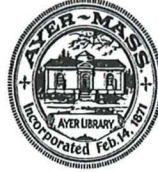


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OCT 12 2023

TOWN OF AYER  
TOWN CLERK

*Scopeland*



## Town of Ayer Conservation Commission

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8220, ext. 143  
Minutes for 7/27/2023

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

All Public Hearings are opened under the Wetlands Protection Act (MCL Ch. 131, section 40)  
and under the Ayer Wetlands Bylaw (Article XXVI)

### 7:00 PM – Open Meeting

- **Confirmation of Agenda**
  - **VOTE:** G. Bacon moved to confirm the agenda as posted; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously 5-0.
- **Approval of Meeting Minutes**
  - **VOTE:** G. Bacon moved to accept minutes for 7/13/2023 as amended; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Input**
  - None received.
- **Discussion: North County Land Trust (NCLT) – Update on Conservation Restrictions (CRs)**
  - Jo-Anne Crystoff, NCLT Director of Land Protection, was present to provide an update.
  - In the previous Fiscal Year, Ayer ConCom entered into a contract with NCLT (now expired) to assist the Commission in bringing all of its CRs up to date and into compliance with State requirements (see also minutes for 6/23/2022).
    - The priorities identified for the first year of the contract were the CRs for:
      - John Carroll Reserve subdivision
      - Ayer Solar II
      - Shaker Mill Pond subdivision
      - Panther Place subdivision
      - Kohler Place
  - Partly due to NCLT getting slammed with land acquisition work as well as losing some staff, Ms. Crystoff said they were not able to accomplish very much this past year.
  - To note:
    - A CR is a legal agreement providing permanent protection for the conservation values of a property; it includes details as to permitted and prohibited uses.
    - The CR is prepared by the landowner ('Grantor') and must be held by a separate entity ('Grantee') which can be a town, a conservation commission, a land trust, or other appropriate non-profit.



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- Baseline Documentation must be prepared for each CR, documenting the conditions of the CR property, including narrative description, maps, photos of key landmarks and bounds, at the time of the CRs recording at the Registry of Deeds.
- It then becomes the responsibility of the CR holder to perform annual monitoring of the CR to ensure that the terms of the CR protections are being met.
- Status of priority CRs:
  - Kohler Place, Wright Road
    - This CR was the closest to being ready for the start of yearly monitoring by NCLT, with the Baseline Documentation nearly complete but not yet recorded.
    - The owner of the CR is John Burns, and Oxbow Associates has completed most of the Documentation.
      - At this point, Ms. Crystoff said Oxbow simply needs to remove the 'draft' watermark on the document and add in the book/page notation from the Registry for the recorded CR.
    - Ms. Crystoff has not been successful in getting either Mr. Burns or Oxbow to respond with the completed document.
      - She said NCLT cannot begin the monitoring until the Baseline Documentation is complete.
  - Ayer Solar IIB, off Washington Street
    - Rohit Garg has indicated the CR is nearly complete, but NCLT has not seen a Baseline Documentation report for this CR.
    - Oxbow is apparently the contractor for Solar IIB.
  - Shaker Mill Road
    - When last heard from, Attorney Alan Shockett, for developer Dan Aho, had indicated the CR was almost ready to go to the State for review.
    - No Baseline Documentation report has been seen yet.
  - Panther Place, off Washington Street
    - Attorney Alex Parra has been preparing the CR.
    - It is unknown who is preparing Baseline Documentation for the developer, Joe Levine.
  - John Carroll Reserve, Curley Circle off Littleton Road (Rte. 2A)
    - Ms. Crystoff does not know who the attorney is for this subdivision, nor where it is in the CR process.
- Ms. Crystoff raised the issue of Town leverage, where for more recent subdivisions, the Planning Board has been adding a condition that occupancy permits would not be issued until a CR was complete.
  - With the lengthy impact of the COVID pandemic and related shut-down in 2020, as well as the loss of the State's CR reviewer, this condition has had to be waived in some cases, removing a source of potential leverage.
- J. Schmalenberger said he understood NCLT was busy with land acquisition, but wondered if they would be able to move forward on Ayer's CRs soon.



