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AUG 10 2018

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 7/26/2018

TOWN OF AYER
TOWN CLERK

M. J. O'Connell

Location: Ayer Town Hall, 1st Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)

Not Present: Jon Schmalenberger (JS, Member)

APAC taped: Yes

7:08 PM – Open Meeting

- **Confirmation of Agenda**
 - Emergency Certification for drainwork at 112 Washington Street was added.
 - GB moved to confirm the agenda as amended; BT 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - BT made some edits.
 - GB moved to approve the minutes for 7/12/2018 as taken by GB, amended by BT, and noted by JG; BT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Diesel Direct (Adam Nataupsky), Oil Spill Cleanup, Page Hilltop School, 115 Washington Street, MassDEP # 100-0425**
 - Assessor's Map 13 & Map 20, Parcels 13-11, 13-42, 12-158, 12-159
 - MassDEP Release Tracking Number 2-20459
 - Gregory Morand, the LSP (Licensed Site Professional) from Omni Environmental Group LLC (OEG), was present on behalf of Diesel Direct.
 - Also present was Paul McManus, of EcoTec, Inc., the outside consultant hired by ConCom, and Brian Snow, the LSP for Calvin Moore's Riley Jayne Farm subdivision.
 - A check for \$6700 from Diesel Direct to pay for the outside consultant has been received.
 - CA said a clause in the contract covers additional expenses, which Diesel Direct will have to pay, including the additional \$400 expense added for Mr. McManus attending tonight's meeting.
 - Mr. Morand said that Seal Harbor (for the Nashua Street Extension subdivision) has signed the access agreement.
 - He then handed copies of the access agreement to Mr. McManus and Mr. Snow.
 - The access agreement with Riley Jayne Farm and Cowfield Realty is still pending but Mr. Snow said it was at the stage of final language and was almost ready to be signed.
 - As the result of the ongoing access discussion between legal counsels, two plans were revised by Omni and Mr. Morand distributed copies of each.
 - Figure 4A (July 2018) (stormwater diversion and redirection areas)
 - This plan provides new detail for another access road from the dirty material storage area up to the stormwater conveyance system outlet by the southern border of Parcel 13-11.
 - This revision adds extended access detail in order to avoid the need to further disturb the residents at 112 Washington Street.



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Figure 5A (July 2018) (new staging area)

- Per request of Counsel for Riley Jayne Farm, this plan details the storage on the full extent of the Trevor Trail cul-de-sac (Parcel 12-159) that will be covered by high density mats, with 6 ft. high chain link fencing around the area for security.
- This staging area will have one 21,000-gallon steel frac tank, along with a phase separator and roll off containers located in secondary containment.
- Mr. Morand said there will also need to be some staging along Trevor Trail for temporary parking for on-site workers and visitors.
- An existing utility easement will provide access across the approved wetland crossing from Trevor Trail into the upland remediation areas.
- BD asked if there were any other changes to the 5/1 NOI and 6/13 Addendum to the NOI.
 - Mr. Morand said not really, but added that he was in discussion with the DPW for information and guidance as to how much flow the Town's stormwater system could receive in the event of a worst-case scenario storm flow.
- Provided the Emergency Certification is approved by ConCom (see next Discussion item), CA said the DPW would be starting work tomorrow (7/27) to replace the undersized drainage pipe running from the catchbasin on Washington Street (across and down from Page Hilltop) through the yard at 112 Washington Street.
 - Subcontractor Trident Environmental Group will then install a stormwater bypass system at the outfall of the drainage pipe coming off the back/northern edge of 112 Washington Street.
 - Bypassing the normal stormwater flow will allow Trident to minimize the amount of liquid needing management during clean-up and to more thoroughly clean/remediate the contaminated soils and vegetation along the natural down-gradient channel that carries the stormwater from Washington Street into the affected wetland system.
 - Mr. Morand described this bypass system and its backups:
 - it will have a minimum 3 ft. high berm, likely made from supersacks or sandbags, at the drainage pipe outfall;
 - BD asked that Mr. Morand have Trident clarify what material would be used for the berm;
 - a primary 3-in. pump will connect to an 8-in. hard hose;
 - a secondary 6-in. pump will also connect to the 8-in. hard hose;
 - a tertiary 3-in. backup pump will connect to a 3-in. lay-flat hose that will follow the same path as the hard hose.
 - During heavy storms, Mr. Morand said they are required by contract to provide 24/7 monitoring of the pumping system to ensure that it can adequately manage stormwater flow.
 - BD asked that this bypass system be left in place until the Commission can evaluate how the DPW's replacement drainage pipe functions, especially regarding the impact of stormwater release into the wetlands from a larger pipe.
 - Mr. Snow asked if the Town had considered installing a water-quality structure up on Washington Street (such as a Stormceptor to pre-treat stormwater in the catchbasin before discharge).
 - ConCom later addressed this further by speculating as to whether the Town/Page Hilltop School would consider installing a stormwater detention basin, or



