

RECEIVED  
JAN 10 2022

TOWN OF AYER  
TOWN CLERK

## Town of Ayer Conservation Commission

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

Minutes for 12/16/2021

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)

Not Present: Jo-Anne Crystoff, (CA, Conservation Administrator)

APAC Recorded: Yes

**7:00 PM – Open Meeting (Previously opened at 6 PM to go immediately into Executive Session, closing from there to reenter Open Meeting at 7.)**

- **Confirmation of Agenda**
  - GB moved to confirm the agenda as amended; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 12/2/2021 as written; JA 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Input**
  - Rachel Kozera, of 30 Groton Harvard Road, asked if she could raise questions during the meeting, and was invited to do so during the appropriate hearings.
- **Certificate of Vote**
  - JG informed the Commission that the Certificate of Vote passed by the Commission at its previous meeting on 12/2 is invalid given that Massachusetts is no longer under an official State of Emergency.
    - Commissioners will therefore have to stop by Town Hall to sign permits.
    - However, it is also possible to have signature stamps made and if Commissioners provide their signatures on blank white paper, JG can have this done.
      - Use of the signature stamp for particular permits must be okayed by each commissioner during the related Public Hearing or Meeting.
- **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.
  - Brian Butler, of Oxbow Associates, was present via Zoom on behalf of the applicant.
  - Ms. Kozera, via Zoom, asked for background on this project for a new subdivision, what testing was done, if wetlands were affected, information on bylaws that were bypassed, whether additional studies were performed, if proper protocol was followed, and so forth.

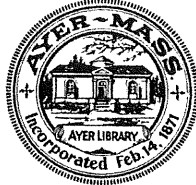


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- JS said this was a fairly confusing and broad question and that the Commission has been looking at this project, starting with an ANRAD (Abbreviated Notice of Resource Area Delineation), for over a year.
- JG said no bylaws were ignored and, in fact, it was because the Commission was able to pass a local Wetlands Bylaw and enact regulations that this project was under the new limitation of a 50 ft. “No Disturb” buffer zone.
  - More buffer zone land was therefore protected in this application that was previously possible.
- Ms. Kozera asked if there were guaranteed parameters regarding the expulsion of biological hazards for this installation or other proposed developments, if local testing had been done regarding effects on surrounding areas re traffic, environmental impact, tree cutting, chemicals, building materials, groundwater, etc.
  - JS again said that precautions have been taken and that this project has been reviewed with a ‘fine-toothed comb’.
- Brian Butler, from Oxbow, offered to provide Ms. Kozera with some background information, including that the project has been reviewed intensively by both the Commission and the Planning Board over the last 18 months.
  - He noted that Oxbow did the initial conservation assessment, and that the Commission had had the ANRAD peer-reviewed by a third party consultant.
  - The project was also reviewed by NHESP (Natural Heritage & Endangered Species Program) for compliance with State standards.
  - In addition, as an OSRD development, more than 50% of the land associated with the parcel is going into permanent Conservation Restriction.
- Ms. Kozera asked if there were parameters restricting conflicts of interest.
  - Mr. Butler stressed that all parties are subject to standard State ethics requirements, and that performance standards required by the Wetlands Protection Act and the local Bylaw have been met.
- The Commission then proceeded to its scheduled business:
  - **Public Hearing (cont’d.): NOI – Lot 17, MassDEP # 100-0472**
    - Updated plans for this lot having been received from Brian Butler, of Oxbow Associates, and there being no issues with the draft Order of Conditions (OOC):
      - GB moved to approve /issue the OOC for Lot 17, MassDEP # 100-0472; MP 2<sup>nd</sup>.
        - Motion approved unanimously by Roll Call Vote 5-0
    - GB moved to close the Public Hearing for 100-0472; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
  - **Public Hearing (cont’d.): NOI – Lot 19, MassDEP # 100-0473**
    - Updated plans for this lot having been received from Oxbow Associates and there being no issues with the draft OOC:
      - GB moved to approve /issue the OOC for Lot 19, MassDEP # 100-0473; MP 2<sup>nd</sup>.



