



## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8220, ext. 143

Minutes for 10/13/2022

Location: Ayer Town Hall, 1st Floor

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

APAC taped: YES

### **7:00 PM – Open Meeting**

- **Confirmation of Agenda**

- G. Bacon moved to confirm the agenda as posted; M. Phillips 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Approval of Meeting Minutes**

- G. Bacon moved to approve the minutes for 9/22/2022 as amended; M. Phillips 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Public Input**

- Resident Marion Stoddart thanked the Commission for all the effort it has put into drafting its Conservation Recommendation to the Planning Board.

- **Discussion: Conservation Recommendation to Planning Board for Stratton Hill Preliminary Subdivision Plan**

- Per the Ayer Zoning Bylaw (2018), Section 10.1, Open Space Residential Development (OSRD), the Conservation Commission is tasked with providing a Conservation Recommendation to the Planning Board, based on the applicant's submission of a Conservation Analysis and plans.
  - Matt Burne, of BSC Group, was engaged by the Commission to perform a third-party peer review.
  - Members of the Commission and H. Hampson conducted site visits as well, on 7/9/2022 and 8/5/2022.
  - In addition, H. Hampson and two members of the Commission (J. Amaya and J. Gugino), along with the Town Planner and representatives of the Planning Board, participated in a Zoom meeting with Lauren Glorioso, of the Natural Heritage & Endangered Species Program (NHESP), on 9/26/2022 in order to clarify questions around the status of the joint (Groton/Ayer) Conservation Management Permit (CMP) issued by NHESP in 2005.
- The draft Recommendation document was reviewed with minor changes or corrections made.
- Since criticism has been raised by a resident at previous meetings about the Conservation Analysis's lack of turtle data specific to Ayer, J. Gugino clarified NHESP's position on this.
  - The original data was gathered for the 2005 CMP at NHESP's request, and NHESP intentionally had data gathered from the Groton side of the parcel as they felt the data was stronger there.



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- NHESP was therefore able, in the 2005 CMP, to have 75% of the Groton-Ayer parcel's land set aside as protected open space, as mitigation for the impact of development on rare or threatened species.
  - In 2005, this included the Blanding Turtle and the Yellow Spotted Turtle.
- NHESP informed the applicant on at least two occasions, and later the Town, that the herpetofaunal data report was not to be made public (to safeguard the turtles) and therefore should not have been attached to the Conservation Analysis that was submitted to the Planning Board and passed on to ConCom.
  - Regarding this topic, per M. Phillips question, it was decided that if the Planning Board were, after receiving the Commission's Recommendation, to request further professional ecological study of the parcel in Ayer, they would be advised to make sure that any data gathered on rare/threatened species would not be made public, in keeping with NHESP's advisement.
- In addition, Ms. Glorioso was asked on 9/26 whether updated data gathered in Ayer was necessary and Ms. Glorioso responded that NHESP had no need of further data to 'tell them that an animal was present that they already know is present.'
- Also in the same Zoom call, Ms. Glorioso reiterated that NHESP would not be able to require 75% open space protection now, were the CMP to be redone, and that the 2005 joint CMP provides the most robust land protection possible.
- It was noted by H. Hampson and J. Gugino that, per the Planning Board's recent meeting on 10/11, the applicant has already made efforts to revise their plans in order to have no houses located on the Long Pond/furthest east side of the loop road.
  - While not confirmed, the applicant's representatives (Attorney Collins and Engineer Dillis) also said they were trying to relocate stormwater structures from that side (i.e. the forested slope to Long Pond south of the powerlines/Right-of-Way) as well.
- Ms. Stoddart asked for additional details as to how Long Pond could be protected from stormwater flow on that side of the development, mentioning the possibility of a permanent berm or other vegetation.
  - H. Hampson said stormwater decisions would be solidified when the project reaches the definitive plan stage before the Planning Board.
  - Ms. Stoddart was also reassured that the slope to Long Pond that was in question is highlighted in the Recommendation for no disturbance, leaving old as well as new growth (since 2008 when the project was abandoned) intact – which would provide a substantial natural vegetative barrier.
- Anne Gagnon, of Mass. Fish & Wildlife, asked whether a point raised at previous meetings by a resident had been addressed regarding stormwater runoff currently coming off Stratton Hill and allegedly flowing directly into Sandy Pond.
  - J. Gugino, who lives in the neighborhood, said runoff does not directly enter Sandy Pond from the site.
    - It is currently just rainwater runoff with sediments.