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something similar, at the front of the school property to contain and manage stormwater from school property.

- Stormwater currently leaves the school property without treatment, flowing to the catchbasin in front of 112 Washington Street.
- At ConCom's request, Mr. McManus reviewed the NOI application and walked those parts of the site where legal access has been granted.
 - Unfortunately this leaves the largest section of the approximately 50,000 sq. ft. of impacted wetlands unreviewed by Mr. McManus at this time.
 - BD questioned whether Mr. McManus had seen enough to advise the Commission, and whether the Commission therefore had enough information to move forward on the application.
 - He expressed his displeasure that, effectively, more than half of the project has not been open for review for the past several months.
 - Mr. Morand also said that he had not been able to visit the area of largest impact for several months, ever since Mr. Moore's counsel denied further access until legal issues could be resolved.
 - Once these legal issues, including access to the site, have been resolved, Mr. Morand stated his intention to visit the site to ensure that the NOI captures the fullest extent of remediation needed.
- Mr. McManus said he thought he had a general sense of the wetlands involved, even if he hadn't been able to access all of the area.
 - He added that he did not want to hold the project up as August and September, typically the driest months of the year, are fast approaching and this will be the best time to do the clean-up.
 - Mr. Snow advised that a clean-up NOI application is very different from normal project applications, where the Commission can expect a complete application and answers to various questions ahead of issuing an Order of Conditions.
 - With a clean-up, such answers often are revealed during the course of the project, as the actual conditions of contamination are uncovered and made known.
 - Mr. Snow added that he had concerns about additional contamination further down-gradient from the area depicted in the NOI and plans, extending to the powerlines.
 - Mr. Morand said he was not looking to omit any portions of impact from the clean-up, but again stressed that he did not yet have access to much of the private land affected, both within the scope of the NOI and further north to the area Mr. Snow expressed additional concern about.
 - Mr. Morand said he would be surprised, though, if there were significant impacts beyond the area covered in the NOI.
 - Mr. McManus said that it would be important to have a commitment from the applicant that, once access has been granted, the area further down-gradient would be investigated as to possible extended impact from the oil spill.
 - He said this could be guaranteed by Omni, or could be a Special Condition in the OOC.
 - Once an assessment is done, findings will need to be provided to ConCom and Mr. McManus.



