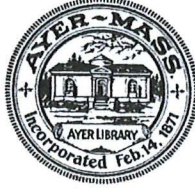


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TOWN OF AYER
TOWN CLERK



Town of Ayer Conservation Commission

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

Minutes for 8/11/2022

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

7:01 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 7/28/2022 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) – 71 & 72 Nashua Street, Jen Amaya and Ryan Clinton.**

- Assessor's Map 13, Parcels 42 & 41
- As one of the applicants, J. Amaya recused herself from the Commission just for this RDA Public Meeting.
- Ms. Amaya and Mr. Clinton, whose properties adjoin, were both present via Zoom.
 - When their houses were built as part of the Nashua Street Extension subdivision, the developer put in a shared driveway that was too narrow and only constructed with one layer of asphalt.
 - The driveway, only a few years old, is already crumbling.
- The Clintons and the Amayas would like to redo the driveway properly, laying down a couple of inches of gravel and 2 layers of asphalt.
 - At the same time, they would like to widen the driveway 1-2 feet from the cul-de-sac to the Amaya's driveway on the left side of the road, then a little bit further along the Clinton driveway.
 - In addition, the Clinton's would like to pave the existing two turnaround areas that are currently gravel (see 7/9 and 7/23/2020 minutes for previous RDA).
- J. Schmalenberger asked for opinions on whether this is an RDA application or should be a more formal Notice of Intent (NOI).
 - H. Hampson said replacing existing driveway counts as maintenance, and that the area for driveway expansion is already disturbed area.
 - G. Bacon said the project seemed straightforward.



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- M. Phillips was okay with the project as long as it was okay with the rest of the Commission to pave the gravel turnarounds.
 - G. Bacon moved to issue a Negative Determination of Applicability (DOA) for 71 and 72 Nashua Street, with the condition that erosion controls are to be installed and then inspected by H. Hampson prior to the start of work.; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - J. Schmalenberger advised as to the 10 day waiting period from issuance of the permit.
- **Public Meeting: RDA – 0 Bligh Street, Pirone Park, Kiddie Junction Playground, Grove Pond, Town of Ayer Department of Public Works**
 - Assessor's Map 34, Parcel 17
 - Present for this meeting via Zoom were Jeff Thomas, Director of the Ayer Parks Department; Dan Van Schalkwyk, Director of the Ayer Department of Public Works (DPW); and Randy Collins, of The Beta Group, Inc., the landscape architect working on this project.
 - Because of arsenic contamination and per requirement of MassDEP, Kiddie Junction Playground is to be demolished and removed, along with roughly 6-12 inches of arsenic-contaminated soils/materials within the fenced playground.
 - There is also an area extending south outside of the fencing, entering the outer buffer zone to Grove Pond, that is contaminated as well and will also have to be scraped and remediated.
 - A new playground will then be rebuilt in the second phase of the project (and which will be reviewed under a Notice of Intent filing where grading and new construction are proposed within buffer zone).
 - Beta Group is overseeing the demolition and remediation portion of the project.
 - Beta will be taking soil samples throughout the project area to determine the boundaries of the clean-up.
 - They will also do confirmatory soil samples after removal to make sure enough contaminated soil has been removed to meet State arsenic standards (below a threshold of 20 mg/kg) and that area no longer qualifies as 'hot.'
 - If contaminated material is still present, they will have to dig deeper to remove that.
 - The LSP (Licensed Site Professional) will make those calls.
 - Of necessity, most of the trees within the existing playground fencing will be removed but, in response to public feedback and concerns, there will be an effort to save three of the oak trees by vacuuming contaminated soils from around the roots and protecting the trees from dripline to trunk.
 - Outside of the fence perimeter, closer to the pond and within the buffer zone, some additional trees will be taken down in two areas as well.
 - One tree has a damaged split trunk and presents a safety hazard in an area where a playground extension is likely to be built.



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- In an area slightly to the west of that, 4 additional trees, 3 of which are inside the 100 ft. buffer zone, will be taken down at the same time, while leaving some others in place.
 - All trees to be taken down will also have their stumps removed.
 - New tree plantings (with 3 to 3-1/2 inch calipers for maples, 2 to 2-1/2 calipers for oaks) will be done here and within the playground area at the completion of the project rebuild.
- M. Phillips questioned the cost and potential futility of trying to save trees inside the playground, but Mr. Thomas explained that this was in response to many comments received at public forums – the trees provide shade and have historical and sentimental importance to many.
 - H. Hampson spoke strongly in favor of retaining established trees, where possible, for the valuable shade they provide (and J. Gugino strongly concurred!).
 - J. Schmalenberger asked about the additional cost of removing the trees if they were to die after the new playground has been completed.
 - However, given that the area within the existing playground fence is outside of ConCom jurisdiction, this discussion was in the end terminated.
- In response to a question from H. Hampson, Mr. Collins said all excavated/contaminated soil/material will be removed from the site and not stored there.
- The anticipated timetable for the project is to put the demolition/remediation work for the first phase out for bid in August so that the work can begin in September.
 - Depending on the results of soil testing and clean-up results, it is possible this work could bleed into November, but ideally it would be completed earlier so that the second phase of the project could begin in late fall.
 - Proposals will be solicited prior to that for the playground rebuild contract for phase 2.
 - The goal is to have the new playground completed and able to open to the public in spring 2023.
 - If the ideal timetable does not prove feasible, H. Hampson asked about having the site prepared in such a way that it presents no hazards to the environment over the winter.
- G. Bacon moved to issue a Negative DOA, with the condition that the site is to be inspected for over-winterization conditions by H. Hampson at the end of the construction season; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - The 10 day waiting period for MassDEP to appeal this decision applies.
- **Public Meeting: Requests for Certificate of Compliance (COC), Pingry Hill Subdivision**
 - Dr. Desheng Wang, of Creative Land & Water Engineering, was present via Zoom on behalf of Ridge View Realty Trust, the applicant for the COCs.
 - Dr. Wang has been the Erosion Control Specialist monitoring this site for years, per the requirement for such made of the applicant by MassDEP.



