

## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249  
Minutes for 11/18/2021

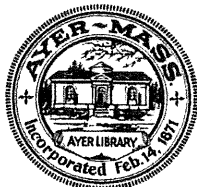
Location: Remote Meeting via Zoom, accessible to public, due to ongoing COVID 19 Pandemic

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

APAC Recorded: Yes

### **7:00 PM – Open Meeting**

- **Confirmation of Agenda**
  - MP moved to confirm the agenda as posted; JA 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 4-0 (GB not yet having arrived).
- **Approval of Meeting Minutes**
  - MP moved to accept the minutes for 10/28/2021 as written; JA 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 4-0 (GB not yet having arrived).
- **Accounts Payable**
  - Most recent reports were reviewed.
  - It was noted that the FY2022 budget line item for beaver management is now used up.
    - With all the rain this year, beaver activity has been unusually high and created problems in several areas.
- **Public Input**
  - No public input was received.
- **Public Meeting: Notice of Possible Violation – 27 Harvard Road, Theodore Maxant**
  - Assessor's Map 35, Parcel 21
  - Mr. Maxant was present via Zoom.
  - ConCom performed a site walk on 11/2.
  - Work done on the site included clearing of invasives, some grading, and some mowing.
    - JS and MP said that, by their measurement, the work done was outside of the 100 ft. buffer zone to an intermittent stream, with the exception of some of the mowing that was inside the buffer zone.
    - Mr. Maxant was cautioned that if he did do any future work closer to the wetlands, he needs to contact ConCom ahead of time.
  - JS said no further action was to be taken.
    - Mr. Maxant asked for something in writing from the Commission attesting to this, and CA will do this tomorrow.

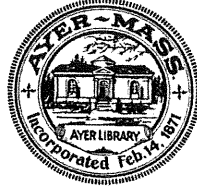


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- **Public Meeting: RDA – Sunflower Court, Pondview Condominiums, Merle Adelman, Trustee**
  - Assessor's Map 7, Parcel 70
  - Ms. Adelman was present via Zoom.
  - CA and MP separately visited the site after it was discussed at the last meeting, 10/28.
  - The RDA asks to remove 2 trees, planted too close to the buildings (6 ft.) and beginning to damage the roof and put underground foundations also at risk.
    - Additionally, trimming of black birch branches extending over the Conservation Restriction fencing, also starting to do some building damage, was requested.
    - Some dead or dying pines will also be taken down, before they come down on any structures, but 5-ft.+ stumps will be left in place for habitat.
  - MP and CA raised the recommendation of replacing the viable trees at a 2-1 ratio where possible.
  - MP moved to issue a Negative Determination of Applicability with one condition, that if possible the live trees taken down be replaced elsewhere on the premises, 2-1, with appropriate native trees; JA 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **PUBLIC HEARINGS (cont'd.) FOR NOTICES OF INTENT (NOIs) – “PANTHER PLACE” OSRD (Open Space Residential Development) SUBDIVISION, NORTHEAST SITE DEVELOPMENT, LLC., JOSEPH LEVINE.**
  - Assessor's Map 13, Parcels 12, 13 & 14
  - Opened under the Wetlands Protection Act and Ayer Wetlands Bylaw.
  - Joe Levine, of Northeast Site Development, was present via Zoom.
  - **Public Hearing (cont'd.): NOI – Lot 4, MassDEP # 100-0466**
    - Updated plans for this lot having been received from Brian Butler, of Oxbow Associates, and Mr. Levine having no issues with the draft Order of Conditions (OOC):
    - GB moved to approve /issue the OOC for Lot 4, MassDEP # 100-0466; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0
    - GB moved to close the Public Hearing for 100-0466; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
    - Mr. Levine will pick up the signed OOC for this, and the next two NOIs, tomorrow morning.
  - **Public Hearing (cont'd.): NOI – Lot 5, MassDEP # 100-0467**
    - Updated plans for this lot having been received from Brian Butler, of Oxbow Associates, and Mr. Levine having no issues with the draft Order of Conditions (OOC):
    - GB moved to approve /issue the OOC for Lot 5, MassDEP # 100-0467; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0
    - GB moved to close the Public Hearing for 100-0467; MP 2<sup>nd</sup>.



