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TOWN OF AYER
TOWN CLERK

Annun Copeland

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 11/21/2019

Location: Ayer Town Hall, 1st Floor

Present: Jon Schmalenberger (JS, Chair), Mark Phillips (MP, Vice-Chair), George Bacon (GB, Member), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)

APAC taped: Yes

7:03 PM – Open Meeting

- **Confirmation of Agenda**

- The first Public Hearing will be continued, at the applicant's request.
- Jeff Thomas, Ayer Parks Director, will be stopping in after his meeting to update the Commission on some plans for the Town Beach area.
- BT moved to confirm the agenda as amended; MP 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- BT moved to confirm the minutes for 11/7/2019 as written; MP 2nd.
 - Motion approved unanimously.

- **Announcements**

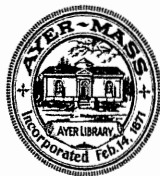
- Tonight was BT's last meeting as a commissioner.
 - CA presented BT with a 'conservation sign' as a token of the Commission's appreciation for her service.
 - Later in the meeting, BT gifted CA and Commission members each with a copy of the book "The Overstory."

- **Accounts Payable**

- Solitude Lake Management: \$3500, Task 5, water lily treatments on Sandy, Flannagan, and Pine Meadow ponds, 9/6/2019.
 - BT moved to approve payment of \$3500; MP 2nd.
 - Motion approved unanimously.
- Sun Newspapers: \$283.04, legal ads.
 - BT moved to approve payment of \$283.04; MP 2nd.
 - Motion approved unanimously.
- EcoTec: \$423.48, Paul McManus's outside consultant services for Page-Hilltop Oil Spill Cleanup.
 - BT moved to approve payment of \$423.48; MP 2nd.
 - Motion approved unanimously.

- **Public Hearing (cont'd.): NOI – Off Shaker Road – "Pond View," Open Space Residential Development, Aho Development Corp., MassDEP # 100-0437**

- Assessor's Map 36, Parcel 18, and Map 43, Parcel 3
- At the request of the applicant, BT moved to continue the Public Hearing to 12/5/2019; MP 2nd.
 - Motion approved unanimously.



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- **Public Hearing (cont'd.): NOI – 20 Hibiscus Lane, David W. Badger, Lily Pad Trust, MassDEP # 100-0439**
 - Assessor's Map 7, Parcel 29
 - Neil Gorman, of David E. Ross Associates, was present on behalf of the applicant.
 - The project proposes construction of a single-family house, garage, and paved driveway, with associated grading and utilities, on an 84,090 sq. ft. lot.
 - Mr. Gorman updated ConCom on changes made since the last Public Hearing on 11/7 and provided a revised plan:
 - The data forms have been given to CA;
 - 51 additional plantings have been added, including rhododendrons and red maples – minimum 2-in. caliper;
 - (This is in addition to 9 arborvitae shown on the previous plan.)
 - An inventory of the trees to be removed has been provided, mostly pines and oaks – 35 within the proposed Limit of Work (LOW);
 - Mr. Gorman said he had tried looking at moving the house and driveway again, but the terrain and ledge make this unfeasible;
 - JG asked if the LOW on the south/southeast side of the house had been pulled back, as discussed on 11/7.
 - This wasn't done but Mr. Gorman said it would be no problem to pull the LOW in another 10-15 ft. on that side.
 - BT asked that if any highbush blueberry plants are found in the LOW clearing, they be replaced with new plantings elsewhere.
 - Mr. Gorman agreed but noted that highbush blueberry is a wetland plant and likely wouldn't be found in the upland buffer zone.
 - A Special Condition will be added mandating the use of sand only (no salt) on the driveway where it is located within the buffer zone.
 - A Special Condition will be added banning the use of phosphorous-based fertilizer on the lawn within the buffer zone.
 - Per GB, a Special Condition will be added requiring the posting of conservation signs – every 50 ft. along the 350-ft.-long driveway, and another 5 around the sides of the house, at locations to be determined by CA.
 - The soil pile location will likely be between the house and driveway; erosion controls will be placed on the downhill side of this pile.
 - The location of the pile needs to be shown on the plan.
 - The pile will need to be covered or stabilized in some manner if it is going to remain on site for an extended period of time.
 - Abutter Kelly Harte, of Hibiscus Lane, repeated her concern over the removal of so many large trees, especially the pines.
 - It was noted that pulling back the LOW on the south/southeast side will reduce the number of large trees to be removed.
 - CA suggested, and Mr. Gorman agreed, 5 new pines – minimum 5 ft. tall – will be planted elsewhere, adding to the proposed number of new plantings described above.
 - A final revised plan, based on tonight's discussion, must be received prior to ConCom signing an Order of Conditions (OOC).
 - GB moved to approve the NOI and draft an OOC for 100-0439; MP 2nd.
 - Motion approved unanimously.
 - GB moved to continue the Public Hearing to 12/5; MP 2nd.