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- If additional work needs to be done in that area, it will have to be subject to Commission review and approval.
- At numerous points in the subsequent discussion, Mr. McManus noted that the lack of clarity and detail in the applicant's application meant that the Commission would have to employ a heavier hand in its OOC in order to ensure that the interests of the Wetlands Protection Act (WPA) were upheld.
 - Many things that the applicant was not independently guaranteeing would therefore have to be subject to Commission review and approval at various stages of the project.
 - Mr. Morand expressed frustration, saying he just wanted to get in there and get the site cleaned up.
 - BD took umbrage with this and said the Commission is not the one holding up the project as access issues between the applicant and property owners are still pending, and that in fact the Commission has moved expeditiously to find and hire an outside consultant and do what it can on its end to facilitate the project responsibly.
 - It was at this point that Mr. McManus underscored that while Mr. Morand's stated priority was to satisfy the standards of the MCP (Massachusetts Contingency Plan) for oil spills, the Commission's priority had to be upholding the standards of the WPA.
 - His goal therefore was to help facilitate an agreement between ConCom and the applicant such that there were no unforeseen surprises down the road, and that parameters are set so that both parties share the same expectations for the outcome of the project.
- BD said that, once the access agreements have finally been straightened out and an access path has been constructed from Trevor Trail south into the primary remediation area, then ConCom would have to have Mr. McManus, along with CA, do a site walk into that area to document conditions *prior* to remediation work commencing.
- Mr. McManus's written evaluation of the NOI, dated July 25, was then reviewed and various questions raised were discussed, to the extent possible, with Mr. Morand.
 - Mr. McManus wanted the Commission to have a clear understanding of how much the down-gradient channel and its bank would be affected by the clean-up and removal of contaminated soils and vegetation.
 - This channel and its bank will therefore need to be reconstructed, and he was seeking a standard by which to quantify this work.
 - Mr. Morand again said he had not been able to fully evaluate the site in the last few months because of access issues, but said oil tends to travel horizontally rather than vertically.
 - As such, he did not expect to find the oil contamination deeper in the soil than 2-5 inches.
 - Mr. Snow offered his suggestion that the Commission use language in the OOC such as "the bank will be reconstructed to a condition satisfactory to the Conservation Commission."
- Highlights of other questions raised by Mr. McManus and responded to by Mr. Morand:
 - Regarding whether unaffected vegetation (i.e. perhaps some hummocks) will be spared:
 - Mr. Morand said he hoped to save what vegetation he could but if something was questionable, he was going to remove it.



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- Regarding how, on a day-to-day level, decisions would be made in the field as to what is 'enough' or 'not enough' remediation (i.e. go deeper, further left, further right, etc.):
 - Mr. Morand said they would have a trained environmental scientist on site using professional field expertise, visual observation, and various field tests (e.g. photo ionization detector) to make such determinations.
- Regarding the NOI language that the goal of the cleanup is an MCP Permanent Solution Statement "*with no conditions*":
 - Mr. Morand said that the property owners of the affected parcels required this for their own liability.
- Regarding the vague NOI wording that use of the already-approved stream crossing (for Nashua Street Extension/Seal Harbor, under a DEP Superceding OOC) is "anticipated," and that this language should be definitive or an alternative location he specified, with detail, in the NOI:
 - Mr. Morand said that Seal Harbor has now approved and signed the access agreement, and DEP has said it was fine, so this language was now obsolete – the stream crossing is definitive.
- Regarding the need for developing a detailed and definitive restoration plan, and the need to have a detailed characterization of existing conditions (soil types, organic matter composition, texture, density...) prior to cleanup, documented at a number of checkpoints throughout the wetlands:
 - Mr. Morand said Ducharme & Dillis Civil Design Group (Bolton, MA) is being consulted and will be providing this documentation.
- Regarding the NOI Addendum stating that "if/as appropriate" certain areas of the cleanup "may be allowed to naturally restore," to what did this apply and what was the criterion by which this would be determined:
 - Mr. Morand said this would primarily apply to areas where the high-density mats were laid down for heavy equipment access to the site, to avoid unnecessary additional disturbance to an area perhaps better served by being allowed to come back naturally.
 - Mr. McManus asked if this language applied therefore strictly to the mat areas.
 - Mr. Morand said "or any other areas in the remediation area where all agree..."
 - Mr. McManus said that, in the absence of firmer details or criterion, this hands more authority to the Commission to make this determination.
 - He suggested ConCom therefore write Special Conditions that indicate 'the Conservation Commission gets to decide what is adequate or not' in such open-ended situations.
 - Mr. Morand said he is hoping to bring in a wetland scientist to guide them in this work.
 - He also said that, as LSP, he "[doesn't] have the authority to speak for Diesel Direct."
 - Mr. McManus noted that an NOI written with open-ended options puts the Commission in a difficult spot.
 - He again underscored for Mr. Morand that Mr. Morand's priority obligation was to the oil cleanup, but the Commission's obligation was to