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- Ms. Crystoff said the difficulty moving forward is that owners, contractors, and/or attorneys have not been responding to NCLT.
    - She suggested a letter from the Commission, on Town letterhead, might help in gaining more cooperation, cc'd to Town Manager Robert Pontbriand.
  - J. Gugino asked if the Planning Board had any leverage it could exert on the Commission's behalf, such as bonds they may hold on current projects.
    - H. Hampson said that was one possibility, along with the issue of road acceptance that could be discouraged when proposed at Town Meetings if things have been left undone.
  - J. Gugino will work on drafting a letter, with input from H. Hampson, to go to the various landowners, attorneys, and relevant contractors associated with the projects mentioned above.
  - J. Schmalenberger asked how much of the previous fiscal year's \$10,000 contract with NCLT had thus far been spent.
    - Ms. Crystoff said the Town has been billed for just \$700.
  - Ms. Crystoff also noted that the State has completed going through the backlog of CRs that were held up during the pandemic shutdown, along with the lack of a State reviewer, but that it appears the State is again getting bogged down with new submissions.
    - Ms. Crystoff said that when a CR is ready to be recorded at the Registry, the Baseline Documentation has to be ready for recording at the same time.
    - She suggested that the Town (Select Board, ConCom) going forward should not sign any CRs until the Baseline Documentation is complete as well.
  - G. Bacon asked how ConCom goes forward with a new contract.
    - Ms. Crystoff said it was her understanding that the initiation of a new contract would come from Town Manager Pontbriand.
      - J. Schmalenberger, J. Gugino, and H. Hampson will be meeting with Mr. Pontbriand on Friday, 8/4, and will ask him about this then.
    - If the contract is renewed for this current fiscal year, Ms. Crystoff said she did not anticipate that NCLT would get beyond the current batch of priority CRs, so the initial scope should not change.
  - J. Schmalenberger said it would be good to not wait a year until another update, and suggested check-ins, as at tonight's meeting, should be done every 3 months.
- **Public Meeting: Request for Determination of Applicability (RDA) – 72 Nashua Street, Jen and David Amaya**
  - J. Amaya recused herself as a Commissioner from this agenda item, and joined David Amaya at the table as an applicant.
  - The Amayas have a stormwater detention basin on their property that was installed by the original developer.
    - The basin's sides are badly eroding.
    - They consulted with Pinard's Landscaping about how to address this.
  - This RDA is submitted for the work recommended by Pinard's to install a retaining wall to buttress the basin's sides.



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- Mr. Amaya said the length of the retaining wall would be 15-20 ft. and would form an arc around the side of the basin facing the Amaya house.
  - The wall would be set on a base of 3/4-inch crushed stone, using interlocking 1-ft. by 8-in. pavers.
  - A channel would be dug, probably with a small excavator, to set the crushed stone and pavers.
  - Crushed stone will be used along the outside of the retaining wall to facilitate drainage as well.
  - The retaining wall would be up to 5-ft. in height, meeting the top of grade, and tapering at the ends.
  - Ms. Amaya said there would be some minor grading to level off the land between the house and the basin's wall.
  - The closest distance from the corner of the garage to the edge of the wall is 12 feet.
  - Erosion control wattles are still in place from Seal Harbor's initial basin installation but Ms. Amaya said they would install fresh wattles for this project in consultation with H. Hampson.
- **VOTE:** G. Bacon moved to issue a Negative Determination of Applicability (DOA), with the condition of oversight by H. Hampson; M. Phillips 2<sup>nd</sup>.
  - Motion approved unanimously 4-0 and the DOA was signed.
- **Public Meeting: RDA – 1 New England Way, Nasoya Foods USA, LLC**
  - J. Amaya rejoined the meeting as a Commissioner.
  - David Mackwell, of Kelly Engineering Group, Inc., was present on behalf of the applicant.
    - Justin Lee, Nasoya Plant Manager, was also present.
  - Nasoya is proposing a building expansion and site improvements on the roughly 12-acre property.
    - The improvements include condensing the parking area, repaving, creating a circulation pattern for truck traffic, the addition of multiple water quality devices and subsurface recharge systems, and the installation of a green area and additional landscape plantings.
    - They hope to start the project this fall; it is expected to take a full year to complete.
  - Other reviews have been completed:
    - The Planning Board completed its Site Plan Review and issued a Special Permit, Stormwater Management Permit, and a waiver for reduction of the number of required parking spaces.
    - The project had also previously received a building height variance from the Zoning Board of Appeals.
    - In addition, the Ayer Department of Public Works (DPW) has reviewed the project extensively given its proximity to Spectacle Pond and Town wellheads.



