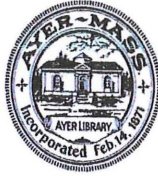


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TOWN OF AYER
TOWN CLERK

Shapland



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249

Minutes for 4/23/2020

Location: Remote Meeting via Zoom, accessible to public, due to Pandemic State of Emergency

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

Not Present: Scott Murray (SM, Associate Member)

Broadcast and Recorded by APAC

5:00 PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm the agenda as posted; JG 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0 (MP not yet on-line).
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 3/12/2020 as written; JA 2nd.
 - Motion approved unanimously by Roll Call Vote 4-0 (MP not yet on-line)
- **Discussion: Authorization of Conservation Agent to sign signature page of permits during State of Emergency**
 - MassDEP is still working on its guidance document to clarify procedures under which conservation commissions can continue to work via remote participation during the State of Emergency.
 - One of the issues for ConCom is that Orders of Conditions (OOC) must be filed by applicants at the Registry of Deeds, but the Registry will not record a filing without a signature page containing original ink, not electronic, signatures.
 - Since ConCom members are not allowed inside Town Hall during the shut-down, ConCom is hoping that CA instead will be able to provide an original ink signature on behalf of the Commission.
 - Clarification is needed as to whether this will be acceptable to the State.
 - While the Registry only accepts ink signature pages, under the Wetlands Protection Act, MassDEP is able to accept electronic signatures for things like Enforcement Orders that don't also go to the Registry.
 - Discussion to be continued until MassDEP has clarified this and other issues.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Spectacle Pond PFAS Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-0443**
 - Assessor's Map 17, Parcel 7
 - The DPW is still awaiting comments from the Natural Heritage & Endangered Species Program (NHESP) so ConCom cannot sign off on this OOC regardless of the unresolved signature issue (see above Discussion).
 - GB moved to continue the Public Hearing to 5/14/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.



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- **Public Hearing (cont'd.): NOI -- 0 Washington Street, "Ayer Solar II LLC," Rohit Garg, MassDEP # 100-0444**
 - Assessor's Maps 13, 12 & 4, Parcels 13-1, 13-2, 12-1, 4-49
 - Cal Goldsmith, of Goldsmith, Prest & Ringwall (GPR), was on-line remotely.
 - This project is also awaiting comments from NHESP, but the focus of tonight's meeting was solely for ConCom to select the contractor to perform the third-party peer review.
 - As discussed on 3/12/2020, four proposals were received in response to the RFP:
 - Wetland Strategies and Solutions, LLC
 - EcoTec, Inc.
 - Lucas Environmental, LLC
 - SWCA Environmental Consultants
 - ConCom members reviewed each of the proposals since the last meeting and were asked to state their preferences, with the majority (3) ranking EcoTec as their first choice.
 - Mr. Goldsmith said EcoTec was their first choice as well, especially noting that their contractor for reviewing the solar array, Graves Engineering, had a lot of experience and was known to be fair.
 - GB moved to approve the selection of EcoTec to perform the peer review; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - CA will contact EcoTec and get the contract details started.
 - Mr. Goldsmith said EcoTec could contact GPR directly for electronic copies of the NOI.
 - CA and the Commission agreed that all communication between GPR and the third-party reviewer should pass through CA.
 - Mr. Goldsmith agreed that email exchanges responding to questions, etc. will pass through the Commission's office.
 - ConCom will defer further action on the NOI until EcoTec has completed its review.
 - CA will also check on EcoTec's schedule and availability, given the pandemic.
- **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
 - Because of the unresolved signature issue, GB moved to continue the Public Hearing to 5/14/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – 270 Woodland Way, David Grubb, MassDEP # 100-0442**
 - Assessor's Map 36, Parcel 181
 - Because of the unresolved signature issue, GB moved to continue the Public Hearing to 5/14/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: 2020 Weed Treatment of Ayer Ponds**
 - The only proposal received in response to the RFP was from Solitude Lake Management, the company that has been performing the weed treatment.