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- protect the wetlands and have them sufficiently restored after the cleanup, per duties prescribed under the Wetlands Protection Act.
- Therefore, in the absence of details, some of which cannot be provided at this point (because of limited access), the Commission will need to write Special Conditions with a heavy hand that requires oversight and approval.
- Mr. Snow expressed confidence that the Commission and its consultant, Mr. McManus, would find a way to properly condition the OOC.
 - He added that he wished to correct the record, on behalf of his client (property owner Calvin Moore), that access issues were not the sole reason for delays in coming to a satisfactory agreement on their part with the applicant.
- Regarding how much work would proceed at the level of plant roots:
 - Mr. McManus said this would have to be a judgment call on the part of ConCom as to what should/could be done in a given area.
 - BD said he was uncomfortable with the Commission being in the position of deciding 'afterwards' what happens.
 - "Our big problem is that we don't know what we don't know" at this point in the project review.
 - He therefore suggested that ConCom take a video of the remediation areas, after an access path has been created, so that 'before' and 'after' conditions can be documented and later compared.
 - This, along with the soil profile and native plant species list to be created by Ducharme & Dillis, will greatly aid the Commission in determining if satisfactory restoration of wetlands, post-cleanup, has been achieved.
 - To that end, the Commission should require a detailed understanding of proposed restoration measures, one that identifies quantifiable thresholds for when no restoration is warranted as well as specific restoration measures, and possible options, where restoration is warranted.
 - The restoration plan, once developed, will need review and approval by the Commission.
 - As BD sagaciously said, "It's not going to be pretty when they're done [with the remediation cleanup], but I expect it will be pretty when they're done being done [with the post-cleanup restoration]."
- Regarding the question as to provisions in the case of severe weather, such as a hurricane, where the bypass pump, and backups, might not handle the flow:
 - Mr. Morand said he thought the 3-pump system (primary, secondary, tertiary) would suffice, but that if it did not, he would look to the Ayer DPW to assist.
 - Perhaps additional secondary and tertiary pump locations could be identified beyond (down-gradient) the outfall location.
 - He also said enough backup materials would need to be kept on site, and manpower available during extreme weather.
 - The primary 3-in. pump set-up will be unmanned, but if the secondary 6-in. pump is drawn into use, then it would be manned 24/7.
- Regarding standards under the Limited Project for MCP Cleanup (310 CMR 10.53(3)(q):