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- Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – Lot 13, MassDEP # 100-0468**
  - Updated plans for this lot having been received from Brian Butler, of Oxbow Associates, and Mr. Levine having no issues with the draft Order of Conditions (OOC):
  - GB moved to approve / issue the OOC for Lot 13, MassDEP # 100-0468; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0
  - GB moved to close the Public Hearing for 100-0468; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing NOI Continuances**
  - GB moved to continue the Public Hearings for the remaining 7 “Panther Place” NOIs to 12/2/2021; MP 2<sup>nd</sup>.
    - Lot 14, MassDEP # 100-0469
    - Lot 15, MassDEP # 100-0470
    - Lot 16, MassDEP # 100-0471
    - Lot 17, MassDEP # 100-0472
    - Lot 19, MassDEP # 100-0473
    - Lot 20, MassDEP # 100-0474
    - Lot 21, MassDEP # 100-0475
  - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – 65 Westford Road, National Grid, Cory Schultzman, MassDEP # 100-0476**
  - Assessor’s Map 8, Parcel 9
  - Opened under the Wetlands Protection Act and Ayer Wetlands Bylaw.
  - Kelan Koncewicz, of VHB (engineering firm Vanasse, Hangen, Brustlin, Inc.), was present via Zoom on behalf of National Grid, with Cory Schultzman also present.
  - MP recused himself, being an employee of National Grid.
  - The project proposes improvements to Sandy Pond No. 237 substation, located at 65 Westford Road.
    - ConCom performed a site walk with Mr. Koncewicz on 11/2.
  - CA said a copy of the 10/28/2021 “No Take” letter from the Natural Heritage & Endangered Species Program (NHESP) (Division of Fisheries & Wildlife) was received (NHESP File No. 21-40545).
    - The letter requires that a portion of the project be conditioned to avoid the taking of state-listed turtles and includes the wording for the project specific condition to be included in ConCom’s Special Conditions for the OOC.
    - This will be included in the draft OOC and Mr. Koncewicz will coordinate turtle protection where necessary with NHESP.
  - GB moved to approve the NOI and draft the OOC; JA 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 4-0 (with MP recused).
  - GB moved to continue the Public Hearing for 100-0476 to 12/2/2021; JA 2<sup>nd</sup>.
    - Motion approved unanimously by Roll call Vote 4-0 (with MP recused).



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- **Public Meeting: Administrative Approval – 39 Groton Harvard Road, Jeanne DiSanto**
  - Assessor's Map 27, Parcel 177
  - CA did a site visit to evaluate the 2 bald cypress trees Ms. DiSanto, the new homeowner, requested permission to take down.
    - The trees were actually not dead, as thought, and CA explained that bald cypress is unusual because it is a deciduous conifer that loses its needles each fall.
    - One of the trees is closer to the house and could present a hazard, but the second tree is smaller and farther away.
  - CA will sign the administrative approval for the removal of the tree close to the house.
    - JS suggested the homeowner contact a sawmill rather than just have the tree chipped since the wood of a cypress would yield some great boards.
- **Public Meeting: Conservation Analysis, "Stratton Hill" (OSRD), Fox Meadow Realty Corp., David Moulton**
  - Assessor's Map 17, Parcels 1-3, 7, 8, 11-55
  - Bob Collins, Attorney for Mr. Moulton, contacted CA to say they had a conflict and would not be present at tonight's meeting.
    - CA informed him that ConCom would be discussing drafting the Request for Proposals (RFP) for a third-party peer review of the Conservation Analysis and Mr. Collins had no issue with that taking place without his or the applicant's presence.
  - All on the Commission were in agreement with CA that the existing Analysis is not adequate, especially given the environmental importance of this tract of land.
    - After discussions with Town Planner Mark Archambault, it now seems best for ConCom to issue its own RFP and the Planning Board to issue a separate one once they have updated engineering plans, etc., to work off of.
    - In addition, ConCom needs to move forward now so as to be able to provide the Planning Board with a Conservation Recommendation.
    - CA has the names and contacts at 4 consulting companies that can be approached for ConCom's RFP.
  - The RFP will include the draft OSRD Guidance Document.
    - At CA's recommendation, the RFP will be seeking an independent and new Conservation Analysis.
    - To be decided is whether ConCom will include a copy of the applicant's submitted Analysis as well.
  - Mr. Archambault expressed his interest in working with ConCom on drafting the RFP.
- **Public Hearing: NOI – Willow Road and Route 2A, Massachusetts Department of Transportation (MassDOT) – Highway Division, Danielle Spicer, MassDEP # 100-0477**
  - Assessor's Map 30
  - Opened under the Wetlands Protection Act and Ayer Wetlands Bylaw.



