the public, is sponsored by the Nashua River Watershed Association (founded as a result of Ms. Stoddart's work), Groton Neighbors, and the Groton Public Library.
  - Seats can be reserved at [gpl.org](http://gpl.org).

- **Accounts Payable**

- Solitude Lake Management: \$3000, for 2019 post-treatment survey (10/11/19) and Final Report (12/17/2019).
  - GB moved to approve payment of \$3000; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

- **Discussion: Vote to fill Conservation Commission vacancy**

- GB moved that ConCom recommend that the Board of Selectmen (BOS) appoint Jennifer Amaya as Commissioner; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- GB moved that ConCom recommend that the BOS appoint Scott Murray and Kevin Murphy, if their interest is confirmed, as Associate Commissioners; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- Scott Murray arrived to the meeting shortly thereafter and confirmed his interest in being appointed an Associate.
  - CA will check with Mr. Murphy.



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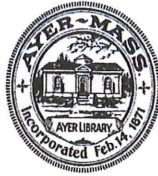
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- **Public Meeting: Request for Determination of Applicability (RDA) – 71 Nashua Street, Ryan Clinton**
  - Assessor's Map 13, Parcel 42
  - Mr. Clinton provided photos of 2 trees leaning toward his house and posing a hazard, both located within the 100 ft. buffer zone to wetlands.
    - He is seeking permission to take down the birch, which has a double trunk, one of which is dead and rotting, as well as a leaning maple.
  - CA has visited the site and has no issues.
  - MP asked that the trees be cut to the ground level, with the roots left in place.
  - GB moved to issue a Negative Determination of Applicability (DOA); MP 2<sup>nd</sup>.
    - Motion approved unanimously.
    - ConCom will sign the DOA at its next meeting on 1/23/2020.
- **Public Meeting: RDA – 69 Nashua Street, Richard and Mary Zolla**
  - Assessor's Map 13, Parcel 43
  - Mr. Zolla would like to put up a 12' x 16' (maximum) single-story shed as well as a 4 ft. high fence along the back yard's perimeter.
    - The whole of his lot is within the 100 ft. buffer zone.
    - The shed is pre-fabricated and would be set on cinder-block-like supports, so no digging would be involved.
    - The fence would require minimal digging in order to drive in the fence posts.
    - The Zolla's would also like to plant a sloped area with native plants and shrubs.
  - CA has visited the site and has no issues.
  - GB moved to issue a Negative Determination of Applicability (DOA); MP 2<sup>nd</sup>.
    - Motion approved unanimously.
    - ConCom will sign the DOA at its next meeting on 1/23/2020.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Off Shaker Road – "Shaker Mill Pond," Open Space Residential Development, Aho Development Corp., MassDEP # 100-0437**
  - Assessor's Map 36, Parcel 18, and Map 43, Parcel 3
  - Per request of John Boardman, of Places Associates, GB moved to continue the Public Hearing to 1/23/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Debris on Sandy Pond bank and failed docks on Flannagan Pond**
  - JS has observed debris and several sinking and rotting 'derelict' docks, the latter on Flannagan Pond.
  - Chuck Miller, of Calvin Street, came to discuss this agenda item as he has an old dock on the pond.
    - JS said Mr. Miller's dock was not one of the ones he was concerned about.
    - Mr. Miller said his dock has been damaged by ice over the years.
      - He came to the meeting seeking guidance on what he can or cannot do, in terms of permits and costs, to repair his dock.