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- All work has basically been completed on the development, save for some replication areas that require at least another growing season before being considered for approval.
 - H. Hampson visited the site with Dr. Wang and the developer, Duke Pointer, on July 1.
 - Dr. Wang said that, on the whole, generally there was less ground disturbance than was permitted by the Orders of Conditions, and that the whole site is now permanently stabilized.
 - Stormwater detention basins have been completed.
 - All required conservation signage is now in place.
- At the site walk, H. Hampson asked for additional signage in some locations where boulders, that had been mandated in the Orders, were not installed.
 - The purpose of the boulders, as of the signs, was to provide clear delineation of the point beyond which lawns are not permitted to encroach, with the boulders presenting physical impediments to any such actions.
 - Where boulders were missing, H. Hampson asked for additional signs, and advised that to bring in boulders now would cause more disturbance to already-stabilized areas.
 - In some cases, the missing boulders would have been located at a slope point that provides its own natural impediment as well.
- M. Phillips said the only thing he was disappointed in were the missing boulders – something as substantial as a boulder is harder to ignore than a sign – and that the boulders in some site photos seemed smaller/less substantial than the Commission wanted.
 - H. Hampson said she could put some of these locations on a list to be checked yearly to make sure no encroachment has taken place.
- That being seen as sufficient, the Commission moved on to vote on the 8 COC requests submitted:
 - **Request for COC: 169 Woodland Way, Map 36, Parcel 112, MassDEP # 100-0413**
 - G. Bacon moved to issue a COC for 100-0413; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - **Request for COC: 237 Woodland Way, Map 36, Parcel 118, MassDEP # 100-0417**
 - G. Bacon moved to issue a COC for 100-0417; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - **Request for COC: 186 Woodland Way, Map 36, Parcel 179, MassDEP # 100-0280**
 - G. Bacon moved to issue a COC for 100-0280; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - **Request for COC: 259 Woodland Way, Map 36, Parcel 184, MassDEP # 100-0418**
 - G. Bacon moved to issue a COC for 100-0418; M. Phillips 2nd.



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- Motion approved unanimously by Roll Call Vote 5-0.
- **Request for COC: 207 Woodland Way, Map 36, Parcel 115&116, MassDEP # 100-0414**
 - G. Bacon moved to issue a COC for 100-0414; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Request for COC: 219 Woodland Way, Map 36, Parcel 117, MassDEP # 100-0416**
 - G. Bacon moved to issue a COC for 100-0416; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Request for COC: 252 Woodland Way, Map 36, Parcel 180, MassDEP # 100-0432**
 - G. Bacon moved to issue a COC for 100-0432; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Request for COC: 10 Fox Run Drive, Map 36, Parcel 153, MassDEP # 100-0435**
 - G. Bacon moved to issue a COC for 100-0435; M. Phillips 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Conservation Restriction (CR) – Shaker Mill Pond Subdivision**
 - A draft of the CR is in circulation, with revisions suggested by ConCom and supported by Town Counsel.
 - H. Hampson will contact Town Planner Mark Archambault to see what the next steps are to get to a final draft.
 - She also said it is good that the draft includes a provision that money be set aside by the developer for CR monitoring for a period of time.
- **Discussion: Waterways Signs Project Update**
 - M. Phillips said ConCom will have the project completed well in advance of the 9/30 deadline.
 - There are still a few signs to be installed, but most are in thanks to the herculean efforts of M. Phillips, J. Schmalenberger, G. Bacon, and J. Amaya mightily swinging that sledgehammer, over and over and over again, to drive the sign stakes deep into that hard, hard ground!
 - J. Gugino took the more delicate route of writing up the descriptions of each waterbody for the Town website that the QR code will link to.
 - IT Director Cindy Knox will handle the website.
 - H. Hampson took care of securing the road opening permits from the DPW for sign installation where needed.
 - Per the suggestion of IT Director Cindy Knox, J. Gugino said she will prepare additional waterbody descriptions for the Nashua River and Plow Shop Pond, for the website (ayer.ma.us/waterways) even though neither will have a sign.