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- Much of the sediment is held back by the lip of Wright Road, and the water that does cross Wright Road then flows down Standish Avenue, approximately 1/10 of a mile, before crossing over grass, then gravel, and only then into a pipe that discharges into the pond.
  - For the Commission, this distance constitutes natural filtration, and the Commission doesn't consider that it therefore has jurisdiction.
- In addition, H. Hampson said there is no application before the Commission under the Wetlands Protection Act (WPA) that would give it review oversight.

However, H. Hampson also said this matter has now been referred to the Department of Public Works (DPW).

  - If and/or when the development of this site starts up again, then stormwater will have to be controlled from leaving the site – but this is something that will be under the jurisdiction of the Planning Board and DPW, not ConCom since the runoff area is not buffer zone or resource area per the WPA.
- **VOTE:** There being no further questions, G. Bacon moved to approve the Conservation Recommendation as amended, then to be submitted to the Planning Board for their review; M. Phillips 2<sup>nd</sup>.
  - Per the Chair's request for a Roll Call vote, motion was then approved unanimously 5-0.
- Once H. Hampson has received the amended document, she will use J. Schmalenberger's signature stamp on the final copy, forward it on to the Town Planner and Planning Board, and post a copy to the Town website.
  - The Planning Board has indicated it will internally be discussing the Recommendation at their next meeting on 10/25, and then again when the applicant's representatives (Attorney Bob Collins, Engineer Stan Dillis) can next be present, on 11/9.
  - It would of course be helpful if Commission members could attend either or both of those meetings, to be present to address any questions the Planning Board may have.
    - If commissioners want to attend the 10/25 meeting, they need to let H. Hampson know in advance by Friday, 10/21, so that she can post the meeting in the event that a quorum of ConCom members plan to attend.
- **Discussion: Boilerplate Template for Special Conditions**
  - The Special Conditions that are included with a formal Order of Conditions (OOC) has been revised and H. Hampson provided the latest draft for review.
    - This is a template, with particular areas that will need to be made specific to each Notice of Intent (NOI) application.
  - Where some conditions may not be applicable for a particular project, it was suggested that the 'strike-through' function in Word be used.

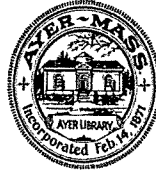


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- Various edits and tweaks were made to the draft.
  - One condition, (currently #45) regarding installation of stormwater structures, etc., at the beginning of a project, was noted by G. Bacon as difficult to enforce.
    - H. Hampson said it was still very valuable to have this condition in the boilerplate as an “ask” in order to encourage developers to do what they can early on.
    - G. Bacon also said this and other details on construction sequencing should be brought up during the NOI application and Hearing process.
- H. Hampson will revise the draft and circulate it to Commission members as well as present it to the Town Manager’s office (R. Pontbriand, C. Antonellis) for submission to Town Counsel review.
- **Request for Certificate of Compliance (COC) – MassDEP File #100-0092, San-Vel Concrete, c/o Peter Allsopp**
  - H. Hampson asked for a procedural re-issue of a signed COC.
  - The Commission voted to issue an original COC on 1/25/2021 for the OOC that dated back to 1990-91.
    - The COC was then issued in February 2021 but was never recorded by the applicant at the Registry.
    - A new COC is needed as the Registry of Deeds will not record copies.
  - The Commission proceeded to sign a re-issued COC.
- **Conservation Commission Office and Member Updates**
  - Dam Removal
    - For informational purposes, H. Hampson has been following a dam removal project in Pepperell which took place last October.
      - The area has been successfully restored to its natural state and now looks like a wet meadow.
  - ConCom Policies
    - H. Hampson has been working on a tree removal policy for Ayer residents and will have a draft ready for the Commission to discuss at its next meeting.
    - She is also planning on drawing up a policy document for guiding residents on irrigation when water is to be drawn from one of the ponds.
  - 2022 Pond Weed Management Program
    - Water & Wetlands, the company doing this year’s treatment of Sandy, Flannagan, and Pine Meadow ponds, performed a survey yesterday (10/12) of Sandy Pond in preparation for drafting their Year-End Report.
      - Because of the continuing Public Health Advisory on Sandy Pond due to the toxic blue-green algae bloom (Cyanobacteria), they were prohibited from doing the scheduled late-season treatment for excess growth of water lilies and phragmites on this pond.