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- The standard is to achieve a level of contamination reduction that meets the criterion of "No Significant Risk" per 310 CMR 40.0006(12).
- Once this minimum standard has been achieved, cleanup work ceases.
- The wetland regulations specify that further work, attempting to go beyond the standard of "No Significant Risk" to achieve previous "Background" conditions, is not justified as this will inflict further collateral damage to wetlands.
- The MCP Limited Project standards also include what Mr. McManus identified as a useful quantifiable yardstick in its specification that:
 - "At least 75% of the surface of any area of disturbed vegetation shall be reestablished with indigenous wetland plant species within two growing seasons..."
- Regarding optimal timing for the cleanup work, Mr. McManus stressed that work in the middle of winter is to be avoided at all costs.
 - Groundwater is typically at its lowest level in this area during the months of August and September.
 - In addition, mid-September to mid-November would be ideal times for restoration replanting.
 - This time period will be specified in the OOC.
- Regarding methods and procedures:
 - the work will commence at the southern end of the project, at the higher elevation, and sequentially proceed down-gradient (north).
 - BD asked if, as one area is remediated, it would be restored prior to moving on to the next remediation area, or if all of the restoration would be done at the same time, once the remediation is complete.
 - Mr. Morand was unsure now Trident would want to proceed.
 - His best guess is that the entire project will take approximately 6 weeks to completion.
- Mr. McManus said the OOC should specify various decision points that will lie ahead, once actual conditions and needed work are more clearly determined.
 - This should include documentation of the conditions of the channel downstream of the culvert stream crossing.
 - It should also include investigation of conditions further downstream, extending to the power lines, beyond the Limit of Work currently specified in the NOI/Addendum.
 - This evaluation should be required in the OOC, with the results to be provided to the Commission and consultant, and subject to further determination by the Commission.
 - The OOC should also specify that as the applicant's contractors enter new areas, if there is further disturbance, this should be documented so that the Commission can decide the degree of restoration to be required.
- Mr. Morand indicated that a daily log sheet will be kept, in pdf format, detailing who was on site, what was done, etc.
 - BD said that one of the OOC Special Conditions will specify that the Commission be provided with a copy of the daily log.
 - CA added that ConCom should really be first on the list to keep the Commission clearly in the loop as it oversees this work.



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- To expedite this project as much as possible in light of the optimal work period fast approaching, and in the hope that the applicant and property owners finalize their access agreements very soon:
 - JG moved to draft an Order of Conditions, submit it to the applicant for review, and have the OOC ready for consideration of approval at ConCom's next meeting on 8/9; GB 2nd.
 - Motion approved unanimously.
 - GB moved to continue the Public Hearing to 8/9; BT 2nd.
 - Motion approved unanimously.
- **Discussion: Emergency Certification for DPW work at 112 Washington Street**
 - As a result of the oil spill above, it became clear that the catchbasin in front of this residence is problematic, fed from the street by a 15-in. pipe, but with only a 10-in. pipe exiting the basin, crossing under this property before discharging into the wetlands beyond.
 - This means that during heavy storm events, the catchbasin often overflows, and the resulting sheetflow travels across the property, with subsequent erosion of yard, before then entering the wetlands.
 - The DPW proposes to replace the existing drainpipe with a larger-diameter pipe.
 - BD expressed concern that this would make things worse for the wetlands, with a heavier pipe discharge/flow rate of untreated stormwater.
 - CA said Town Engineer Dan Van Schalkwyk was on vacation this week, but that she was confident the DPW wanted to do this right.
 - The option of constructing a permanent detention basin at the pipe outfall was discussed, but the complication of doing this on private property makes this likely unfeasible.
 - The option of replacing the Washington Street catchbasin with something like a Stormceptor was discussed.
 - BD asked CA to convey the Commission's concerns to Mr. Van Schalkwyk.
 - This should include discussion of how the Town can better control what goes into the new pipe.
 - The feasibility of a detention basin was also discussed for location at the front of Page-Hilltop School – on Town-owned property – to better control the water coming off the school's parking lots instead of letting it leave the property and travel to the 112 Washington Street catchbasin.
 - GB moved to issue an Emergency Certification to the Town of Ayer/DPW to remove 5 trees and install 90 ft. of 18-in. drain pipe as well as riprap the outfall at the edge of the wetland; BT 2nd.
 - Motion approved unanimously.
 - The 30-day Emergency Certification will be in effect July 27-August 24.
 - BD asked that the record show that the Commission is taking this action "with gritted teeth" and for the benefit of the residents at 112 Washington Street as well as the Town.
- **Discussion: Conservation Fund Policies & Procedures**
 - A draft copy was sent to Town Counsel for review and edit.
 - Per a 7/25 response from Mark R. Reich, of K-P Law, and 7/25 email from Town Manager Robert Pontbriand to the Commission, the language including the Community Preservation Committee (CPC) in any price negotiation meetings for purchase of conservation land was removed.