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- Both are integral links in the chain of Ayer waterbodies that begins with Long Pond and ends with the Nashua, and the website is for the waterways in general.
 - There is no Nashua River sign because of the onerous restrictions that would be hard to meet for the two potential locations – one on Rte. 2A (MassDOT) and the other on MacPherson Road (Oxbow National Wildlife Refuge).
 - There is no Plow Shop Pond sign because that is all private property and inaccessible to the public.
 - H. Hampson will check with Accounting to ascertain the costs to date for expenses covered by the grant.
 - M. Phillips said the actual costs will be quite a bit under the estimate accompanying the grant application.
 - H. Hampson will look into preparing a map graphic of the waterways to accompany each individual waterbody description, with that particular waterbody highlighted in some way for easy identification.
 - Per the suggestion of G. Bacon, the Commission will pursue, some time after Labor Day, the idea of soliciting photos of each waterbody from Ayer residents, to be screened for selection prior to posting to the website as well.
- **Conservation Commission Office and Member Updates**
 - 52 Nashua Street
 - H. Hampson had another request for tree removal from an Ayer resident.
 - Here, 4 trees in the wetlands are proposed for removal, all of them dead or dying or potentially dangerous to the house or the road.
 - H. Hampson spoke to Flagg Tree Removal who said they would remove the trees using a crane set on the driveway, with minimal disturbance to the wetlands.
 - H. Hampson asked if the Commission was in agreement with allowing her to permit this through the Administrative Approval form.
 - The Commission agreed, and M. Phillips asked her to see if the homeowners were willing to leave at least some of the stump/trunk above ground, as much as possible, where it can serve as habitat.
 - H. Hampson said she had already asked that and the homeowners had no problem with doing that; she'll reiterate that in the Approval permit.
 - Mass. Association of Conservation Commissions (MACC)
 - H. Hampson recently attended an online MACC training session on Conservation Restrictions.
 - She said she learned that, while Ayer ConCom thought we were in rough shape with regards to the incomplete or unmonitored status of some of our CR properties, we are not alone, and indeed, are not in as bad shape as some other communities.
 - H. Hampson has also signed up for a training session on CR Baseline Documentation in November.



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- MACC's fall conference will be on October 15.
 - This year, for the first time since the pandemic began, the conference will be in person, and in addition, it will be located this year in Devens close by.
- Also, if M. Phillips wants to complete more of MACC "Fundamentals" trainings, he was assured that there is money in ConCom's annual budget for this purpose.
- H. Hampson confirmed that ConCom's MACC membership has been renewed and is up-to-date.
- Ayer Solar II, MassDEP # 100-0403
 - H. Hampson has not heard back from Rohit Garg with regard to her request for a checklist detailing all of the changes made during construction that differ significantly from the approved plans and Order of Conditions.
 - Rohit Garg is the designated contact person for the project, even though he is located in the Midwest.
 - She also asked for a revised set of plans and has had no response.
 - Town Planner Mark Archambault has also had difficulty getting responses from Mr. Garg lately as well.
 - In addition to concerns about the culvert/stream crossing, the entrance road, and the replication areas, H. Hampson said the tree box filters are not being constructed as described in the plans.
 - Also, the plans call for 5 or 6 of them but only 3 have been put in.
 - Per M. Phillips request, H. Hampson will check the files to see if there are "before" pictures of the stream crossing to compare to.
 - The stormwater basins are essentially just dirt for now and not functional.
 - The replication areas haven't even been begun and we are reaching the end of any growing season.
 - H. Hampson is worried they'll turn the power on in the solar field before they finish their other obligations for the project.
 - Her contact at MassDEP suggested a Violation Letter is in order, including notification to Mr. Garg that failure to respond could lead the Commission to issue a Violation Notice and a Cease & Desist.
 - ConCom would also have to vote on an Amended Order of Conditions – and could vote no if it chose.
 - By luck, H. Hampson was up in the Building Department the other day when Solar II's request for a Certificate of Occupancy came in.
 - However, it is also the case that Solar II could turn the power on anyway without needing that Certificate from the Building Inspector.
 - Changes to requirements made by NHESP (Natural Heritage and Endangered Species Program) were made as well, and while NHESP has said they were okay with the changes, H. Hampson has been unable to get written confirmation from Mr. Garg despite her request.



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- ConCom members shared H. Hampson's frustration with the lack of responsiveness from the project manager.
- Per the Commission's request, H. Hampson will send Mr. Garg a Violation Notice requiring his presence (via Zoom) at ConCom's next meeting on 8/25.
 - J. Amaya said to give a deadline for Mr. Garg to respond, and then say that there could be consequences from the Commission in the form of a Cease & Desist and/or fines if the non-responsiveness continues.
- Permitting Database
 - G. Bacon asked if the permitting database created under the previous Conservation Administrator, at cost to the Commission, was being used?
 - Cindy Knox spoke up that she needs to show H. Hampson where it is in the computer system and how to use it.
 - She will try to do so next week.
- **9:02 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: _____

8/25/2022 *Jimmie L. Gugino*