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- Motion approved unanimously by Roll Call Vote 5-0
  - GB moved to close the Public Hearing for 100-0473; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - **Public Hearing (cont'd.): NOI – Lot 20, MassDEP # 100-0474**
    - Updated plans for this lot having been received from Oxbow Associates and there being no issues with the OOC:
      - GB moved to approve / issue the OOC for Lot 20, MassDEP # 100-0474; MP 2<sup>nd</sup>.
        - Motion approved unanimously by Roll Call Vote 5-0
    - GB moved to close the Public Hearing for 100-0474; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
  - **Public Hearing (cont'd.): NOI – Lot 21, MassDEP # 100-0475**
    - Updated plans for this lot having been received from Oxbow Associates and there being no issues with the OOC:
      - GB moved to approve / issue the OOC for Lot 21, MassDEP # 100-0475; MP 2<sup>nd</sup>.
        - Motion approved unanimously by Roll Call Vote 5-0
    - GB moved to close the Public Hearing for 100-0475; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
  - Commission members will plan to sign the Orders at an upcoming site walk (see below) on Saturday, 12/18, and JG will then contact Mr. Butler to arrange for their pick-up.
- **Public Hearing (cont'd.): 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.
  - Present via Zoom and on behalf of MassDOT were Danielle Spicer, Stormwater & Permitting Group Leader, and Tom Bigelow, Project Manager, from Green International Affiliates, Inc.
  - The project location is at the intersection of Littleton Road/Route 2A and Willow Road (north side of intersection, in Ayer) and Bruce Street (south side of intersection, in Littleton).
    - The work area starts in Ayer on 2A and extends east about 1450 ft. into Littleton through the intersection and down 2A.
    - It also extends about 300 ft. along Bruce Street, and 500 feet down Willow Road.
    - The work section on Willow Road includes a culvert crossing over Bennett's Brook, which in turn flows into Spectacle Pond.
    - This intersection, which itself is in Littleton, has had a history of accidents, resulting in the installation of the temporary signal several years ago.
  - Mr. Bigelow gave a detailed overview of the DOT project to improve the intersection and its safety, including:

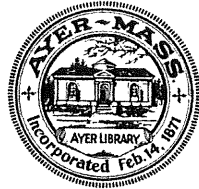


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- replacement of the temporary traffic signal with a permanent one;
- widening of roads to accommodate new turn lanes on 2A, Willow, and Bruce;
- the addition of an 8 ft. wide shared-use path (bicycles, pedestrians) on both sides of 2A;
- pedestrian-activated crosswalks;
- granite curbing;
- replacing and upgrading existing closed drainage catchbasins;
- other upgrades to drainage and stormwater treatment, including replacement of the Town's drain pipe.
- Ms. Spicer described the environmental impact of the project.
  - She said most of the work was on Littleton property (including forebays, infiltration structures for groundwater recharge), but most of the environmental impact was on Ayer property, around Bennett's Brook and the culvert.
  - This area includes Riverfront, Land Subject to Flooding, and Buffer Zone.
  - All of the Ayer work is within 200 ft. of Riverfront, including a small area of previously undisturbed Riverfront.
  - No filling is proposed in the floodplain, and therefore no compensatory storage is planned.
  - Their calculations show an increase in peak rates of stormwater flow, but no downstream flooding impact.
- A 12/10/21 letter from Green International to MassDEP, responding to multiple DEP comments, had been circulated to ConCom members.
  - JG asked for a copy of DEP's response to these clarifications.
- MP asked about the drainage pipe by the culvert.
  - Ms. Spicer said DOT won't connect to the existing Town-owned 12" pipe but will install a new line.
  - This new line will daylight for discharge close to the brook, on the downstream side of the culvert.
- MP asked if there was any plan for catching and treating sedimentation near the outfall pipe.
  - Ms. Spicer said there will be no basin in this area around Bennett's Brook.
  - This area has a very tight right-of-way (ROW) and there is no space, in addition to there being a steep slope leading up from the ROW.
  - Deep sumps and hoods would be used further away, and in Littleton, to provide 25% TSS removal (total suspended solids).
- MP asked if additional land acquisition would be possible to address this area with better stormwater treatment.
  - Mr. Bigelow said they would have to talk to DOT, which would have to acquire more ROW, but that this has not been considered, and if it were, would likely involve more wetland impacts.
- Laurie Nehring, of 35 Highland Avenue, said this area was heavily impacted by trucks coming to and from the nearby auto-loading facility further down Willow Road.

