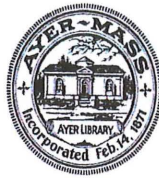


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TOWN OF AYER  
TOWN CLERK

*Scopeland*

## Town of Ayer Conservation Commission

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249  
Minutes for 3/12/2020

Location: Ayer Town Hall, 1st Floor

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

Not Present: Scott Murray (SM, Associate Member),

APAC taped: Yes

### 7:00 PM – Open Meeting

- **Confirmation of Agenda**
  - GB moved to confirm the agenda as posted; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 2/27/2020 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Hearing: Notice of Intent (NOI) – Spectacle Pond PFAS Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-TBD**
  - Assessor's Map 17, Parcel 7
  - DPW Superintendent Mark Wetzel, and Magdalena Lofstedt, of CDM Smith, Inc., civil engineers, were present.
  - The NOI seeks permitting for the construction of a new PFAS (per- and polyfluoralkyl substances) treatment facility at the Town's Spectacle Pond Water Treatment Plant (WTP).
    - A PFAS treatment facility was constructed at the Grove Pond WTP last year.
    - Groundwater treated at the Spectacle and Grove Pond WTPs supplies all of the Town's water supply.
    - PFAS are an emergent contaminant, also known as "forever chemicals."
      - Although MassDEP's acceptable contaminant level for PFAS has been 70 parts per trillion (ppt), its pending new DRAFT maximum contaminant level is set at 20 ppt.
    - PFAS contamination levels at the Spectacle Pond well field are 30 ppt.
    - The well site is tight and falls within both the 200 ft. Riverfront Buffer Zone (to Bennett's Brook/tributary) and the 100-ft. Buffer Zone (to Bordering Vegetated Wetlands [BVW]).
      - The wetlands were delineated in May 2019.
    - As a water improvements project, it qualifies as a Limited Project per Sections 10.53(3) (d) of the Mass. Wetlands Protection Act Regulations (310 CMR 10.00).
    - The PFAS treatment facility must be a stand-alone building separate from the existing WTP.
    - The new activated carbon filter WTP will be an approximately 42 ft. x 57 ft. building constructed on a slab foundation at grade.
      - Mr. Wetzel estimated that the filter would need to be changed approximately every 6 years.



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- (Grove Pond has higher PFAS levels and its PFAS filter will likely need to be changed every 3 years.)
- Two existing pump houses will be demolished during the project.
- Independent of this application, existing Well 1A will be decommissioned and the Town will be pursuing the installation of a new well on site, in addition to existing Well 2A.
- “Greensand” filtered water will be pumped to the new PFAS treatment facility, then will be pumped back to the existing WTP for final chemical additives prior to public distribution.
  - Interbuilding piping will be underground to avoid freezing.
- Additionally during the project:
  - Electrical service will be upgraded;
  - A retaining wall will be constructed at the base of the slope coming down behind the building location;
  - A new generator and propane tank will be installed to replace the current diesel-fueled generator.
    - Diesel generators are no longer permitted in close proximity to wetlands.
  - Room will be needed to allow trucks to unload and turn around.
  - Approximately 3.5% of the project will involve impervious surfaces, less than the 10% limit.
  - The project will need to provide mitigation for turtle habitat (endangered Blandings Turtle), including an exclusion fence during breeding season.
    - The project has filed with NHESP (Natural Heritage & Endangered Species Program) for permitting (NHESP tracking no. 04-16967).
  - No refueling of equipment will be done within the buffer zone but must be done off-site.
  - Any leakages must be reported immediately.
  - An inspector will be present during the project.
  - Compost straw wattles will be used for erosion control.
  - Stormwater management systems will be installed.
    - This includes an infiltration sand filter to capture flow from the new building with underdrains, and discharge it, with 80% TSS (total suspended solids) removal to be discharged 10 ft. from the wetland boundary.
    - A waiver will be sought for Standard 2 of the Massachusetts Stormwater Standards as there will be a slight 0.2 cubic-feet-per-second increase in the peak rate attenuation for 2-, 20-, and 25-year storm events.
- No adverse impacts to wetland resource areas are anticipated.
- For time-frame, the project is anticipated to be bid in June, construction to begin in summer 2020, and to be completed and on-line in summer 2021.
- Resident Elizabeth Bodurtha asked what alert systems the DPW had on site.
  - Mr. Wetzel said there were several, including a low-well alarm (in the case of over-drawing) as well as a station flood alarm.
- ConCom members were able to visit the site on 3/7, while attending another site walk in the immediate vicinity.