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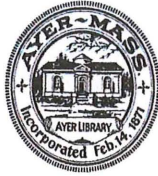
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- There are still some pipe supports, anchored into the ground in the water, from the original dock and he would like to use those as part of the basis for rebuilding.
- ConCom clarified that dock permits are not required for Flannagan Pond; it is not a 'Great Pond' like Sandy Pond.
- JS asked Mr. Miller to put together a plan of what he'd like to do, describing how much ground disturbance would be involved, and come back to us.
  - Mr. Miller will do so, probably sometime in April.
- **Discussion: Consideration of a Request for Amendment to Order of Conditions (OOC) – 0 Washington Street, "Ayer Solar II LLC," Rohit Garg, MassDEP # 100-0403**
  - Assessor's Maps 13, 12 & 4, Parcels 13-1, 13-2, 12-1, 4-49
  - Present were Cal Goldsmith and Kyle Burchard, of the engineering firm Goldsmith, Prest & Ringwall (GPR); Attorney Adam Costa, representing Ayer Solar II LLC; and in the audience, Rohit Garg, of Prometheus Solar.
  - Mr. Costa began by describing the current situation.
    - ConCom issued an OOC for the original project on 7/27/2017.
    - While the project was approved under Site Plan Review by the Planning Board, it was the ANR Plan (Approval Not Required) that was appealed by abutters, naming both the applicant and the Town of Ayer as defendants.
      - This legal appeal, which put the project on hold for over a year-and-a-half during litigation, was recently resolved by a Settlement Agreement between the parties.
    - The Settlement Agreement requires revisions to the original design of the solar project.
      - As these revisions involve work in areas under the jurisdiction of ConCom, the amended plans must therefore be reviewed and approved by the Commission.
    - Mr. Costa cited MassDEP Department of Wetlands and Waterways (DWW) Policy 85-4, "Amending an Order of Conditions."
      - This policy notes that it is at the "discretion" of the Commission ("the issuing authority") as to whether it will accept a request to amend or require the submission of a new Notice of Intent (NOI).
        - This decision is not appealable.
      - As guidance, Policy 85-4 suggests it is reasonable for an issuing authority to accept a request to amend when the changes to the Final OOC "are relatively minor and will have unchanged or less impact on the interests protected by the Act."
      - Mr. Costa said he and the applicants contend that the modifications are not substantial and that therefore an Amended OOC is appropriate rather than filing a new NOI for a new OOC.
    - Mr. Goldsmith then presented a summary of the original project as background for those not on the Commission in April-July 2017 for the original submission.
      - (See ConCom minutes from 2017: 4/27, 5/11, 6/8, 7/27)
      - The solar array would be located at the western end of the project area, close to the Rail Trail.
      - Access to the array would be via a lengthy driveway off Washington Street, from the eastern end of the project.



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- Coming immediately off Washington Street, the steep slope would require substantial compacted fill to engineer access.
- The driveway would then follow much of the course of an old gravel cart path, but widened (to 16 ft. plus shoulders) and repurposed for the solar field access.
  - The driveway crosses an existing intermittent stream that enters from the direction of the Madigan Lane subdivision abutting to the north.
  - Stormwater management, that drained into the wetlands, was required all along the access drive, and wetland replication was required due to the stream crossing.
- In 2017, ConCom required a third-party peer review which was conducted by Matt Schweisberg, of Wetland Strategies and Solutions.
  - The evaluation included review of the plans, the wetland line, stormwater management, and the proposed replication areas.
  - A habitat study, requested by ConCom, was done by Oxbow Associates (6/23/17).
    - It concluded that the area had little habitat value.
- CA noted that since the 2017 application was processed, the Division of Fisheries & Wildlife (via the Natural History & Endangered Species Program [NHESP]) updated its maps and now includes the area within the project site under its mapping for both Estimated Habitat and Priority Habitat.
- The primary concern of abutters to the immediate north was that there was not enough vegetated screening buffer between the solar field/access drive and their houses.
  - The lengthy litigation resulted in a Settlement Agreement that is predicated on relocating a portion of the access drive away from the houses and closer to the wetlands to the south.
  - Mr. Goldsmith described this as a fairly innocuous portion of driveway.
- Mr. Burchard then described the proposed revisions to the original plans approved under OOC #100-0403 in 2017.
  - The entry area off Washington Street is unchanged [roughly the first 250 ft. of the access drive].
    - This portion includes the intermittent stream crossing area, where there will be 4400 sq. ft. of wetland impact (BVW – Bordering Vegetated Wetlands).
    - Two replication areas are planned on the east and the west side of the stream crossing.
  - The next portion of the drive, approximately 300 ft. leading to the array field, has been modified from the original plan.
    - Here the drive lengthens from the original as it curves and dips to the south, toward the wetlands and away from the houses to the north.
    - There are no impacts to the BVW with this change from the original plan, but there is increased encroachment into, and impact on, the buffer zone.
    - In addition, the shift in the driveway layout requires changes to the stormwater management systems, including changes to the shape and depth of an infiltration basin in this area.
    - This change to the layout results in a more consistent width of existing trees to be left untouched between the abutters to the north and the access drive, per the Settlement Agreement.