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- No fanwort was found during the survey, and only a few strands of dying milfoil were observed in the southeast corner of the pond – both invasives targeted by the treatment program.
- Water & Wetlands will include options in the Year-End Report for the Commission to consider with regard to preventing or mitigating future algae blooms.
- Ayer Solar II
  - H. Hampson has been visiting the site at least once weekly.
  - Work has restarted at the site and H. Hampson is very happy with how the project is now progressing in light of all the numerous previous violations or lack of compliance with the OOC:
    - Approximately 90% of haybales and silt fencing (erosion controls) have been replaced and a stockpile of extra controls is now being maintained on site.
    - A copy of the approved plans and the OOC are now kept on site as well.
    - Work on the two replication areas, under the supervision Scott Smyers, of Oxbow Associates, has begun and this includes a few changes:
      - the replication areas have been dug out;
      - only one of the two ferns specified in the plans is available but Mr. Smyers was okay with this;
      - the plans called for 6-8 ft. tall maple trees, but Rohit Garg has only been able to get trees less than a foot tall, allegedly due to supply issues.
        - M. Phillips questioned how hard it would be to find larger maple trees, but ultimately the Commission okayed going forward with these plantings now.
        - If the trees are not successful, the project will have to purchase new ones anyway to replace them next spring – when taller specimens should be available.
        - The Commission may consider whether requiring a third monitoring year (two years were required in the OOC) is necessary.
  - Two swales and two stormwater basins are in and have been matted, seeded and graded.
  - Goldsmith, Prest & Ringwall (GPR) has been re-surveying the property in order to determine the final grades that will be necessary in a number of areas.
  - The culvert crossing now has silt socks in the middle to create a defined channel and looks good.
  - The asphalt paving of the initial portion of the access road is also being planned and H. Hampson brought to Mr. Garg's attention the fact that asphalt production ceases in New England later in the fall, something he was unaware of.



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- J. Schmalenberger asked how the steep slope to the left of the entry from Washington Street is looking.
  - H. Hampson said it is one of the areas that is not at final grade yet.
  - It still needs to be re-graded and two gates installed.
- Overall, H. Hampson said she was very happy with how the site has been cleaned up.
  - Members of the Commission were, in turn, very happy with the monitoring that H. Hampson has been doing of Ayer Solar II and her successful efforts to bring the project into greater compliance with the OOC.
- Commissioner Updates:
  - G. Bacon asked what was happening with North County Land Trust regarding Conservation Restriction management.
    - H. Hampson recently sent them material on Kohler Place but hasn't heard back from them.
  - G. Bacon asked H. Hampson to check Riley Jayne Road, the first left at the end of Pleasant Street, after entering Riley Jayne Farm subdivision.
    - A wetland replication area is supposed to be located at the end of that road but G. Bacon observed it wasn't there a month ago.
  - M. Phillips asked H. Hampson to check on the finances related to the Waterways Sign project – does the Commission owe money anywhere? Is there money left that will need to be returned to the Nashua River Stewardship Council (which provided the funding grant)?
- **9:00 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval:

11/10/2022 