

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 * 978-772-8208 (fax)
Minutes for **02/10/11** – Approved 2/24/11

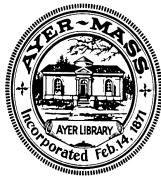
Location: Ayer Town Hall, 1st Floor

Members present: Bill Daniels (BD, Chair), Dave Bodurtha (DB, Vice-Chair), George Bacon (GB), Takashi Tada (TT), Jessica Gugino (JG, Clerk), Becky DaSilva-Conde (CA, Conservation Administrator)

APAC taped: Yes

7:08 PM – Open Meeting

- **Pledge of Allegiance**
- **Confirmation of Agenda**
 - GB moved to approve agenda as written; JG 2nd.
 - Motion approved unanimously.
- **Accounts Payable**
 - The Lowell Sun: \$51.00, for Public Hearing notice, Hannafords, 22 Fitchburg Road
 - GB moved to approve payment of \$51.00; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Proposed Conservation Restriction (CR), Sandy Pond Investment Trust , Kohler Place**
 - Scott Smyers, Field Biologist for Oxbow Associates, Inc., representing Sandy Pond Investment Trust, was present along with Sandy Pond Trustee Ed Cornelier and Francis Callahan.
 - Because of the possibility of conflict of interest, TT, who works for Oxbow Associates, recused himself from all discussion and voting related to Kohler Place subdivision.
 - Mr. Smyers appeared before the Commission to discuss the proposed CR for the 4-lot Kohler Place Subdivision, located at the end of Wright Road and abutting Sandy Pond and extensive wetlands.
 - Mr. Smyers described the proposed 22-acre CR as encompassing both wetland and upland habitat that runs along the shore of Sandy Pond and the southern and northeastern boundaries of the subdivision.
 - The owner of the property will remain the Kohler Place Neighborhood Association while the Town of Ayer will hold the CR on the property.
 - Mr. Smyers said the Natural Heritage and Endangered Species Program (NHESP) does not have special requirements at this time but asked to review the draft CR when ready.
 - Mr. Smyers asked for a letter from the Town indicating its interest in holding the CR.
 - BD indicated Commission support for the CR and said Oxbow should prepare a draft.
 - The Public Hearing for Kohler Place subdivision will take place on 2/24/11.
- **Discussion: Crabtree Development Land Donation, Parcel H-2, Pingry Hill**
 - Steve Mullaney, of SJ Mullaney Engineering, and Rick Roper, of Crabtree Development, discussed the settlement agreement offer of Parcel H-2 to the Town of Ayer's



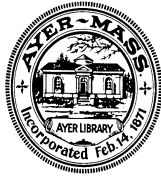
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Conservation Commission (“in fee simple and without encumbrances”) in lieu of a fine imposed on Crabtree Development by the EPA.