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- Also per the Agreement with abutters, the solar array area itself has been slightly reduced along its northern edge.
  - Mr. Burchard said that they were also introducing a new element to the plan, “tree topping,” in two areas, one to the northeast of the solar array, and another to the southeast, to reduce shading on the array.
    - The area to the northeast is outside of the BVW buffer zone, with supplemental plantings proposed to densify the understory for better screening to abutting properties.
    - The area to the southeast is in the inner (0-50 ft.) buffer zone and would extend up to the edge of the BVW.
      - No supplemental plantings are proposed but significant understory growth is anticipated according to GPR.
    - Mr. Burchard said tree-topping would have the effect of increasing the habitat value.
- Before going further, JG suggested ConCom first consider the issue of whether these changes were appropriate to address through an Amended OOC or whether they were substantial enough to require the submission of a new NOI, per Policy 85-4.
  - JG reviewed the resource impact comparison summary chart submitted by GPR with the Request to Amend.
    - For the inner buffer zone (0-50 ft.), the square footage of buffer zone impact increases by 19,321 sq. ft.
    - For the outer buffer zone (50-100 ft.), the square footage of impact increases by 24,223 sq. ft.
    - The total increase in buffer zone impact between the 2017 approved OOC plan and the 2019 revised plan would be well in excess of 40,000 sq. ft.
  - JG thought this was a substantial change in impact from the original plan and therefore did not qualify as “relatively minor” per Policy 85-4.
  - In addition, JG cited the 1/7/2020 email received from Melany Cheeseman, of NHESP, regarding the revised project.
    - The email included a paragraph stating NHESP’s assumption that the described changes to the project would require a new NOI and OOC as well as a filing for permits under MESA (Mass. Endangered Species Act) to NHESP.
  - JG therefore said it was her opinion this project should be reviewed under a new Notice of Intent, not through the Amendment process.
- CA also noted that under the Amendment process, only that portion of a project that has changed from the original proposal can be evaluated; the totality of the project cannot.
- Mr. Goldsmith said from their standpoint, the focus should just be on what has changed.
  - He did not think the conditions in a new OOC would be substantially different from those in the existing one.
- Mr. Costa said the decision was at ConCom’s discretion and that the applicant’s objective was not to “reinvent the wheel” given the previous review of the project.
- GB asked if GPR had any objection to ConCom having a third-party peer review of the changes, and noted ConCom would require another site walk in any case.
  - Mr. Goldsmith said they had no objection to further peer review.
- MP said he agreed with JG that the changes were substantial and should be reviewed under a new NOI.