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- Mr. Pontbriand noted that CPC “legally does not have a legal role in the acquisition of property that uses Conservation Funds.”
 - CA’s understanding from further discussion with Mr. Pontbriand is that the intent of the Town Meeting vote creating the Conservation Fund (Fall Town Meeting 2017) was that the Conservation Commission was to have sole control over the disposition of the Fund.
 - Per MGL Chapter 30b, Section 16.
- The next step in administration of the Fund will be to distribute the Policies & Procedures packet and see what happens.
 - The Commission’s Town website should have this posted.
 - BD suggested CA prepare an article for the Nashoba Valley Voice directing interested parties to the website.
 - CA also said the MRPC (Montachusett Regional Planning Commission), from which she and the Town Planner secured an assistance grant, will have its mapping and prioritizing project completed by December.
 - At that point, overtures can be made to owners of properties that appear on this list.
- GB moved to accept the Application Information Packet, including Policies & Procedures, as created for administration of the Ayer Conservation Commission Conservation Fund, and as edited and approved by Town Counsel; BT 2nd.
 - Motion approved unanimously.
- **Discussion: Balch Pond Dam**
 - According to new information found, the State appears to have secured \$5 million for preparation of a report on the condition of Balch Dam.
 - The report, “Balch Pond Dam (MA00135 / 4-9-19-4): Phase II Inspection / Evaluation Report,” was prepared in June 2014 for the Massachusetts Department of Transportation (MassDOT).
 - The report was prepared by Pare Corporation.
 - Balch Pond Dam is described as holding a Significant (Class II) hazard potential.
 - MassDOT’s estimate for the probable cost of repair is \$1,330,000 - \$1,864,000.
 - The Commission is assuming the preparation of this report suggests MassDOT and the State have accepted ownership/responsibility for the dam, and that part of the \$5 million grant will go toward its repair.
 - CA will attempt to contact MassDOT for further information.
- **Conservation Commission Office Updates**
 - Ayer ponds brochure
 - CA asked for ConCom approval of her spending some time updating the brochure for distribution to the public.
 - BD said he had no problem with this once CA is confident that the office files are back in shape.
 - Some important items, as well as some files in their entirety, appear to be missing as a result of changes made under the previous CA.
 - Conservation Commission Vacancy
 - BD has indicated that he will be resigning from the Commission, with his last meeting to be August 9.



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- He advised the rest of the Commission to begin thinking about who will take over as Chair.
 - His departure, after 15 years of service, will be an enormous loss for the Commission, but members were unanimous in wishing him well.
- Open Space & Recreation Plan (OSRP)
 - CA said the OSRP was submitted to the State DCR (Dept. of Conservation & Recreation) and that comments were received in the spring.
 - Some sections were incomplete or missing and require further work.
 - Mr. Pontbriand has divided these items amongst Town Hall staff, including CA, which will take up some of her time.
- Upcoming site walks
 - The Commission has three site walks scheduled on Saturday, August 4:
 - 8:30 a.m., 186 Littleton Road, Brent Routhier (MassDEP # 100-0428)
 - 9 a.m., 28 Harvard Road, Global Partners LP (MassDEP # 100-0429)
 - 10 a.m., 0 Sedgeway, Paul Bresnahan (MassDEP # 100-0427)
 - CA brought to ConCom's attention a 7/24 memo from DPW Superintendent Mark Wetzel to the Planning Board with several critical comments about the proposed plans for Brent Routhier's project.
 - CA also said that the Board of Health has stated its need to know the exact location of the septic system on the property before it can sign off.
 - The Commission assumes that Mr. Routhier's representative, Kyle Burchard, of Goldsmith, Prest & Ringwall, will have received a copy of the memo from the Planning Board.
- **10:20 PM – Adjourn Meeting**
 - GB moved to adjourn; BT 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission:

8/9/18

Signature Indicating Approval:

[Signature]