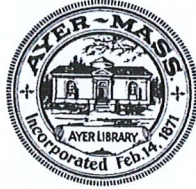


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AUG 16 2022



TOWN OF AYER
TOWN CLERK



Town of Ayer Conservation Commission

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

Minutes for 7/28/2022

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

Present: Jon Schmalenberger (Chair), Mark Phillips (Vice-Chair), George Bacon (Member), Jennifer Amaya (Member), Jessica Gugino (Clerk), Heather Hampson (Conservation Agent)

APAC Recorded: Yes

7:00 PM – Open Meeting

- **Confirmation of Agenda**

- G. Bacon moved to confirm the agenda as posted; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

- **Approval of Meeting Minutes**

- G. Bacon moved to accept the minutes for 7/14/2022 as written; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

- **Public Input**

- None received

- **Public Meeting: Request for Determination of Applicability (RDA) – 113 Oak Ridge Drive, Veronica Berry**

- Assessor's Map 28, Parcel 50
- As the general contractor for Ms. Berry, Alexander Blinn was present via Zoom on behalf of the applicant.
- A structurally unsafe pre-existing deck, 8 ft. above the ground, had to be removed.
 - Ms. Berry wants to construct an expanded new deck that surrounds an existing sunroom, with stairs to the backyard that won't extend past the farthest point of the deck.
 - The way the previous deck was attached to the house did not meet building code so the proposed new deck is a code-compliant reconfiguration that also extends the deck around 8 ft. closer to Flannagan Pond (closest distance would then be approximately 40 ft.).
 - The reconfiguration will also enable safe access to the sunroom's slider doors that couldn't be accessed by the old deck and, if used, would have opened up to a drop down to the ground.
 - The new deck would be mounted on a diamond pier system resulting in almost zero disturbance to the ground.
 - The piers would be set about 1 ft. back from the edge of the deck.
 - The expanded deck, approximately 300 sq. feet, would extend over existing lawn/established vegetation, and this area would be left as is.
- H. Hampson did a site visit and said that the slope to the pond is gentle, and that a temporary silt fence has already been installed on well-established lawn.



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- G. Bacon moved to issue a Negative Determination of Applicability (DOA) with no conditions (given erosion controls are already in place); M. Phillips 2nd.
 - Motion approved unanimously by Roll Call vote 5-0.
- **Public Meeting: RDA – 89 Littleton Road, Milton Raimundo**
 - Assessor's Map 36, Parcel 232
 - Mr. Raimundo was present via Zoom.
 - His neighbor at 87 Littleton Road had previously installed a lawn irrigation system drawing from Shaker Mill Pond and Mr. Raimundo would like to do the same, installing a small underground pipe system connected to a pump by the house.
 - ConCom previously issued a Negative DOA to the resident at 87 Littleton Road on 5/13/2021.
 - The pipe system would be dug into the ground 2-3 inches and immediately covered over, resulting in minimal disturbance.
 - J. Schmalenberger specified that the end of the hose extending into the pond should be tied to a stake to prevent it from disturbing the bottom of the pond.
 - Use of the system must also comply with the Town's current restrictions on water use, given the level 3 critical drought conditions that Massachusetts is currently under.
 - H. Hampson also confirmed with the Dept. of Public Works (DPW) that no new restrictions have been put in place at this time.
 - No erosion controls were deemed necessary, given the extent of vegetated plantings between the end of the lawn and the pond, and the limited ground disturbance described above.
 - G. Bacon moved to issue a Negative DOA with the conditions discussed (intake hose elevated off pond bottom; compliance with Town restrictions); M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Conservation Analysis Third-Party Peer Review, Stratton Hill Subdivision, BSC Group**
 - Matt Burne, a senior ecologist with BSC Group, was present via Zoom.
 - Mr. Burne has already begun reviewing the documentation for the preliminary subdivision plan that has been submitted to the Planning Board for Stratton Hill as an Open Space Residential Development (OSRD) subdivision.
 - H. Hampson will be providing him with the ORAD (Order of Resource Area Delineation) plans as approved by ConCom, under MassDEP #100-0445, with the Public Hearing having closed on 11/19/2020.
 - Mr. Burne will be scheduling a site visit within the next two weeks; H. Hampson and Commission members who are able will attend.
 - The site visit will not be open to the public.
 - Mr. Burne has begun his review based on the tasks identified in the Request for Proposals, and offered some preliminary comments:



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▪ Permitting Analysis

- The Applicant (Fox Meadow Realty Corp.) needs to present **in writing** formal documentation of compliance with the applicable NHESP (Natural Heritage & Endangered Species Program) permitting requirements.
 - A joint Conservation Management Permit (CMP), covering the contiguous open space land in Groton and Ayer, was issued in 2005 and expired in 2012.
 - Is the current proposed preliminary plan subject to MESA (Mass. Endangered Species Act)?
 - Will the previous CMP be reinstated?
 - J. Gugino and H. Hampson were at the 7/12 Planning Board meeting where Attorney Bob Collins, for the Applicant, said they would be seeking to 'amend and extend' the CMP.
- H. Hampson will contact Attorney Collins about the need provide ConCom with documentation of this, including NHESP responses, in writing.
- In addition, Mr. Burne said the outcome of the MESA question could potentially trigger MEPA (Mass. Environmental Policy Act) review thresholds (rare species, work in an ACEC [Area of Critical Environmental Concern], land conversion).
 - Mr. Burne thought it likely that it would probably trigger a MEPA review, which could be a lengthy process but could take place separately from ConCom's preparation of a Conservation Recommendation for the Planning Board.

▪ Blasting

- BSC Group will be doing a research project on this regarding potential impact on wildlife and the status of current regulations.
- J. Gugino brought up that the Planning Board, on 7/12, had raised the possibility of using chemical blasting as an alternative to detonation, and that this raised her concerns about the environmental impact of chemical use given the bedrock and proximity to Long Pond.
 - Mr. Burne said the burden would be on the Applicant to demonstrate no adverse impact, and that BSC Group will also consider this possibility as they do their research.

▪ National Grid powerline right-of-way (ROW)

- Mr. Burne said ROWs often provide valuable wildlife habitat features, and that the 2004 Oxbow Associates report submitted by the Applicant demonstrated how important the Stratton Hill ROW is to Blandings turtles as well as former State-listed species.



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- He is concerned that the Conservation Analysis as submitted just cites that data but does not include information on how the proposed project would interact and impact the ROW, nor how its impact would be managed.
 - Mr. Burne also said there may be ways to mitigate the impact of roadway crossings under the power lines, such as just having one crossing rather than two to minimize vehicle passage, or other structural adjustments.
- J. Gugino also asked for a recommendation on how to prioritize and balance juggling the relative importance of the proposed development area north of the ROW versus the currently forested slope down to Long Pond south of the ROW.
- **Stormwater management**
 - While the preliminary plan only presents hypothetical locations of stormwater systems, BSC Group will look at this relative to limiting potential impact to wildlife and Long Pond.
 - J. Gugino said some residents have specifically raised concerns about the impact of non-point-source pollution runoff to Long Pond.
 - Where proposed stormwater basins are located, what is the status of bedrock underneath as if too close to the surface, this could reduce natural filtration and potentially allow more runoff material to reach Long Pond.
 - Mr. Burne said such projects must meet State stormwater management standards and that these would theoretically protect the pond.
 - J. Gugino noted that Long Pond has previously been identified as being in relatively pristine condition, and that “theoretically” doesn’t guarantee protection; the opportunity to protect Long Pond is now because once degraded, that opportunity will no longer exist.
- **Overview**
 - An overriding question is whether the submitted Conservation Analysis is the right/most adequate conservation analysis for this particular site and the proposed development.
 - This includes consideration of whether the data submitted adequately meets the 18 requirements raised in the OSRD Guidelines.
- **Public Input**
 - Prior to opening the discussion up to public comment, J. Schmalenberger reviewed ConCom’s role in the review of this project:
 - Most of the project is outside of ConCom’s legal jurisdiction over wetland resource areas and buffer zones, both under the Wetland Protection Act as well as the Ayer Wetland Bylaw.