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- It was informally agreed that CA can begin drafting a provisional Order of Conditions (OOC), but ConCom can't proceed further officially until NHESP has responded to the filing and MassDEP has issued its own file number.
  - GB moved to continue the Public Hearing to 3/26; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Meeting: Enforcement Order (EO) – 0 Central Avenue, John Hillier**
  - Assessor's Map 26, Parcel 281
  - Mr. Hillier, of Compassionate Care, was issued an EO on 3/4 because black-top paving was placed at some point in the last few months within the buffer zone to an intermittent stream, without permitting.
    - The location is where an informal entrance from Central Avenue crosses a strip of land owned by Ruth Maxant Schultz to an area cleared over a year ago by Mr. Hillier to create additional parking.
      - See Public Meeting, EO, Ruth Maxant Schultz below for additional discussion.
    - That parking area is under an EO/Cease & Desist issued to Mr. Hillier in February 2019.
  - Mr. Hillier did not respond to CA's email, phone call, or certified mailing of the EO, and did not show up for ConCom's meeting.
  - Prior to forwarding this matter on to MassDEP for enforcement, GB suggested CA talk to DEP to see if they agree with ConCom's actions and will accept taking it over.
- **Public Meeting: EO – 0 Central Avenue, Ruth Maxant Schultz**
  - Assessor's Map 26, Parcel 281
  - Ms. Schultz, accompanied by resident David Bodurtha, was present.
  - Ms. Schultz had previously contacted CA about the approximately 8 ft. wide strip of paving that was done on her property without her knowledge or permission.
    - Because Ms. Schultz is the owner of the land, she is therefore legally responsible – hence the EO issued to her as well as Mr. Hillier.
  - CA previously contacted both the DPW and Mr. Hillier to see if either had knowledge of the apron paving.
    - In a 2/27 email from Mr. Hillier to CA, Mr. Hillier wrote:
      - "I believe it was a result of left over paving material my contractor had on hand after fixing pot holes that developed at 38 Littleton Road this winter. Not wanting to waste the material he expended there."
    - As a result of that admission, CA send the EO (above) to Mr. Hillier as well.
  - Ms. Schultz said she was "very distressed" about the situation and wanted permission to have the paving removed.
    - She owns a strip of land running parallel to Central Avenue and ranging from 7 ft. wide at the eastern end to 18 ft. wide down near the Post Office.
    - Previously she signed a legal agreement, she said, with Mr. Hillier to allow him to put an electrical box at the end of her property, close to Compassionate Care, but nothing more.
    - Ms. Schultz asked about putting up some sort of fencing, either poles driven in or boulders, to block continued access across this strip until matters are settled between her and Mr. Hillier.
      - These would be regarded as minor activities and wouldn't require a permit.



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- Mr. Hillier apparently offered to Ms. Schultz to remove the paving with a backhoe, but ConCom is concerned that it would be difficult for a backhoe not to dig into the dirt, creating more of a problem.
  - Instead, CA said it should be possible for the material – likely cold patch, not asphalt – to be removed by hand.
- In terms of how to move forward, ConCom will issue a “Restoration Order” specifying the following:
  - Removal of the paving material placed in the buffer zone without a permit, and by a to-be-specified date;
  - Said removal must be done by hand, not with heavy equipment such as a backhoe;
  - Material must be legally disposed of off site, on the same day; temporary storage in the buffer zone will not be permitted;
  - Crushed rock or trap rock can be used to stabilize the soil once the paving material is removed.
- Resident Elizabeth Bodurtha asked why Ms. Schultz was being subjected to an EO when the infraction was caused by Mr. Hillier.
  - Because it is Ms. Schultz’s property, she is legally responsible, however ConCom does not expect that Ms. Schultz will be the one to remove the paving.
  - Instead, it is hoped that the EO to Ms. Schultz will provide her with legally-useful leverage to have Mr. Hillier remove the material.
  - However, it was also noted that ConCom’s jurisdiction applied to the buffer zone work done without a permit.
    - There are also separate legal issues regarding Mr. Hillier’s use of Ms. Schultz’s property without her permission, and these are potentially matters for a lawyer if Ms. Schultz chooses to go that route.
- Meanwhile, GB moved to ratify the Enforcement Order of 3/4/2020 to Ms. Schultz, as amended to include points described above; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Meeting: EO – 1 Bishop Road, Carlos Obregon**
  - Assessor’s Map 19, Parcel 199
  - Mr. Obregon was present.
  - Mr. Obregon operates Ultimate Car Care, an auto detailing, restoration and accessories business, at the Bishop Road address.
    - Following an anonymous complaint from a concerned citizen of wetlands being filled in, CA contacted Mr. Obregon, who promptly met with CA.
    - Mr. Obregon was unaware his activity was in violation of the Wetlands Protection Act.
  - At the rear of his business, he had sought to add more parking spaces to provide access to a new rear garage door and provide more swing room for trucks.
    - Approximately 10-15 ft. of material was added to the existing parking lot to extend it further toward the abutting wetlands.
      - It is unclear as yet if this material is only in the buffer zone or if any of it was deposited into the wetlands themselves.
      - The wetlands will have to be flagged.
    - Since meeting with CA, Mr. Obregon has engaged the services of Tom Christopher, an environmental consultant.