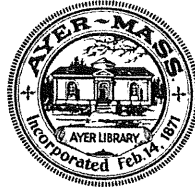


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- She asked about the protection of Bennett's Brook, which flows into Spectacle Pond (Ayer's primary drinking water supply), in terms of efforts to ensure that water from the roadway entering the brook is as clean as possible.
  - In this, she seconded MP's interest in asking if land or easement rights could be acquired to move the drainage outfall pipe further from the brook than currently planned.
- Ms. Spicer said that while sedimentation treatment cannot be provided at the Ayer discharge point, the project provides more stormwater treatment than currently exists so is an overall improvement.
  - The proposed forebays and infiltration structures for groundwater recharge are all located on Littleton land.
- Ms. Nehring also asked about the impact of the proposed granite curbs in terms of wildlife movement.
  - If they were vertical (90-degrees), that could be difficult from some critters (i.e. turtles), too navigate.
  - She asked about sloped curbs instead.
  - Mr. Bigelow said the curbs would be standard 6-in. high, at 90-degrees/vertical.
  - Ms. Spicer said that sloped curbs are usually made from bituminous material and have huge maintenance issues.
  - Mr. Bigelow said the granite curbs are only proposed along 2A, not the side roads, and in addition that vertical curbing is necessary next to a shared-use path for safety reasons as it helps to prevent cars from entering those paths.
    - There will be no curbing on Willow Road where the brook crossing is located.
- MP asked for further details about the drainage enhancements, given these are located in Littleton while all the wetland impact is in Ayer.
  - Ms. Spicer said there is no direct discharge into Bennett's Brook, although the pipe daylights close by.
  - But she again stressed that within the project as a whole, they are providing new recharge in the larger watershed area.
  - A basin down 2A in Littleton, was pointed to on the plans.
    - Mr. Bigelow said DOT had done some land acquisition to make that area possible.
    - MP asked why this wasn't also possible in Ayer?
  - Ms. Spicer said the discharge pipe near Bennett's Brook has to be at a certain elevation.
    - Moving where the pipe daylights to further from the brook would be difficult given the steeper slope that rises up nearby off the existing ROW.
      - To do that would require cutting into that slope, and therefore greater impact to the resource area.

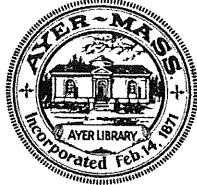


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- Given the forecasted snow over the weekend, a site walk was scheduled for 8:15 on Saturday morning, 12/18.
- Ms. Kozera said she had been very patient but now wanted to know what the project was about, and if propane was involved.
  - Ms. Spicer said it was simply a roadway improvement project, as described.
- Ken Diskin, of 180 Washington Street, asked to see the outfall area again and wondered if the area where the pipe is to daylight is off the ROW already.
  - Mr. Bigelow said the current plan does require a permanent drainage easement, and any changes would require the securing of additional rights.
- GB moved to continue the Public Hearing to 1/6/2022; MP 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – K137E / L138 E/ 337 Transmission Line ROW Exploratory Soil Borings project, New England Power Company, Andrew Cole, MassDEP # 100-0478**
  - Assessor's Map info: various, crosses numerous parcels along ROW across Ayer
  - Alison Milliman, of BSC Group, was present via Zoom on behalf of New England Power Company.
  - MP, being an employee of National Grid, recused himself.
  - The project proposes exploratory geotechnical soil borings at 10 structures on the transmission line ROW.
    - (Additional upland borings will also take place but are outside ConCom's jurisdictional review.)
    - The purpose of the borings is for the planning and design of future utility maintenance work, including installation of replacement structures.
      - Subsurface conditions need to be ascertained in order to determine the proper depth of replacement poles, load-carrying capacity of the soil, etc.
  - The extended project area has wetlands subject to both the Wetlands Protection Act and the Bylaw, with 3 of the structures under the jurisdiction only of the Bylaw.
    - Some of the structures are also located within Natural Heritage & Endangered Species Program (NHESP) Priority & Estimated Habitat of Rare Species.
    - A temporary crossing for equipment access, involving approximately 646 sq. ft. in Bordering Vegetated Wetlands (BVW) will need to be established, using construction mats or low ground pressure equipment.
    - The borings themselves, one per structure, are small, 4"-6" in diameter, and excavated soil will be re-used to backfill the boring holes.
    - No impacts to wetlands are proposed, just the temporary crossing area near Bryan Way (off Nemco Way).
    - All work will be performed in accordance with National Grid's Operations & Maintenance Plan.
    - Some mowing for equipment access will be done, with areas re-seeded and stabilized with straw afterwards.
  - The project is expected to begin in spring 2022 and to take approximately a year working along a ROW area that crosses 6 townships.