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- Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – Wright Road, Lot 5A, Anthony McGuane, MassDEP # 100-0438**
 - Assessor's Map 15, Parcel 68
 - Neil Gorman, of David E. Ross Associates, was present on behalf of the applicant, along with Joseph McGuane, current property owner and brother to applicant Anthony McGuane.
 - The NOI proposes construction of a single-family house with driveway, utility connections, 2 retaining walls, and a recharge trench (2 ft. deep, crushed stone, wrapped in filter fabric) on an approximately 13,681 sq. ft. lot.
 - Mr. Gorman updated ConCom on changes made since the last Public Hearing on 11/7 and provided a revised plan:
 - The data forms have been submitted to CA;
 - New detail regarding the recharge trench was provided;
 - The trench will still be right up against the boulder retaining wall, but now an impervious 40 mil. polyethylene barrier will be placed between the wall and the trench;
 - This will protect the integrity of the wall as well as direct the flow of stormwater downward;
 - 5 additional rhododendrons will be planted inside the 25 ft. buffer zone vegetated area next to the intermittent stream;
 - Other replacement plantings will include red maples, dogwood, hazelnut and juniper;
 - Mr. Gorman did not have the exact square footage for the amount of land to be cleared but said it would be approximately 7500 sq. ft., below the threshold that triggers site plan review by the Planning Board.
 - BT said she had previously been on the fence about this application but, having examined more GIS (Geographic Information Systems) maps of the area, she described the intermittent stream and wetlands here as part of a larger "wetland arc."
 - Some discussion followed on whether an intermittent stream in a wetland arc can be defined instead as a perennial stream.
 - CA said she had run stream stats for the stream and found the watershed is not large enough to qualify as a perennial stream.
 - JG said it was clearly intermittent to her, but that her vote would still be a no because of the presence of the stream and its flow into a Great Pond, as well as the relatively steep slopes on the lot and the amount of tree clearing, fill and re-grading proposed.
 - BT again stressed that this stream area was part of a corridor, in close proximity to other important wetlands (the pond), and that if the project were 50 ft. from the wetland, she would have had a different view.
 - The closest point of construction is approximately 30 ft. from the wetlands line.
 - It was the totality of the project that she objected to.
 - Mr. Gorman said ConCom approved another NOI elsewhere in Ayer that he felt was comparable.
 - JG said the lot he was referring to did not have a stream flowing into a Great Pond.
 - GB said the project should be required to have conservation signs every 50 ft. along the western side of the construction.
 - CA suggested a perpetual Special Condition specifying annual inspection of the recharge trench by CA.
 - Mr. McGuane said he had no problem with that.
 - The Hearing was then opened to public comment.