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- There are no wetlands directly on the property, but a portion of the site is within the 100-foot Buffer Zone to Bordering Vegetated Wetlands or Bank associated with a small pond on the other side of railroad tracks.
  - Ecotec delineated Nasoya's proximity to nearby wetland resource areas.
- For this project, the majority of the work is outside of the Buffer Zone.
  - The only work proposed within the Buffer Zone is grinding and repaving a portion of crumbling pavement in the roadway and the installation of part of a greenstrip.
    - This is in the back southeast corner of the property.
- Although outside of ConCom's jurisdiction, Mr. Mackwell said Nasoya has also agreed to spend \$10,000 for new trees along the front of the property on Westford Road.
  - They will be working with an arborist to determine what trees are dead and need to be removed, and what trees are recommended for planting.
    - G. Bacon asked that they confer with the arborist about whether some dead trees or portions should be left for wildlife.
- H. Hampson asked that they remove invasive knotweed located in the corner where they will be installing the green strip.
  - She also noted that work within Zone A and AE have to meet Wetland Protection Act standards, making that area also jurisdictional to ConCom.
- Mr. Mackwell asked how best to remove knotweed since the use of chemicals would require a permit, and H. Hampson added that because of the proximity to Spectacle Pond wells, ConCom would not want to see chemicals used as well.
  - In some cases, tarps have been used to smother knotweed.
  - Mr. Mackwell said they would consult with someone how best to deal with the invasive plant.
- To prevent future problems, M. Phillips asked that care be taken when planting trees along Westford Road, so that trees that eventually will grow tall aren't too close to a National Grid utility pole.
- M. Phillips asked if there would be any new processes undertaken by Nasoya that could lead to any spills, such as the nearby peanut oil spill recently experienced by Catania Oils.
  - Mr. Mackwell said there were no risks, and H. Hampson said most areas are self-contained.
- The Commission felt that the amount of jurisdictional work involved did not necessitate a site walk.
- **VOTE:** G. Bacon moved to issue a Negative Determination of Applicability, with the added condition of addressing the removal of invasive knotweed; M. Phillips 2<sup>nd</sup>.
  - Motion approved unanimously 5-0 and the DOA was signed.
- **Public Hearing (cont'd.): Amendment to the Order of Conditions (OOC) – 0 Washington Street, Ayer Solar II, Rohit Garg, MassDEP # 100-0444.**
  - Nick Pauling, of Goldsmith, Prest & Ringwall, Inc., was present on behalf of the applicant.

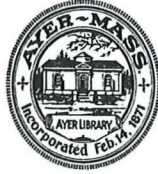


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- Mr. Pauling has reviewed the draft OOC and worked with H. Hampson on suggested rewording of one of the special conditions re monitoring steep slopes within the Buffer Zone for erosion.
  - This is also covered in the Operations & Maintenance manual for the site.
  - The OOC will expire in October, but work should be completed by then.
  - The stream crossing culvert will be finished once weather permits; final paving will be completed after the stream crossing is done.
- **VOTE:** G. Bacon moved to approve and issue the Amended OOC for 100-0444; M. Phillips 2<sup>nd</sup>.
  - Motion approved unanimously 5-0 and the OOC was signed.
- **VOTE:** G. Bacon moved to close the Public Hearing for 100-0444; M. Phillips 2<sup>nd</sup>.
  - Motion approved unanimously 5-0.
- **Conservation Commission Office and Member Updates**
  - Town Planner
    - H. Hampson has already met with new Town Planner Danny Ruiz to discuss various new applications that are or will be before both ConCom and the Planning Board.
  - Enforcement Order (EO) – Oak Ridge Drive
    - H. Hampson will be sending an EO out tomorrow to a resident on Oak Ridge Drive after receiving a complaint from a neighbor that up to 8 trees had been toppled down right into Flannagan Pond.
    - H. Hampson viewed the toppled trees, with permission, from the neighbor's property.
      - Removing the trees from the pond will be a challenge.
    - H. Hampson hopes to have the resident responsible come before ConCom at its next meeting on August 10.
  - Stormwater Inspector
    - H. Hampson has completed the training and received her Municipal Stormwater Inspector Certificate.
  - Regulations and Bylaws
    - ConCom's new regulations have now been posted on the Commission's webpage.
    - H. Hampson is hoping to have some changes to the Wetland Bylaw ready for Fall Town Meeting, including amending some definitions to make them more stringent in light of the need to adapt to climate change.
      - If not Fall, then hopefully Spring Town Meeting next year.
  - August 10 Meeting Agenda
    - Oak Ridge Drive Enforcement Order (see above);
    - Continued Public Hearing for West Main Street development;
    - RDA for Pirone Park playground design;
    - An RDA for a possible septic-to-sewer decommission and transfer.
  - Trail Markers



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- G. Bacon said the Historical Commission had been approached by the Cultural Council with grant application information.
- He wondered if this could be a source of funding for trail markers on Pine Meadow Conservation Land as well.
- Friends of Pine Meadow
  - An initial walk to survey what needs to be done was held on Saturday, July 15.
  - In addition to H. Hampson, G. Bacon and J. Gugino, 3 volunteers attended as well, along with a horde of mosquitoes.
    - It was generally agreed that the first priority should be marking the trails, especially at junctions.
  - Nothing further will be scheduled until fall when the mosquitoes should be much reduced in number.
- **8:35 PM – Adjourn Meeting**
  - **VOTE:** G. Bacon moved to adjourn; M. Phillips 2<sup>nd</sup>.
    - Motion approved unanimously 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: \_\_\_\_\_

8/10/2023 *Jessica G. Gugino*