- The land donation satisfies the conditions and requirements of the EPA for violations of the Clean Water Act that triggered the initial Enforcement Order.
- The EPA gave a valuation \$19,400 to the 7.62 acres of Parcel H-2 on Snake Hill Road.
- The Consent Agreement and Final Order (CAFO) is in reference to US EPA Region 1 Docket No. CWA-01-2010-0014.
- The land donation was previously discussed by Andrew Spejewski of the EPA, and Mr. Mullaney and Mr. Roper at the 10/28/10 meeting of the Conservation Commission.
- The Ayer Planning Board endorsed the CAFO at its meeting on 2/3/11.
- Mr. Roper recorded Plan No. 64 of 2011 (David E. Ross Associates Plan No. L-11545) at the Middlesex Southern District Registry of Deeds on 2/4/11.
- The land donation will be a gift made directly to the Conservation Commission and does not need to go before Town Meeting for acceptance.
- Mr. Mullaney asked the Commission to sign and endorse the transfer deed for Parcel H-2.
- GB moved to agree to the land donation of parcel H-2; DB 2nd.
 - Motion approved unanimously and transfer deed signed by Commission members.
- The proposal goes before the Board of Selectmen on 2/15/11 for final approval.
- Crabtree Development will retain drainage easements on Parcel H-2, and will be constructing a drainage basin to be maintained later by a Homeowners Association.
 - BD asked about the culvert pipe running off of Snake Hill Road, and plans for constructing the forebay and final basin.
 - Mr. Roper said Snake Hill Road in the vicinity of Pingry Hill will get its final paving this year (after being subject to Planning Board subdivision regulations that required two coats of binder before final paving, with a year of separation between each coat); this will enable construction of the basin to proceed as well.
 - DB asked what has caused the delay in finishing this area.
 - Mr. Roper said there were issues with:
 - the nearby railroad which have now been resolved
 - confusion over the Planning Board’s initial requirement (from the Settlement Agreement of 2003) for the construction of two nonstandard soccer fields on adjacent Parcel H-1. The Ayer Parks Department, which was not consulted at the time, is not interested in constructing/maintaining soccer fields at this site.
- Parcel H-1 is currently under the control of the Planning Board.
 - BD sent an email to the Planning Board expressing the Commission’s interest in learning about the PB’s plans for H-1 and asked to be put on the PB’s agenda for 3/3/11; Mr. Roper requested a copy of the email.
 - BD suggested if the Planning Board did not have further plans for Parcel H-1, then perhaps they would be willing to turn control of the parcel over to another Town board.
- DB said there was interest in other community groups in turning this area (H-1 and H-2) into a small pocket park, and also in looking into possible acquisition of the landlocked



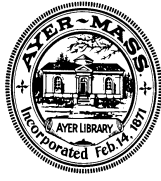
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Matheson Family Trust parcel adjacent to H-2, which would join H-1/H-2 contiguously to other lots donated to the Town in Pingry Hill.

- **Discussion: Phillip Berry, used car lot at 217 West Main Street (Map 32, Parcel 51)**
- In 2010, the BOS granted a business license to Mr. Berry permitting him to lease 217 West Main Street to a tenant for use as an interim used car lot.
- Mr. Berry approached the CA at the end of summer 2010 about putting gravel down on the lot, asking whether this was possible given the proximity to wetland resources.
- It was noted that the BOS, in granting the permit, only expressed concern about impact on the Devens Zone 2 aquifer but apparently did not take into consideration state stormwater regulations nor the Town of Ayer's own bordering vegetated wetlands that fall under the jurisdiction of the Conservation Commission; the Commission was never notified of the granting of this business permit by the BOS.
 - DB noted that he has yet to hear back from the BOS about his request that the Commission be kept in the loop on similar rulings that deal with land considered jurisdictional to the Commission.
- Mr. Berry came in to see CA again on 2/9/11; CA learned at this time that Mr. Berry is regularly out-of-state on Thursdays and will not be able to come before the Commission, as previously thought.
 - The Commission had put off issuing a Violation Notice for stormwater violations in anticipation that Mr. Berry, who had first approached the Commission on his own initiative, would soon be attending a Commission meeting.
- Mr. Berry asked CA to request a letter from the Commission that details what his tenant would need to do in order to bring 217 West Main Street into compliance with state stormwater regulations.
 - Mr. Berry would like to give his tenant the option of doing the necessary work, although Mr. Berry told CA that he himself is not interested in investing any of his own money to bring this lot into compliance.
- The Commission discussed the merits of issuing an opinion given the lack of an application or engineered plan of some sort that shows wetland delineation.
 - BD said the role of the Commission was to hear and rule on information as presented by an applicant, not to render opinions in advance of that.
- BD summarized the Commission's position on Mr. Berry's request for a letter:
 - The Commission appreciates that Mr. Berry approached the Commission of his own accord.
 - The CA has previously walked the site and the present use of this property as a used car lot is clearly out of compliance with state regulations pertaining to stormwater as well as bordering vegetated wetlands.
 - While the Commission is not interested in creating a hardship for Mr. Berry, the Commission cannot take on the role of telling Mr. Berry what his compliance plan for the lot should be; if Mr. Berry is interested in bringing the lot into compliance, he needs to have engineered plans prepared and file a Notice of Intent (NOI) like other applicants who come before the Commission.