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- ConCom's role is not to stop development but to make sure that where it will take place, it will be done in the best, least impactful way possible.
- ConCom's primary in the Stratton Hill review process now is to prepare a "Conservation Recommendation" to the Planning Board in a timely fashion (end of August/early September) to enable them to meet their own time deadlines for the preliminary subdivision review process.
 - ConCom has secured third-party review to enable it to present the strongest, most-informed, recommendation possible.
- Public comments should ideally be limited to 5 minutes/person to allow time for everyone interested to speak.
- Annie Reed, Wachusett Avenue East
 - Ms. Reed referred to the continued applicability of many comments that she previously made in 2021.
 - That was when the project was first under discussion until the Definitive Subdivision application before the Planning Board was withdrawn, revised, and then resubmitted in June as a Preliminary Subdivision application.
 - She said the applicant has not done a thorough enough documentation of existing flora, fauna, geological and geographical features, and that a lot of the wetland area hasn't necessarily been delineated correctly.
 - With so much of the development site having impermeable bedrock present, she wanted to know where stormwater will go and how it will be managed.
 - The current basin, constructed back in the 2005-2008 period, is a disaster and does not work as it should.
 - Piles of abandoned rubble were also left from this work period – how will they be addressed?
 - How will other areas previously disturbed but no longer proposed for development be restored?
 - What will be the effect of blasting if that is done?
 - Clearing existing woodland to put in new stormwater basins seems problematic.
 - A lot of the existing cart trails on the parcel have not been identified and located in their submission.
 - One of the 18 data points in the guidelines for submitting a Conservation Analysis for OSRD subdivisions states that existing physical conditions within 500 ft. surrounding the development parcel should have been depicted.
 - The Analysis's depiction of High, Medium, and Low Priority areas for conservation is not correct, as was pointed out by the Commission the previous year as well.



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- Ken Diskin, Washington Street/Planning Board Member
 - Mr. Diskin said that the Commission had a third-party peer reviewer review the ANRAD (Abbreviated Notice of Resource Area Delineation) submitted by the applicant in 2020.
 - Adjustments were made to the wetland delineation as needed and the Commission issued an ORAD (Order of Resource Area Delineation) in the fall of 2020.
 - Mr. Diskin asked the Chair to verbally confirm the Commission was satisfied with the confirmed delineation done in 2020.
 - Chair J. Schmalenberger confirmed the Commission's previous approval of the ORAD.
 - Mr. Burne said that, regardless of any wetland changes that may have occurred since 2020, the ORAD's acceptance of the wetland delineation is legally applicable for 3 years from the time of its issuance, or longer if extended by vote of the Commission.
 - Mr. Diskin also said that 3 drawings in particular need to be reviewed by Mr. Burne, depicting land cover, soil type, and topography, and H. Hampson will make sure these are passed on.
- Marion Stoddart, Autumn Ridge
 - Ms. Stoddart said she strongly supported all of the concerns expressed by ConCom in the Request for Proposals.
 - Everything possible should be done to ensure the protection of Long Pond and its integrity.
- Anne Gagnon, Mass. Dept. of Fish & Wildlife
 - [Note: All parties (applicant, town/commission/planning board) are anticipating that the open space for this OSRD subdivision will be conveyed to, and held by, Fish & Wildlife.]
 - The 18 data points cited by Ms. Reed would contribute to the baseline documentation of the exact conditions on the day of transfer, but are a small piece of the documentation process.
 - Mr. Burne said he would be looking at what information might need to be added to the submitted Conservation Analysis.
 - Ms. Gagnon emphasized that this parcel is regarded as a very important "focus area" for conservation.
 - The process of putting land into permanent protection under Fish & Wildlife is a bit different than a regular Conservation Restriction that would be held by the Town through the Commission.
 - In previous discussions with Attorney Robert Collins for the applicant, Ms. Gagnon said it was indicated that the open space would likely be conveyed to Fish & Wildlife as a "donation in fee."