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- Carolyn McCreary, of 6 Wachusett Avenue East, reiterated comments from the previous meeting opposing the project, saying it was the wrong place to build a house because of its slope, its connection to Sandy Pond, and the impact to the environment.
 - She also referred to the petition submitted on 11/7, with over 40 signatures opposing the project.
- Susan Tordella, of 5 Hedgeway, said the project was going through a lot of steps to squeeze the house in, and was concerned with future impact on the environment, especially if maintenance was not kept up on the recharge trench, etc.
 - She asked if the project could be appealed if passed.
 - JG said that if ConCom denies the project, the applicant can appeal to MassDEP, and if ConCom approves the project, any group of 10+ residents can also file an appeal, both within a specified time period.
 - Mr. McGuane objected that none of this was Ms. Tordella's business.
 - JS asked people to speak respectfully, even if they disagree.
- Timothy Dolan, of 25 Wright Road and a relative, spoke in support of the project, noting how many McGuanes and Bresnahan's already live on or around Sandy Pond.
 - There was no incentive to do anything bad to the pond, he said.
- Kevin Bresnahan, of 4 Wachusett Avenue East, spoke in support of his uncle's project, and said he was very upset at opposition to the project, that the neighborhood was deteriorating to attacking each other through "the Conservation Committee," that members of his family had lived around the pond for 4 or 5 generations, and that no one was more concerned with protecting the pond than his family, he said.
 - JG said that neither Ms. McCreary nor Ms. Tordella were attacking neighbors through ConCom and that Mr. Bresnahan could check the minutes to see that.
- Mr. Bresnahan also said a number of people who had signed the petition had come up to family members later to apologize, saying they had not known what they were signing.
 - He also asked that people work together as neighbors, and that bringing complaints before ConCom was "not the appropriate way to work together to protect this lake."
 - He said the choice was to continue down an adversarial path or not.
- JS admonished that people could have differences of opinion without attacking each other.
- BT said she had approached the project impartially, as a scientist, trying to figure out what was the right thing to do according to the Wetlands Protection Act.
 - Because this is a sensitive lot, with a sensitive wetland system and huge mature trees, within an ACEC (Area of Critical Environmental Concern – the Petapawag), it did not make sense to her to approve this project.
 - Mr. Bresnahan said he was not an "anti-environmentalist," that he grew up on the lake, and, again, that no one wanted to preserve the lake more than he and his family
- CA interrupted the heated discussion to ask that the meeting return to discussing the plan on the table.
- Mr. Gorham asked to speak and summarized the applicant's view.
 - He noted that a buffer zone is not a no-disturb zone but rather a build-safely zone.
 - He said the wetlands would not be impacted by the project.
 - He said stormwater systems would be in place, including a recharge trench that would intercept road runoff, and that the project had an overall plan that "maintained and improved the 25-ft. buffer zone."

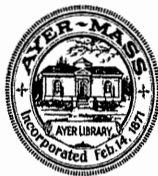


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- He asked that the Commission take a vote.
 - GB asked for a recap of plan changes discussed and items to be included in an OOC.
 - JG consulted her notes:
 - Conservation signs every 50 ft. along the west side of the intermittent stream;
 - Pulling the lawn back from the road a bit to leave a natural area;
 - Details added to the recharge trench, with the impervious liner;
 - Addition of rhododendrons were made to the plan
 - Perpetual condition mandating annual cleaning of the recharge trench by the homeowner and annual inspection by CA.
 - GB moved to approve an Order of Conditions for 100-0438, contingent on receipt of a revised plan noting some of the changes above; MP 2nd.
 - Motion denied 3-2, with GB and MP voting aye, and JG, BT, and JS voting nay.
 - GB said ConCom will need to write up a detailed denial, separate from the minutes.
 - JG confirmed with Mr. Gorman that he could advise his client on the appeal process to MassDEP.
 - GB moved to close the Public Hearing for 100-0438; MP 2nd.
 - Motion approved unanimously.
- **Discussion: Update on replication plantings, Page-Hilltop School Oil Spill Cleanup, MassDEP # 100-0425**
 - Assessor's Map 13, Parcels 11 & 12, Assessor's Map 12, Parcels 158 & 159
 - Greg Morand, of Omni Environmental Group, presented a status update.
 - A copy of the lengthy "Status of Restoration and Replication Order of Conditions (OOC) File No. 100-0425" report, dated November 21, 2019, was given to each Commission member.
 - The "Immediate Response Action Completion and Permanent Solution Statement with No Conditions for RTN 2-20459" was submitted to MassDEP on Sept. 30, 2019.
 - Mr. Morand reviewed "Post Remediation OOC Items" as detailed in the submitted report, including:
 - That all wetland flagging and erosion controls will remain in place until a Certificate of Compliance (COC) is issued;
 - (As the OOC requires replication plantings and stabilization be evaluated for success over a 2 year period post-completion of the project, the request for a COC cannot be submitted until 2021.)
 - Following the "Restoration Plan"(Nov. 8, 2018) prepared by Ducharme & Dillis, the replication option of planting woody material "6-8' on center in the areas of wetland disturbed" was selected.
 - Wetlands have been inspected nearly weekly since the completion of response actions in late January 2019.
 - Wetland growth has rebounded well and the use of a wetland seed mix has also been very successful.
 - About 1000 plants were planted across 32 cells in the restoration/replication area.
 - Ducharme & Dillis is working on a final as-built for submission with a COC request in January 2021.
 - Mr. Morand also reviewed three outstanding items for discussion, based on the July 2019 property inspection with CA and outside consultant Paul McManus, of EcoTec.
 - 1) A low point along the temporary access road was identified as a potential problem.
 - The temporary mats have since been removed.