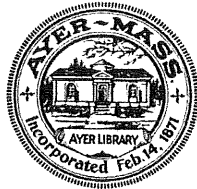


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- Ms. Nehring asked if the project would be looking for signs of contamination (PFAS, arsenic, etc.) while doing the borings?
  - Ms. Milliman said the borings are only looking for soil quality insofar as loading support for new poles, but if anything unexpected was encountered, it would be reported.
- Ms. Kozera asked if there was any guarantee that this project would not be used to facilitate expansion of development in Ayer.
  - Ms. Milliman said there was no reason that NEP would have to share soil samples from under its power lines with developers.
- The Commission was in agreement that there was no need for a site walk for this particular project.
- GB moved to approve the NOI and draft an Order of Conditions; JA 2<sup>nd</sup>.
  - Motion approved 4-0 by Roll Call Vote, with MP recused from voting.
- GB moved to continue the Public Hearing to 1/6/2022 for the purpose of approving the OOC; JA 2<sup>nd</sup>.
  - Motion approved 4-0 by Roll Call Vote, with MP recused from voting.
- **Discussion: Administrative Approval, 4 Shelly Lane, Seann Ives**
  - The Commission briefly reviewed an Administrative Approval application initiated by Conservation Administrator Crystoff.
    - Mr. Ives was unable to attend but had provided a description of his project.
  - The project proposes to level an area approximately 16' x 12' in a semicircle in back of a firepit, around 25 ft. from the shore of Grove Pond.
    - In addition, a 20-24" high retaining wall is proposed for the back of the sitting area.
  - Commissioners were in agreement that an Administrative Approval was not likely the proper review process for this amount of work close to a pond.
  - A site walk was scheduled for Saturday, 12/18, around 9 a.m., provided JG receives permission from Mr. Ives to enter his property.
- **Discussion: Prior RDA, 7 Mountain View Avenue, Pat Hall**
  - JG, a neighbor, recused herself from the discussion.
  - An RDA was submitted by Ms. Hall in October, and a Negative Determination of Applicability (DOA) was issued at ConCom's 10/28 meeting, permitting Ms. Hall to replace a deteriorating wood retaining wall with a new barrier to hold sand in place on her beach on Sandy Pond.
  - Ms. Hall contacted JS that, due to contractor costs, she is not going to pursue a replacement barrier.
    - Instead, she would like to remove the existing barrier, which is rotting, and let the beach go back to its natural state.
  - After discussion, it was decided that no further action was needed in terms of cancelling the DOA, and Ms. Hall can move forward with her new plan.