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- JS said the two choices were either to remove all of the material, or to file an NOI for after-the-fact permitting of the project.
- On behalf of his client, Mr. Christopher previously informed CA that they felt the best route going forward was the NOI process.
  - It was agreed that Mr. Obregon would submit an NOI on or before April 9, so that CA can advertise a Public Hearing to take place at ConCom's April 23<sup>rd</sup> meeting.
- GB moved to ratify the EO, as amended to include the point described above; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- CA complimented Mr. Obregon on his responsiveness to the EO and ConCom's concerns.
- **Public Hearing (cont'd.): NOI -- 0 Washington Street, "Ayer Solar II LLC," Rohit Garg, MassDEP # 100-TBD**
  - Assessor's Maps 13, 12 & 4, Parcels 13-1, 13-2, 12-1, 4-49
  - Cal Goldsmith, of Goldsmith, Prest & Ringwall (GPR) was present on behalf of the applicant.
  - Mr. Goldsmith said there was not much to report from their end other than that they have been in contact with NHESP.
    - In their letter of March 11, NHESP has required them to do an expanded habitat study for Blanding's Turtle.
      - (NHESP Tracking No. 19-38891)
    - GPR contacted Oxbow Associates earlier in the day to begin this work.
    - Mr. Goldsmith was primarily present at tonight's meeting to see what proposals were submitted in response to the RFP for an outside peer review consultant.
  - The scope for the RFP was previously discussed at ConCom's 2/27 meeting.
    - CA sent the RFP to 13 different firms.
      - Four proposals were received by the deadline, with a number of other firms responding that they were currently too busy at this time to take on this project.
      - The four RFP proposals received were briefly reviewed, with copies provided to Mr. Goldsmith.
    - ConCom members will review the four proposals listed below in more detail and be ready to vote on selecting a consultant at their next meeting on 3/26.
      - Wetland Strategies and Solutions, LLC, Matt Schweisberg
        - \$3532.50
        - The scope of the RFP required reviewers have credentials in engineering, wildlife biology, wetlands science, and electrical engineering.
        - Mr. Schweisberg is a wetlands scientist but wrote that he could potentially sub out for other expertise.
      - EcoTec, Inc., environmental consulting services
        - \$10,680
        - Their proposal included civil engineering, electrical engineering, and wildlife and wetlands reviews.
      - Lucas Environmental, LLC.
        - \$9800
        - Their proposal does not include someone who could address the shading and power generation issue, given Ayer Solar II's proposed tree-topping in the buffer zone.
      - SWCA Environmental Consultants