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- At the time of transfer, metes and bounds, etc. would need to be correct.
- She also stated that Fish & Wildlife is requesting that the transfer of ownership of the open space take place at the beginning of the active development of the site.
 - To prevent any hold-ups and get the process started, Ms. Gagnon will be bringing the likely transfer of the Stratton Hill open space before the Land Committee (under Fish & Wildlife) this fall, a process of review that can at least begin even though the Planning Board may not have completed its permitting review process.
- Ms. Gagnon also asked to clarify Mr. Burne's role in this review process, and whether he was going to require the applicant to collect new data or revise the Analysis.
 - Mr. Burne said his intent is to evaluate the Conservation Analysis for its accuracy and completeness, and also to evaluate whether the Analysis and the plans have drawn the appropriate conclusions from the data to guide the proposed development plans.
 - He can advise the Commission on all of this, and on whether it makes sense or not to go back and redo some things, but the decision on how to proceed will rest with the Commission.
- Mr. Burne said he also understands the time frame that the Planning Board must operate under, and therefore the need of the Commission to provide its Conservation Recommendation in a timely fashion.
 - He will aim to have his report ready at the first or the second Commission meeting in August (11th or 25th).
- **Discussion: Waterways Sign Project Update**
 - M. Phillips said he was still waiting for a response from the Building Inspector as to whether permits needed to be sought to install the signs.
 - H. Hampson will try to contact Mr. Schulz again before he leaves on vacation.
 - H. Hampson has already heard from the Fire and Police departments who have no issues.
 - DPW Director Dan Van Schalkwyk provided H. Hampson with the form for a Street Opening Permit that is needed for anything that 'encroaches' on a Right-of-Way and she will submit this for all the sign locations within ROWs.
 - No comments have been received from the Town Manager's office or the Select Board, indicating they have no issues with the signs going up.
 - M. Phillips will contact Commission members about help installing at least some of the signs over the next weekend or so.

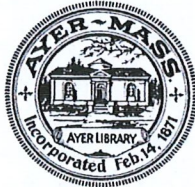


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- **Conservation Commission Office and Member Updates**
 - Ayer Solar II, MassDEP # 100-0403
 - H. Hampson has been inspecting this site weekly.
 - Stone has been laid and leveled at the outlet of the culvert but not at the inlet.
 - Erosion control matting and crushed stone have been put on the side slope after the entrance from Washington Street.
 - They are working on grading the stormwater basins.
 - They have yet to begin work on the wetland replication areas specified in the approved plans and Order of Conditions.
 - Mr. Diskin, whose property abuts the project, said to clarify that the area underneath the culvert was supposed to re-create the original conditions and materials.
 - H. Hampson will check with the approved plans before her next visit to the site, to see exactly what was supposed to happen around and underneath the culvert.
 - H. Hampson said it has been taking a lot of effort to get the contractor to handle and complete all of the items needing attention, so she is now parceling them out to keep them focused.
 - M. Phillips said he was getting impatient with the contractor's delays in complying with the Order – first there was too much rain to do certain things, then there's drought, or they can't find haybales for erosion controls, etc.
 - There was discussion as to whether, if there wasn't more responsive compliance, an Enforcement Order, or contacting MassDEP, should be considered.
 - Mr. Diskin suggested the Commission ask Goldsmith, Prest & Ringwall (GPR), the engineering firm used by the project, to prepare a complete list of all the changes that the contractor has made from the approved plans and why.
 - His concern is that they are not building Solar II according to the plans.
 - H. Hampson said she had made that request already to GPR but was deferred to Rohit Garg, the applicant for the project, who was out of the country for a few weeks.
 - Mr. Garg, when he returned, told H. Hampson she should contact GPR!
 - H. Hampson has also contacted the Natural Heritage & Endangered Species Program (NHESP), which also issued permits, on changes to the project and they have reached out to Mr. Garg as well asking for more data.
 - H. Hampson has also told the contractor 3 times so far to clean debris out of the replication area locations and this has yet to take place as well.
 - H. Hampson, who all agreed is doing a fine job catching up on this project and monitoring it closely, will keep the Commission apprised on developments.



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- 39 Groton Harvard Road
 - H. Hampson was contacted by the homeowner, who provided photos of large fallen branches from a willow tree near the shore of Flannagan Pond.
 - The homeowner wants to remove the tree, as well as another that is also in bad shape, while the water level in the pond is relatively low due to the drought.
 - The stumps will be left in place.
 - If the Commission wants the homeowner to submit an RDA, this could go on the next agenda.
 - After discussion, Commission members agreed that an RDA was not necessary, but that this would be a good use of the 'Administrative Approval' form that can be signed by H. Hampson.
- **9:17 PM – Adjourn Meeting**
 - G. Bacon moved to adjourn; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval:

8/11/2022 