



## **Town of Ayer Conservation Commission**

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

Minutes for 9/8/2022

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

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

Not Present: Jon Schmalenberger (Chair)

APAC Recorded: Yes

### **7:01 PM – Open Meeting**

- **Confirmation of Agenda**

- G. Bacon moved to confirm the agenda as posted; J. Amaya 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 40.

- **Approval of Meeting Minutes**

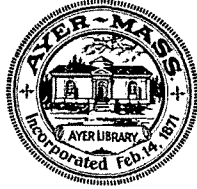
- Regarding the Ayer Solar II violations discussion, M. Phillips suggested some edits to add clarity.
- G. Bacon moved to accept the minutes for 8/25/2022 as amended; J. Amaya 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 4-0.

- **Public Input**

- None received.

- **Public Hearing (cont'd.): Notice of Intent (NOI) -- Transmission Main Replacement, Spectacle Pond Water Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-0480**

- Assessor's Maps 24 & 17, Parcels 1 & 7 (project between Willow Road and Nemco Way)
- Present via Zoom were DPW Director Dan Van Schalkwyk and Charles Gore, of Tighe & Bond.
- The project proposes to replace an approximately 750-ft. long portion of corroded pipe carrying water out of the Spectacle Pond Water Treatment Plant, a pipe of critical importance as it is the only pipe delivering water from Spectacle Pond into the Ayer water distribution system.
- The Conservation Commission did a site walk on 9/3/2022 and observed it was a straightforward project.
- Mr. Gore addressed comments received from MassDEP when the file number was issued.
  - His response to DEP included clarifying that while the whole area for the project is within BLSF (Bordering Land Subject to Flooding), all of the project work is within the existing roadway, not in the resource area itself.
  - He also clarified that the replacement pipe ends at the nearby culvert; work on the culvert is not part of this project.
- Mr. Van Schalkwyk referenced the 8/30/2022 comment letter received from NHESP (Natural Heritage & Endangered Species Program, NHESP Tracking No. 22-41259).



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- The NHESP letter permitted the project on the basis of compliance with 7 conditions to be included in the Order of Conditions (OOC) in order to ensure no adverse effects to Resource Area habitats of state-listed wildlife species, and no prohibited 'Take' of state-listed species.
- Many of the 7 conditions are based on condition #1, the 'Time of Year Restriction'.
  - If the project work takes place over the winter, from October 16 to April 15, no state-listed turtle protective measures are required.
  - However, if work takes place between April 15-October 15, then the project must comply with additional conditions to ensure protection of endangered turtles.
- Other NHESP conditions included details regarding the use of any seed mixes to disturbed soils, an authorization duration deadline of 5 years, and a condition requiring submission of a Compliance Report within 30 days of the completion of the project.
- Mr. Van Schalkwyk indicated that a turtle protection plan will be submitted to NHESP for their approval.
- It is hoped that the project will be completed outside of the Time of Year Restriction period anyway.
- G. Bacon moved to approve the drafting of an OOC for 100-0480; J. Amaya 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 4-0.
- All seven of the NHESP conditions should be cut-and-pasted into the draft OOC verbatim.
  - H. Hampson will work with Mr. Gore and the DPW to adjust other conditions in the boilerplate that may not be workable for this project.
  - If there are no concerns about the draft OOC, the applicant need not be present at ConCom's next meeting to vote on issuing the OOC and close the Public Hearing.
- G. Bacon moved to continue the Public Hearing to 9/22; J. Amaya 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 4-0.
- **Discussion: Conservation Recommendation for Stratton Hill Open Space Residential Development (OSRD)**
  - Per the OSRD Zoning Bylaw (Section 10.1), the Conservation Commission is tasked with providing the Planning Board with a written Conservation Recommendation based on the Conservation Analysis submitted by applicants for proposed OSRD subdivisions.
    - Fox Meadow Realty submitted a Conservation Analysis for Stratton Hill that was primarily based on data collected by Oxbow Associates in 2003-2005 when a non-OSRD subdivision was initially proposed, then halted in 2008 until the project was recently reactivated.
    - A revised plan was submitted to the Planning Board in 2021 in the form of a definitive OSRD subdivision, an application that was subsequently withdrawn without prejudice at the beginning of 2022.