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- Mr. McManus thinks the weight of the heavy equipment traveling across the access mats may have resulted in “hydraulic dredging.”
- CA said Mr. McManus’s concern was that a low-lying wetland area has been turned into a kind of pond where water cannot get out as easily.
- Mr. Morand said this was a low area even before the access mats were installed and used, providing photos to show this.
 - He noted that cut logs had even been used to provide additional support under the access mats in this area, but they had sunk as well.
- He was not sure what else could have been done, given the need to access the oil spill for the clean-up, and that he thought that this area was still largely fulfilling its primary function in the area.
- This area will be re-evaluated in a future inspection.
- 2) At the top of the slope behind 112 Washington Street, there is an outfall leading to 2 channels (‘east’ and ‘west’), close together but separately draining downhill into the wetlands.
 - Following the clean-up, the eastern drainage channel has been marginally widened 5-10 ft., for a 30 ft. length, about 100 ft. downhill from the outfall.
 - Mr. Morand said this was because the eastern channel took more of the oil from the Page-Hilltop spill.
 - To remove the contaminated soil, they had had to bite into the soil more to remove all of the oil.
 - Mr. Morand said they had to widen this channel for a good reason and hoped an agreement could be reached that the channel is still functioning more or less the same as it had before the oil spill.
- 3) Regarding the outfall itself, at the back of the property on 112 Washington, Mr. Morand said there are two pipes, one that had previously been there, and a second new one that had been put in by a contractor around the same time as Omni’s clean-up effort began.
 - The western pipe channel is now taking more water than the eastern channel during times of high stormwater outfall.
 - Mr. Morand suggested that a couple of laborers could, by hand, adjust the pipes and 1-1/2” stone to more evenly distribute the outfall flow.
 - Material from this work would be relocated in the area, not taken away.
 - He will seek input on this from Mr. McManus and submit a plan to ConCom in the spring.
 - JS suggested it might be a good idea to do this readjustment in stages rather than all at once.
- **Public Hearing (cont’d.): NOI – Pine Meadow Conservation Area Pond Leveling Device, Town of Ayer, MassDEP # 100-TBD**
 - Assessor’s Map 14, Parcel 3
 - CA said this after-the-fact NOI has turned out to be more complicated than anticipated, given the location of the beaver device within the Petapawag ACEC, Priority Habitat, and Estimated Habitat.
 - CA prepared the NOI and had DPW Superintendent Mark Wetzel sign it, since the DPW had the money in its budget to pay for the installation and was therefore the ‘applicant’.