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- \$11,928
  - CA said their proposal felt a little light on addressing an evaluation of the shading impact.
- DISCUSSION:
  - ConCom members will review the four proposals more carefully.
  - Mr. Goldsmith asked if it was possible to find out how much the shading/tree-topping analysis added to each review.
    - Mr. Garg had already cut down the extent of the tree-topping from the original plans for the 2020 submission, and it is possible he might back off on tree-topping entirely.
  - JG and JA both commented that they found Mr. Schweisberg's tone in his email to CA to be unnecessarily snarky and snippy.
    - JG read Mr. Schweisberg's opening comment, "As neither a civil, professional, nor electrical engineer, *and assuming that the review truly requires those qualifications*, I could sub out for that." (Emphasis added)
    - It is not up to a potential consultant to decide the extent and scope of ConCom's peer review request.
    - This also supported ConCom members' general view that fresh eyes reviewing the project was ideal.
  - Mr. Goldsmith said he would be inclined then to lean toward EcoTec or Lucas Environmental.
- GB moved to continue the Public Hearing to 3/26; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – 145 Oak Ridge Drive, Julian Zhao**
  - Assessor's Map 21, Parcel 66
  - Mr. Zhao, who was present, said he moved into his house last year.
    - The house has an unused and abandoned swimming pool in the backyard, on very level ground near to the shore of Flannagan Pond, with no slope.
    - His insurance company has indicated that, for liability concerns, he either has to repair the pool or fill the hole in and make it disappear.
    - He would like to fill it in with dirt and plantings after leveling it out.
    - The framework in the ground, probably liner, no longer holds water so he is proposing leaving that in place and just filling the hole in.
      - However level the area, GB said he should still use a line of straw wattles between the pool area and the pond for erosion control while the area is being worked on.
  - JS will arrange with Mr. Zhao for a time to stop by and give the site a quick look-over.
  - GB moved to issue a Negative Determination of Applicability, pending JS's site visit and okay, with two conditions – 1) use of an erosion control line; and 2) requirement of a preconstruction discussion with CA and the contractor prior to work beginning; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Request by Boston Mycological Club to hold field trip at Pine Meadow Conservation Land (PMCL)**



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- Jonathan Franz, of 46 Washington Street, appeared before ConCom to seek permission, per the PMLC regulations, for a group field trip in July to the conservation land.
  - The Mycological Club group would consist of 15-20 people, with two leaders – one running the field trip, the other serving as the mushroom ‘identification’ expert.
    - Residents of Ayer would also be invited to join in.
  - The group disperses to seek mushrooms and take samples for identification.
    - Samples that are edible may be collected and kept to be eaten later.
    - Specimens of other mushrooms would likely be collected for the purpose of identification – a process that can take an hour-and-a-half – and then discarded.
  - After field trips, the Club creates a list of the mushrooms that were found, and Mr. Franz said they would be happy to share that list, and photos, with the Town to put on its website.
- The two-hour field trip would be scheduled for Sunday, July 19,
  - The Commission gave permission.
- **Discussion: Conservation Analysis for Open Space Residential Development (OSRD) subdivision, 76 Groton-School Road, Robert Prescott, North Shirley Realty Trust**
  - Assessor’s Map 11, Parcel 36
  - Robert Prescott was present, along with Kevin Mark, of David E. Ross Associates.
  - Mr. Prescott hopes to take advantage of the new OSRD bylaw and create a small cluster subdivision of 14 homes, most to be built solar-ready.
    - 76 Groton-School Road is a 4-1/2 acre parcel across the road from Zodiac Apartments.
    - It abuts Fish & Wildlife conservation property in the back.
    - An intermittent stream is located to the northwest, approximately 70 ft. off the edge of the property, so part of the parcel is buffer zone.
    - The parcel is also in an ACEC (Area of Critical Environmental Concern), so a filing will have to be done with NHESP.
  - David E Ross Associates prepared a preliminary Conservation Analysis, as required by the OSRD bylaw; Steve Sears, also of David E. Ross, served as their wetland scientist.
    - CA noted the Conservation Analysis needs additional information as, for example some remarkable white oaks at the back of the property are not called out in the report.
  - A site walk was scheduled for Saturday, 3/21, at 9 a.m.
- **Discussion: Future of sheds on Pine Meadow Conservation Land (2011 Tooker parcel acquisition)**
  - CA reported that a site visit was done the day before, 3/11, by CA, JS, Town Manager Pontbriand, Assistant Town Manager Antonellis, DPW Superintendent Wetzel, and Building Inspector Schultz.
    - The purpose was to evaluate the sheds and next steps.
  - After discussion, CA said that two lists were prepared.
    - List 1: to list the constraints that the Town faces with these sheds located on what is now Town conservation land.
      - Among the issues:
        - Lack of ADA accessibility;
        - Insurance liability;
        - General access up the steep and narrow trail from Oak Ridge Drive;
        - Potentiality for vandalism;