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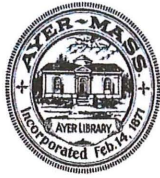
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- JG added that a new NOI allows ConCom to look beyond just the proposed changes in order to evaluate if those changes would themselves have increased impacts to the buffer zone and resource areas outside of the scope of the changes.
  - GB and JS indicated their agreement that a new NOI as well as another site walk was appropriate.
  - Mr. Costa said that, with the litigation having taken up over a year-and-a-half of time, their desire was to keep the ball rolling at the opening of the first Public Hearing for a new NOI.
    - He asked that ConCom expedite the securing of a peer reviewer as well as the conducting of a new site walk.
  - JS asked if there were comments from the audience.
    - Kevin Horgan, of Madigan Lane, spoke on behalf of the abutters who appealed the original project, and said they were in support of the revisions to the plan made by the applicant.
  - The site walk was then considered.
    - When asked, Mr. Goldsmith said they would not be able to mark the changed path of the access drive for ConCom review by the coming weekend (1/11) but could do so for Saturday, 1/18.
      - CA would be unable to attend that day but would visit the site at another time.
    - The site walk was scheduled for 1/18 at 9 a.m., parking at a nearby turnout under the power lines.
- **Public Meeting: RDA – 1 Trevor Trail, Robert Boisvert**
  - Assessor's Map 12, Parcel 161
  - Mr. Boisvert spoke informally with the Commission at its previous meeting on 12/19/2019.
  - The RDA proposes the installation of an 11' x 20' swimming pool, chainlink fencing around the pool, and 11' x 18' shed nearby, all within the 100 ft. buffer zone.
    - JS asked for more detail on the excavation for the pool and the fence.
      - The pool hole would be excavated down 5 ft. at the deep end, 4 ft. at the shallow end.
      - Access for excavating this hole would be from Pleasant Street.
      - Removed soil would be used to backfill an existing wall at the front of the house.
    - The shed would be built on grade, on stone blocks or a slab base.
      - MP said he would prefer to see the shed set on blocks rather than a more permanent slab.
    - The corner and gate posts for the fence, required around a swimming pool, will likely need to be set in cement.
    - Mr. Boisvert also plans to add plantings in several locations, probably hemlocks.
    - The RDA notes that the house builder, Seal Harbor, has not yet completed final grading at the rear of the house (under OOC # 100-0389 for Riley Jayne Farm).
  - All of this work is still within the erosion controls for the original development project.
    - CA also said the wetlands are actually uphill from this project, so she had no concerns about the proposed project.
  - GB moved to issue a Negative Determination of Applicability (DOA); MP 2<sup>nd</sup>.
    - Motion approved unanimously.
    - ConCom will sign the DOA at its next meeting on 1/23/2020.
- **Public Meeting: Kohler Place Conservation Restriction (CR) – For the purpose of signing the CR**





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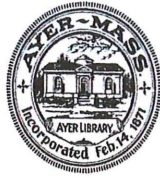
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- (MassDEP #s: Lot 1 – 100-0392; Lot 3 – 100-0390; Lot 4 – 100-0391; Subdivision – 100-0340)
- The BOS signed the CR on Tuesday night, 1/7.
- ConCom members proceeded to sign the CR.
- It now goes to Fish & Wildlife for signatures, then to the Executive Office of Energy & Environmental Affairs, followed by its return to the John and Stephanie Burns, who are then responsible for recording it.
- **Discussion: Affidavits documenting transfer of ownership for open Orders of Conditions**
  - Following the discussion at ConCom's 12/19 meeting, CA asked for clearer guidance as to what her next step/s should be.
    - For the immediate future, CA should contact Duke Pointer, of Ridge View Realty Trust (for Pingry Hill subdivision), for an update on the status of the missing Affidavits for their recent Request for Certificate of Compliance (COC) submissions.
      - CA would prefer to contact Mr. Pointer first, before going around him to the law firm that handles the closing sales, Eliopoulos & Eliopoulos.
      - MP suggested CA also advise Mr. Pointer that ConCom is contacting him first before going directly to the buyers/homeowners.
  - Meanwhile, JG will draft a letter for ConCom to consider sending to new homeowners for properties with open OOCs, and that were not informed of their properties having open OOCs.
    - In spite of the Affidavit requirement, this situation has been encountered not just with Pingry Hill but also other places in town, including the Riley Jayne Farm subdivision/Trevor Trail.
    - ConCom's goal with the Affidavit is to ensure that new homeowners know that their property has jurisdictional wetlands and/or buffer zone, and that they were given a copy of the open OOC that is applicable.
- **Discussion: Final Report from Solitude Lake Management for 2019 pond treatments; planning for 2020**
  - The report was reviewed, as well as the recommendations made for 2020 treatments.
  - Solitude again recommended the use of the herbicide Clipper, but ConCom again noted that NHESP has indicated Clipper cannot be used in a Great Pond within an ACEC (Area of Critical Environmental Concern).
  - The 2019 report highlighted the appearance of a new invasive, curly-leaf pondweed, in the treated ponds.
    - Solitude recommends the best time to treat for this invasive is early-May to early-June.
    - MP noted, however, that the 2019 treatments didn't begin until July, and the report indicated the treatments at this time were largely successful in also eradicating the pondweed.
  - CA will ask Solitude to come to a ConCom meeting this winter to discuss the upcoming treatment year further.
  - From the audience, resident Dave Bodurtha asked if the Commission has addressed that a third of Flannagan Pond lies over private property, so that essentially ConCom is providing weed treatment on private property.
    - CA observed that Flannagan Pond is a peculiar situation, noting that people freely kayak over those areas of the pond that may cover privately-owned land.