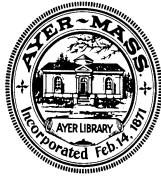


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- The Commission therefore has no choice at this time but to issue an Enforcement Order to Mr. Berry (via Worthen Realty) ordering him to immediately Cease and Desist the operation of a used car lot on this site by his tenant.
- BD sent an email to Town Administrator Robert Pontbriand informing him of this decision, and in addition reiterating DB's request that the BOS ask for the Commission's opinion prior to authorizing permits for businesses in areas where wetlands are present.
- **Public Hearing (cont'd): MBCR Phase II Fitchburg Line Improvements**
 - The Special Conditions added to the OOC were reviewed and approved:
 - #50 mandates a preconstruction conference with the Commission, with 14 days notice
 - #51 requires excavated soils to stay on-site
 - #52 stipulates that pipes and culverts will be cleaned and maintained as needed
 - #53 requires filter fabric be used under catch basin gratings
 - #54 prohibits storage of old railroad ties in buffer zones and adjoining uplands, and requires that old railroad ties from previous projects also be removed
 - #55 requires an environmental monitoring report be presented on a monthly basis
 - GB moved to close the Public Hearing; TT 2nd.
 - Motion approved 4-0; TT abstained.
- **Public Meeting: Littleton LELWD & Clean Lakes Committee**
 - Request for 3-year extension of Order of Conditions DEP File # 100-0233, for continued weed treatment on Spectacle Pond.
 - GB moved to approve extension of OOC; TT 2nd.
 - Motion approved unanimously.
- **Member Updates**
 - DB
 - Is working on a letter to Ayer Moving & Storage about their removal of the boulders that prevent snow being pushed into the wetlands.
 - Is working on a letter to the Park Street business condos.
 - The Condo Association has asked for a formal letter in order to pressure one member who apparently still has vehicles in the area which the Commission has ordered be cleared.
 - BD said to issue an Enforcement Order instead.
 - Would like to further discuss the excavating done on Rte. 2A near Bennett's Brook (by Hickory Way) and at Matt Pinard's property ("Lot W") before spring.
 - DB has had little luck getting a reply from Mass Highway.
 - DB wants to understand what Mass Highway allowed Mr. Pinard to do, and what the design was.
 - There were apparently no up-to-date permits from Mass Highway that allowed for road cuts.
 - DB would like to know how Mass Highway will clean up Bennetts Brook.



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- BD suggested another avenue of recourse might be to contact State Representative Jamie Eldredge about the state doing work in the Town of Ayer without responding to inquiries from Town officials.
 - Members of the Flanagan Pond weed control group are planning to come before the Commission to ask about funding.
 - The development known as Emily's Way has been approved by the Planning Board and the Public Hearing has been closed.
- TT
 - If the Commission is going to pursue weed control on the ponds this year, it needs to start planning now.
 - TT, via the Greenway Committee, is close to finalizing the documentation to certify a vernal pool located in the Pine Meadow Conservation Land.
 - The recent logging done by the Ayer Gun and Sportsmen Club came very close to this vernal pool.
 - CA said when the vernal pool is certified, it will be protected by the state.
 - TT would like the Commission to notify the Gun Club when the pool is certified, and come to an agreement with them so that future logging activity won't be done in as close proximity as happened this past fall.
- **CA Updates**
 - Cara Sanford, who is doing an Americorp project dealing with land stewardship with the Nashua River Watershed Association, will be coming before the Commission for a short 'meet and greet' and to find out what sorts of projects she might help the Commission/Town with, such as an Open Space plan.
 - DPW Superintendent Dan Nason is still interested in keeping the RDA for work on Groton-Harvard Road on the table (discussed previously at the 10/28/10 and 11/4/10 meetings of the Commission).
- **9:45 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.