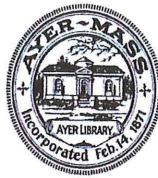
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- No windows, electricity, plumbing;
    - No environmental programming that ConCom could use the sheds for;
    - No Town storage needs that the sheds could accommodate.
  - Building Inspector Schultz said that if the sheds were to be used for any public purpose, they would have to be brought up to Building Code to address issues related to access, ventilation, ADA, electrical, and plumbing.
    - This would be expensive, even if the access issue (the sheds are located up a steep slope from the Oak Ridge Drive PMCL trailhead, and close to the rear property line of the private residence at 145 Oak Ridge Drive) could be resolved.
  - List 2: to seek interdepartmental review from others (i.e. police, fire, etc.) asking for them to weigh in on their interests or concerns.
  - Meanwhile, the DPW will put a bid out for the cost of demolition, so as to have that information available at the same time as the results of the interdepartmental review.
    - Superintendent Wetzel indicated it would be a challenge to remove the building materials down the hill, if and when the sheds are demolished.
  - CA will put together the interdepartmental review request for circulation.
  - The final decision as to the disposition of the sheds will be ConCom's.
  - GB asked if ConCom should seek a Warrant Article to fund their demolition.
  - Resident David Bodurtha said he thought the sheds were structurally sound.
    - He also thought the one shed could be secured with a padlock – although he also had noted that previous padlocks had been cut off and replaced.
    - JS said at a certain point, an unused structure gets a certain kind of look and becomes, in effect, an “attractive nuisance.”
  - ConCom will have to see what comes of the review and the demolition cost bid before it makes its decision.
- 
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Off Shaker Road – “Shaker Mill Pond,” Open Space Residential Development, Aho Development Corp., MassDEP # 100-0437**
    - Assessor's Map 36, Parcel 18, and Map 43, Parcel 3
    - The OOC was not ready for signing.
    - GB moved to continue the Public Hearing to 3/26; MP 2<sup>nd</sup>.
      - Motion approved unanimously.
- 
- **Public Hearing (cont'd.): NOI – 270 Woodland Way, David Grubb, MassDEP # 100-0442**
    - Assessor's Map 36, Parcel 181
    - While the DEP file number has been received, MassDEP has requested additional details on Mr. Grubb's plan.
      - As a result, the OOC is not ready for signing.
    - GB moved to continue the Public Hearing to 3/26; MP 2<sup>nd</sup>.
      - Motion approved unanimously.
- 
- **Resident Comment**
    - David Bodurtha asked if the Commission was concerned about the continuous removal of beaver material by the culvert into Shaker Mill Pond, near the entrance to the planned new subdivision (DEP # 100-0437).





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- Was the Commission going to allow the DPW to continue clearing this culvert, or would it consider putting in a permanent beaver deceiver.
  - CA said there is currently no beaver activity taking place there.
  - JG said her recollection is that ConCom looked at this area with Mike Callahan, of Beaver Solutions, several years ago and that the geography of the stream here was deemed probably not a great location for a workable deceiver installation.
  - GB asked CA to talk to DPW Superintendent Wetzel about this area.
- **Conservation Commission Office Updates**
  - Warrant Article for Pond Weed Control
    - CA will have a draft of the Warrant Article ready for ConCom to sign off on at the next meeting.
    - She will be contacting Solitude Lake Management, and some other potential vendors, about submitting a proposal for the continued maintenance treatment of Sandy, Flannagan, and Pine Meadow ponds.
  - ConCom Office Assistant
    - CA has been approved to have a Senior Tax Work-Off assistant to help with some of the backlog of office work.
    - IT Supervisor Cindy Knox will set up an assistant with an extra computer, and a table/desk has already been found.
    - CA will be interviewing an applicant tomorrow, 3/13.
- **Member Updates**
  - JG needs to edit the draft letter seeking signed Affidavits from new homeowners and then send it to Duke Pointer, of Ridge View Realty Trust (for Pingry Hill Subdivision).
  - GB asked if Solitude Lake Management could provide ConCom with cost estimates for alternative pond treatments – hydrotanking, dredging, hand-pulling, and related disposal costs.
    - This information would be a useful comparison for Spring Town Meeting's consideration of this year's weed-treatment warrant article for continued chemical management.
- **9:55 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 Minutes Approved by Conservation Commission: \_\_\_\_\_

Signature Indicating Approval: \_\_\_\_\_