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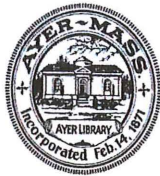
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- Mr. Bodurtha said this point was likely to come up at Town Meeting when funding weed treatment is next addressed, and advised that ConCom should have a coherent and reasonable stance on this issue.
- **Discussion: Local Wetlands Bylaw and Regulations, Next Steps**
  - MP prepared a grid, distributed at the meeting, showing the types of regulations that a variety of towns have, or have not, adopted.
    - Those highlighted in blue are ones that MP thinks ConCom should definitely consider.
  - Members will review this document further before continuing discussion at another meeting.
- **Conservation Commission Office Updates**
  - Trevor Trail (Riley Jayne Farm LLC, MassDEP # 100-0389)
    - CA has been conducting pre-construction inspections for several lots here.
  - Municipal Vulnerability Preparedness (MVP) Workshops
    - CA arrived late to ConCom's meeting, following her attendance at the DPW's MVP workshop.
    - Today's workshop was primarily focused on identifying areas of vulnerability by hazard types, including natural disasters, terrorist attacks, and climate change.
      - The wide array of climate change risks posing different impacts to different areas include:
        - Flooding
        - Infrastructure impact (eg. train tracks)
        - Environmental justice populations
        - Ability to access the hospital
        - Culvert flooding
    - The second scheduled workshop, on Thursday, 1/16, will focus on action items and contingency plans.
    - A public listening session will also be scheduled at some point in the future.
  - Planning Board
    - A reminder that an agenda has been posted for ConCom's attendance at the Planning Board meeting next Tuesday, 1/14.
  - MRPC EPA Brownfields Grant
    - Ayer has received an EPA Brownfields Grant through the Montachusett Regional Planning Commission.
      - 'Brownfield' projects are those involving previously-developed land that is not currently in use, whether contaminated or not.
    - CA said this grant will be used to fund a Phase I environmental review of a property, near the new Fire Station, that is under consideration for acquisition by the Town.
      - This area, which includes wetlands, could be used to provide more flood storage, especially for the Fire Station.
      - As a side-note, CA noted that the property in question once was used to host the circus.
  - Septic system replacement in riverfront
    - CA met recently with engineer Daniel Wolf, of David E. Ross Associates.
      - The old David E. Ross Associates building now has a potential buyer, but the septic system will need to be replaced.





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- Mr. Wolf is looking into the possibility that its replacement, even though in a riverfront area, may be exempt.
- Appeal of Denied OOC, Wright Road, Lot 5A, Anthony McGuane, MassDEP # 100-0438 (Assessor's Map 15, Parcel 68)
  - JS, GB, and CA met earlier today (1/9) with Denise Childs, Wetlands Section Chief for MassDEP, for a site inspection of the McGuane property on Wright Road.
  - Also present during the Appeal review was Joseph McGuane, and engineer Neil Gorman, of David E. Ross Associates.
  - Ms. Childs heard from both sides during the roughly half-hour site walk, and will now deliberate before issuing her ruling on the Appeal.
- Peer Review Quotes for Ayer Solar II (see Discussion above)
  - Briefly returning to the topic of the Solar II project and the need for moving things along, CA will develop a Scope of Work in order to secure quotes for an additional peer review of the project.
  - JG expressed her interest in the Commission maintaining tighter control so that communications between the peer reviewer and the applicant are run through CA/ConCom and are completely transparent.
  - CA mentioned MassDEP Policy 17-1 regarding solar arrays as something ConCom members should consult.
- **9:55 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: \_\_\_\_\_

*1/23/2020*

Signature Indicating Approval: \_\_\_\_\_

*Jessica G. Gugino*