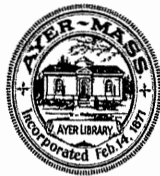


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- The NOI has been sent to both MassDEP and NHESP (Natural Heritage & Endangered Species Program).
- The NHESP submission required a fee of \$300 which CA had the Town Treasurer write a check for.
- Circuit Rider Judy Schmitz asked that the OOC include a Special Condition allowing for annual maintenance on the 'beaver deceiver'.
- CA is waiting for a response from NHESP as well as a MassDEP File number.
 - ConCom cannot take action on the NOI until these have been received.
- GB moved to continue the Public Hearing to 12/5; BT 2nd.
 - Motion approved unanimously.
- **Unscheduled Discussion: Jeff Thomas, Ayer Parks Director, and Jason Mayo, Chair of the Parks Commission**
 - Mr. Thomas and Mr. Mayo updated ConCom on the results of their informal discussion (informal due to an agenda posting mix-up) just concluded and coincident with ConCom's meeting.
 - The subject of creating a public boat launch on Sandy Pond, at the Town Beach area, was discussed.
 - Previously, the Parks Commission has opposed creation of a boat launch in this area, especially during swim season, on the basis of safety as well as access to parking.
 - With parking at the Town Beach now restricted to stickered residents, a change made in the last 4 years, parking is no longer as tight as it once was.
 - In addition, having learned of a parcel across the street on Snake Hill that potentially might be deeded to the Town, the possibility of additional parking for boaters – maybe up to 6 spots – has also made them reconsider their previous opposition.
 - Mr. Thomas said an emergency/maintenance vehicle access, separated by a fence, exists on the left side of the beach (facing the pond).
 - A possibility being considered is to put up a second fence, to create a 'corridor', for moving kayaks and canoes down to the pond.
 - Mr. Thomas will work with CA as discussion on this evolves.
- **Discussion: Requests for Certificates of Compliance – Pingry Hill, Ridge View Realty Trust:**
 - 166 Woodland Way, Assessor's Map 36, Parcel 178, MassDEP # 100-0274
 - 130 Woodland Way, Assessor's Map 36, Parcel 176, MassDEP # 100-0275
 - 150 Woodland Way, Assessor's Map 36, Parcel 177, MassDEP # 100-0279
 - 150 Hemlock Drive, Assessor's Map 36, Parcel 121, MassDEP # 100-0282
 - 77 Woodland Way, Assessor's Map 36, Parcel 110, MassDEP # 100-0408
 - 290 Woodland Way, Assessor's Map 36, Parcel 182, MassDEP # 100-0409
 - 143 Hemlock Drive, Assessor's Map 36, Parcel 222, MassDEP # 100-0410
 - 270 Woodland Way, Assessor's Map 36, Parcel 181, MassDEP # 100-0419
 - 273 Woodland Way, Assessor's Map 36, Parcel 185, MassDEP # 100-0431
 - Mr. Mullaney submitted the COC requests on behalf of the applicant, Ridge View Realty Trust, in an email dated Oct. 21, 2019.
 - Following that submission, ConCom contacted Mr. Mullaney in a Nov. 6 email asking him to prepare a table more accurately depicting the differences between the permitted plans and the as-built plans, of which there were many.