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- **Conservation Commission Office and Member Updates**
  - Open Space
    - Janet Providakes, Chair of the Community Preservation Committee (CPC), was present via Zoom.
    - Ms. Providakes had asked to address the Commission about the possibility of an Open Space acquisition of the 7.4 acre Hudlin property off High Street, which JG had spoken about at ConCom's 12/2 meeting.
      - However, since then, Ms. Providakes has learned that an agreement for the sale of the property had already been reached between the seller and a developer.
      - The agreement was now at a lawyer's office.
    - Ms. Providakes asked if the Commission was looking at Open Space opportunities and JS assured her it was.
    - An extended discussion of the area around the Hudlin property continued, noting that it is adjacent to an undeveloped parcel that had been slated to be 'Emily's Way' subdivision but was abandoned due to all of the ledge in the area.
      - In addition, further up the hill is a small Town-owned parcel ("Nonacoicus Park", approximately 3 acres) as well as some undeveloped lots owned by the Sifakis family that might also be available.
      - Mr. Diskin, also a member of the Planning Board, said the Hudlin property only has about 20' of frontage on Groton Harvard Road, with most of its frontage being on High Street.
        - He noted that if it does get developed, it would be as an Open Space Residential Development subdivision, in which case at least 50% of it goes into a Conservation Restriction.
    - Ms. Providakes raised the possibility that the current agreement to sell could always fall through.
      - JG suggested the Commission could vote that, if that were to happen, it would support requesting the Town Manager to move forward with a property appraisal, if not also a Phase I environmental review, for the Town to consider purchase – steps that municipalities must take for potential Open Space purchases.
      - MP questioned the cost of the Hudlin property (\$1.2-1.5 million), especially if it also contains a lot of ledge that would make it difficult to develop.
        - JG said the Commission had looked at this area several years prior, regarding the Sifakis lots, but had decided then that unless the Hudlin property were to become available, this area wouldn't have been attractive to expend a lot of money for open space.



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- Now that the Hudlin property was potentially available, it would be worth being ready to move were the opportunity to present itself.
  - As good land for development has been used up, developers more and more are finding it worth their while to develop previously less-developable areas, often in ways that require blasting.
  - Ms. Providakes said CPC has administrative funds available for appraisals and environmental reviews regarding open space opportunities.
- JG moved that the Commission express its support to move forward with an appraisal and Phase I environmental review of the Hudlin property in the event that it comes back on the market for sale; JA 2<sup>nd</sup>.
  - Motion approved 4-1, with MP voting nay.
- Before the Commission could move on to other necessary business, with little meeting time left, Ms. Kozera expressed her outrage that the Town had only heard about this property being for sale recently when it went on the market back in the summer.
  - In her view, the Town should be taking more initiative.
- Ms. Nehring said this was a hard-working commission whose members were all volunteers.
  - If Ms. Kozera knew about this property being up for sale in the summer, she should have come forward herself to make sure the Town also knew.
- Abutter notification requirements
  - No time
- Ayer Pond Weed Treatment 2021
  - The Year End Report for 2021 pond treatments, with recommendations for 2022, was received from Joe Onorato, of Water & Wetlands.
  - The report looks good but there was no time to discuss it other than for Commissioners to be in agreement that it was okay to pay the final bill.
- Right of First Refusal, Chapter 61 land
  - A 3800 sq. ft. piece of land has come out of Chapter 61 status, giving the Town right of first refusal.
    - Unless the Town were to exercise its right, the land is to be purchased by Mark Fermanian to add onto the back of a parcel he owns on Snake Hill Road, in order to make it a buildable lot.
  - In addition to being very small, the parcel is also landlocked from street access.
    - No other Town departments have expressed interest, and the Planning Board earlier in the week took a formal vote expressing the same.
  - The Select Board will be making the final decision at its meeting on 12/21.
  - JG moved that the Commission affirm its lack of interest in the Town exercising its right of first refusal over this property; JA 2<sup>nd</sup>.



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- Motion approved unanimously by Roll Call Vote 5-0.
- Beaver Management
  - No time for an update.
- Flannagan Pond Public Access for canoes and kayaks
  - No time for an update.
- Signs Project
  - No time for an update.
- North County Land Trust (NCLT)
  - Town Manager Pontbriand asked if the Commission's Wetland Fund (from permit fees) could be used to cover the first few months of a contract with North County Land Trust to manage the Town's Conservation Restrictions, until funds are officially allocated for FY2023 at Spring Town Meeting in April 2022.
  - GB said the Wetland Fund is specifically for administration of the Wetland Protection Act, and this would not be a legitimate use.
    - JG will pass this on to Mr. Pontbriand.
- **9:06 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:**

1/6/2022 Jessica G. Gugino