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- Earlier in the day, CA received the email from MassDEP assigning the file number (100-0477) and including a “vigorous” set of comments on the proposed project.
  - As a result, the applicant requested that ConCom open the Public Hearing as planned but continue it to 12/2.
  - This will give them time to address DEP’s comments before making their presentation to ConCom.
- GB moved to continue the Public Hearing to 12/2; MP 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Long-term Beaver Management Planning**
  - This year has seen an enormous uptick in beaver activity that has created damming and flooding problems.
  - Currently active problem areas:
    - Rosewood Avenue Extension, which is currently flooded over, affecting not just the roadway but Town sewer manholes;
    - Long Pond Dam, where the beavers learned how to block the flow control device (aka “beaver deceiver”) and also can no longer be trapped since someone released those that were trapped, making them now untrappable.
      - Yesterday the DPW opened up a portion of the beaver dam blocking the man-made dam, and began the release of the excess impounded water.
    - The man-made dam off Oak Ridge Drive directing water from Pine Meadow Pond through a culvert under the road and into Flannagan Pond is another area.
      - This was recently cleared by the DPW and will need to be maintained to prevent any risk to Oak Ridge Drive (which had previously been washed out at that point in 2011 by a failed beaver dam further up).
    - Shaker Mill Pond – ConCom had a beaver deceiver installed at the *inlet* to the pond, but this area is now underwater because of beaver damming atop the man-made *outlet* from the pond further down, located on private property.
    - Finally, while a beaver deceiver has now been installed at the site of the former culvert off of West Main Street, on Nonacoicus Brook, ConCom needs to ensure that the cleanup at this site is completed.
  - JS will contact Town Manager Pontbriand about setting up a joint meeting with Mr. Pontbriand, JS and other interested commissioners, and Mr. Van Schalkwyk to discuss and coordinate a better management plan (including monitoring and maintenance) going forward.
- **Conservation Commission Office and Member Updates**
  - North County Land Trust
    - CA met with representatives of NCLT on Monday to review Ayer’s Conservation Restrictions (CRs) and walk some of the sites, including John Carroll Reserve.



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- The Executive Director of NCLT has sent a letter to Mr. Pontbriand outlining the general terms and approach for NCLT to take over monitoring Ayer's CRs as well as 'cleaning up' documentation on some older and /or incomplete CRs before monitoring can begin on them as well.
  - The number of CRs in town is expanding, given the requirements of the new OSRD Zoning Bylaw (2017, Section 10.1).
- The next step will be for Mr. Pontbriand to draw up a contract and finalize arrangements.
- NCLT is already in receipt of much of the scanned documentation regarding past and new CRs.
  - To maintain validity before the State, CRs must be properly monitored and documented on a yearly basis.
- 2022 Conservation Commission meeting dates
  - JG presented two options for 2022 meeting dates.
    - typically meets on the 2<sup>nd</sup> and 4<sup>th</sup> Thursday of each month, but adjustments have to be made around certain holidays.
    - Also, the Commission does not want any gaps between meetings longer than 3 weeks.
  - Suggestions were made, and JG will finalize a third version to submit to the Town Manager's office.
- **8:26 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: \_\_\_\_\_

12/2/2021 *Jessica G. Gugino*