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- ConCom also requested, in the same email, copies of the affidavits documenting acceptance of the OOC by new homeowners, none of which have been received for these lots despite Special Condition #3 in all of the issued OOCs.
 - In addition, ConCom requested information as to why the OOC-required conservation signs ('no dumping, no disturbance') had not been installed on several of the lots before they were sold.
- An email received from Mr. Mullaney on Nov. 6 indicated that he declined to produce the requested tabulation, writing that discrepancies had been noted, as required, in his cover letter for each COC request.
 - Mr. Mullaney also copied this email to the law firm of Eliopoulos & Eliopoulos, P.C., asking them to supply the requested affidavits, and to Duke Pointer, of Ridge View Realty Trust, and Luke Pyburn, site contractor, asking that they address the sign placement and timing concern.
- Mr. Mullaney's email to ConCom on Nov. 21 indicated that as he had not yet been informed as to whether the signs were in place, nor heard from the law firm about the affidavits, he would accordingly not be attending tonight's meeting.
- During that time period, CA learned the conservation signs were installed.
 - ConCom also received a complaint from the resident at 290 Woodland Way about the sudden appearance of these signs.
 - On checking the OOC, conservation signs were not required on this particular lot.
 - No affidavits have been received for any of these lots.
- JG will draft a letter for JS to send to Mr. Mullaney asking to schedule a site walk for the Commission, and noting that the Commission will not sign off on the COCs without receipt of the affidavits.
 - The subject of the affidavits has been a recurring problem with this subdivision development, dating back at least to 2014.
- **Discussion: Pingry Hill subdivision winterization plan**
 - CA received a 11/16/2019 letter from Dr. Deshang Wang, of Creative Land & Water Engineering, detailing his most recent inspection of the site.
 - CA plans to walk the site soon with Dr. Wang and Luke Pyburn to evaluate what needs to be fixed or completed prior to the arrival of winter weather.
 - CA also noted that one of the detention basins appears to be leaking.
 - GB asked CA to try to schedule her walk with Dr. Wang prior to the Commission's site walk for the COCs (above), in case anything else needs to be looked at by ComCom during their site walk.
- **Discussion: Local bylaw and regulations, next steps**
 - Postponed to the following meeting.
- **Discussion: 2020 Conservation Commission Meeting Dates**
 - The 2020 meeting date list, including the November-December adjustment, because of the holidays, from the normal 2nd and 4th Thursdays of the month, was reviewed and accepted.
 - CA will pass these dates on to Assistant Town Manager Carly Antonellis for room scheduling, etc.
- **Conservation Commission Office Updates**
 - MassDOT stormwater project at Frederick Carleton Circle (MassDEP # 100-0426)



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- The rotary circle has now been hydroseeded.
 - 28 Harvard Road, Global Partners LP (MassDEP # 100-0429)
 - CA will be performing the site inspection.
 - The gas station facility is scheduled to open mid-December.
 - NOI for repaving Murphy Knives parking lot, on Groton-Harvard Road
 - The NOI submission prepared by David E. Ross Associates was returned to the applicant, at their request, following a request for more information, including stormwater calculations, from Denise Child of MassDEP.
 - MassDEP Circuit Rider, Central Region
 - Judy Schmitz has moved to a new position, Environmental Analyst, at MassDEP.
 - The new Circuit Rider for the Central Region is Kimberly Roth, who has already reached out with an introduction to the commissions under her jurisdiction.
 - Pine Meadow Conservation Land sheds, behind 102 Oak Ridge Drive
 - Following the Commission's site walk on 10/26, CA reached out to the homeowner of 102 Oak Ridge, currently living out-of-state and renting the house out, about the shed and lean-to.
 - The homeowner said he would be able to remove his stuff from the sheds by the end of January, and would give CA an update on his plans in mid-December.
 - GB raised the idea of perhaps paying the homeowner for the removal of other material also stored in the sheds, at the same time.
 - Conservation Commission vacancy
 - Several people have expressed information about the vacancy open after tonight's meeting, BT's last.
 - They will all need to submit letters of interest to Town Manager Robert Pontbriand.
 - ConCom will also again inquire as to whether it can have Associate Members, given it generally takes some time for new commissioners to become familiar with the responsibilities of the Commission.
 - JG also learned that the town of Charlton was successful in its effort, through action of the State Legislature, to be able to appoint Alternate Members.
 - Alternate Members have the capacity to vote when a regular member is absent.
 - Pine Meadow Conservation Land hunting policy
 - ConCom reviewed and made minor edits to CA's preparation of a sign for use at both entrances to the walking trails (on Oak Ridge Drive and on Groton-Harvard Road).
 - The sign specifies that (deer) hunting is allowed, but **only** during the two-week period designated for shotgun season.
- **10:08 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:

12/5/2019

Signature Indicating Approval:

Jessica G. Gugino