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- It was then re-submitted to the Planning Board in June 2022 in the form of a preliminary OSRD subdivision application.
- The Commission then had the proposed project and the Conservation Analysis evaluated by a third party peer reviewer, Matt Burne, of BSC Group.
- Commissioners have individually sent their suggested recommendations to H. Hampson who is now working on drafting a final document.
  - She has also reached out to Groton's Planning Board and Conservation Commission to see how they approved development on their side of the parcel back in 2005.
    - (NHESP issued a Conservation Management Permit (CMP) jointly to Groton and Ayer in 2005 since the proposed open space was contiguous and both areas for development were being considered at the time.)
- H. Hampson reported meanwhile on the areas of apparent consensus, and general discussion followed:
  - ConCom members are broadly in agreement that development north of the powerline Right-of-Way (ROW) should strongly be discouraged or, at the least, reduced.
    - At the same time, the Commission wants the ROW itself treated as valuable High Priority habitat, and is also in agreement that the slope down to Long Pond south of the ROW is High Priority as well and should be left undisturbed rather than used for stormwater management structures.
    - Discussion took place as to how to nuance this to allow for bargaining room if necessary.
      - The presence of Commissioners at the Planning Board meeting on 9/27 might help.
  - It was suggested that house lots south of the ROW could be reduced in size to allow the relocation of houses from north of the ROW to its south.
    - J. Gugino noted that the issue of traffic from 35 new residences, wherever located, will still be a contentious issue for residents along Wright Road and its side streets.
  - Regarding Dark Sky friendly street lighting to reduce adverse impact on wildlife/habitat, M. Phillips and the rest of the Commission were in agreement that this area should have no requirement for street lights.
- G. Bacon said that if, after ConCom submits its Recommendation, the applicant does not agree, it is up to the applicant to prove why the Commission is wrong.
- Resident Annie Reed, of Wachusett Avenue East, spoke to the importance of emphasizing Mr. Burne's position that the 2005 CMP expired in 2012.
  - She also noted that it is her understanding that State permitting supersedes Town permitting, and therefore asked if the CMP has expired, does this not also apply to Town permits issued at the time, i.e., the Planning Board approval of the original subdivision design?



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- In her view, someone with proper legal expertise, such as Town Counsel, should be consulted on this question.
  - In addition, she said the preliminary plan proposes 2 duplexes which would require a Special Permit from the Zoning Board of Appeals (ZBA) or Planning Board.
    - She said this should also be run by Town Counsel given that earlier in the year, the ZBA received a petition signed by 47 residents in the same Snake Hill/Wright road neighborhood opposing the issuance of a Special Permit for a duplex nearby; the ZBA subsequently denied the Special Permit application.
  - H. Hampson expects to have a draft ready for Commissioners to review next week.
- **Conservation Commission Office and Member Updates**
  - Sandy Pond
    - Just a few hours before this meeting opened, the Town of Ayer/Board of Health issued a Public Health Advisory that closed Sandy Pond to swimming and recreation until further notice.
    - From testing confirmed by the State, Sandy Pond is experiencing a harmful blue-green algae bloom (aka Cyanobacteria) that is toxic to both humans and animals.
      - The severe drought and hot temperatures over the summer have contributed to this outbreak.
    - J. Gugino said she had asked Joe Onorato, of Water & Wetlands (the company providing aquatic weed management on the ponds this year), to look at the situation when they do their next treatment, and to recommend if anything could be done.
      - Mr. Onorato has already raised the possibility of incorporating 'on-call algae treatment' into the RFQ for next year's treatment program.
  - Conservation Commission Webpage
    - IT Director Cindy Knox has been helping H. Hampson update the Commission's Town webpage.
    - H. Hampson has added things like an overview of what ConComs do, a homeowners guide, and information on drought-resistant plants and rain barrels.
    - The 2016 Geosyntec Consultants report, "Biological Survey, Assessment and Management Recommendations for Ayer's Ponds," is also now back up on the site as it is frequently referenced.
  - Ayer Solar II, MassDEP # 100-0444
    - On Friday, 9/2, H. Hampson and J. Schmalenberger had a fruitful discussion with the main proponents for Ayer Solar II – Rohit Garg, along with Cal Goldsmith and Kyle Burchard from Goldsmith, Prest & Ringwall.
    - The site is stable, erosion controls have been corrected, but it is still proving difficult to find workers for the site.
      - Next time they have a crew working, they will let H. Hampson know.



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- Shaker Mill Pond footpath along shoreline
  - H. Hampson provided an update on her walk along the pond's shore with representatives from the Shaker Mill OSRD currently under construction.
  - The terms of the project's permitting included putting in a footpath along the shoreline to allow residents access to the open space.
    - The natural path already there can be enlarged a bit using hand shears to cut back brush.
  - M. Phillips suggested the trail is further defined by painted blazes on the trees.
  - J. Amaya asked if there were ADA (Americans with Disabilities Act) requirements for the footpath?
    - H. Hampson has been checking on this but said she did not think so – ADA requirements only come into play if State money has been used to purchase land.
- **8:25 PM – Adjourn Meeting**
  - ConCom's next meeting will take place on 9/22 and will return to an in-person format in Town Hall.
  - G. Bacon moved to adjourn; J. Amaya 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 4-0.

**Minutes Recorded and Submitted by Jessica G. Gugino, Clerk**

**Date / Signature of Approval:** 9/22/2022 Jessica G. Gugino