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- As a side note, CA received a definite NO from NHESP for considering the use of Clipper (flumioxazin) – see previous discussion by ConCom on 2/27/2020.
 - Clipper would have reduced the cost of weed treatment for invasive Fanwort.
- GB moved to approve recommending the selection of Solitude for the 2020 weed treatments in Sandy, Flannagan, and Pine Meadow ponds; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- CA will contact SOLitude to provide a contract with the cost based on not using Clipper.
 - The contract must be approved and signed by the Board of Selectmen and Town Manager Robert Pontbriand.
- **Enforcement Order (EO)(New): 0 Central Avenue, John Hillier**
 - Assessor's Map 26, Parcel 281
 - Mr. Hillier was previously issued an EO for unpermitted paving in March (see minutes for 3/12/2020) but did not respond nor attend the meeting (see next EO item below).
 - Since then, Mr. Hillier had an excavator working on the property, doing further tree-cutting, grading and removing stumps and rocks, some of this in the buffer zone to the intermittent stream that crosses the property.
 - Any new work is not permitted since the parcel remains under a previous EO (Feb. 2019) and Cease & Desist that has yet to be resolved since Mr. Hillier has yet to provide the Commission with an engineered plan and Notice of Intent.
 - This is now the second EO of 2020, with previous EOs having been issued in Feb. 2019 and in 2013 as well.
 - It is unfortunate that Mr. Hillier appears to have chosen to resume this work, without a permit, during the pandemic State of Emergency.
 - JG reiterated that, dating back to 2013, Mr. Hillier was made aware of the intermittent stream and the jurisdictional issues under the Wetlands Protection Act requiring a permit for work in its buffer zone.
 - MP expressed frustration that this is now the 4th EO Mr. Hillier has been issued for the same violation.
 - CA spoke about this to Town Manager Pontbriand, who then reached out to Mr. Hillier.
 - It took Mr. Hillier a few days to call Mr. Pontbriand back, at which time Mr. Pontbriand reiterated that Mr. Hillier needs to submit a plan to the Commission.
 - Mr. Pontbriand also discussed this issue with Amy Kwesell, of KP Law, Ayer's Town Counsel.
 - Ms. Kwesell said ConCom can issue fines, and also outlined the process by which, if that doesn't gain Mr. Hillier's compliance, Town Counsel could take over the enforcement issue via civil action in court.
 - Meanwhile, this new April EO includes another Cease & Desist.
 - It also requires that the area's alteration be returned to its original condition, that a restoration plan be submitted to ConCom by June 15, and that a Notice of Intent, with plan, be filed.
 - GB moved to ratify the April EO as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.



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- Given the vote, and that EOs ratified and sent to MassDEP do not require original ink signatures, CA will submit the EO with electronic signatures of the Commission members.
- **Enforcement Order (cont'd. from 3/12/2020): 0 Central Avenue, John Hillier**
 - Assessor's Map 26, Parcel 281
 - Related to the above EO, the March EO was issued to Mr. Hillier for black-topped paving done across a strip of land, owned by Ruth Maxant Schultz, for easier access to Mr. Hillier's property from Central Avenue.
 - Again, this is work in proximity to an intermittent stream on a parcel already subject to a previous EO (Feb. 2019).
 - Mr. Hillier has known he needs to submit an NOI and plan for work on his parcel but has yet to comply.
 - (He has also known of this requirement since the 2013 EO, but did not pursue work on this parcel from then until early 2019.)
 - ConCom also had to issue Ms. Schultz an EO since she is the owner of the property affected – while not expecting her to be the one to actually remove the paving.
 - The March EO to Ms. Schultz was ratified at ConCom's last Town Hall meeting on 3/12/2020, prior to the pandemic shutdown.
 - Because Mr. Hillier did not attend the 3/12 meeting, and CA was attempting to get more guidance from MassDEP, the Commission did not ratify Mr. Hillier's March EO under the expectation that it would do so at its next regularly scheduled meeting on 3/26.
 - This meeting did not take place because of the closing of Town Hall due to the pandemic, and it understandably took some time for the Town to set up procedures for boards to hold remote meetings.
 - In reviewing Mr. Hillier's March EO, Commission members reviewed the wording of its expectations.
 - This included an understanding that provisions be made that didn't order Mr. Hillier to do something (i.e. remove the paving) on someone else's property (Ms. Schultz's) without permission.
 - CA will word the ratified EO language to include the following:
 - that Mr. Hillier secure Ms. Schultz's permission to remove the paving on her property, and that he provide CA/ConCom with written proof of that permission prior to the commencement of work;
 - that a restoration plan be submitted to the Commission by 5/14;
 - that removal of the pavement must be done by acceptable means and that the material must be legally disposed of;
 - and that failure to comply with the 5/14 deadline could result in the Commission exerting its right to impose a fine of up to \$300 per day, with each day considered a separate offense, until compliance with the conditions of the EO have been met.
 - JS moved to ratify the March 4 Enforcement Order with the aforementioned conditions; MP 2nd.



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- Motion approved unanimously by Roll Call Vote 5-0.
- **Enforcement Order: 156 Washington Street, Michael Mazzola, MassDEP # 100-0394**
 - Assessor's Map 13; Parcel 36
 - Work on this parcel was done under an expired OOC, and the house is now up for sale.
 - Per the advice of MassDEP, Mr. Mazzola must file an NOI after-the-fact.
 - The EO specifies this, and includes a Cease & Desist for any further site work.
 - It requires the filing of a new NOI by 5/30.
 - MP suggested, in addition to requiring a signed Affidavit of receipt of the OOC by a new owner, when sold, that a sign displaying the property is under an OOC be put up.
 - CA suggested also informing the real estate agent, who would then legally have to disclose the issue of the new NOI filing and the need for a Certificate of Compliance.
 - GB moved to ratify the EO as discussed; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Discretionary criteria for accepting applications and scheduling meetings during pandemic State of Emergency**
 - JS clarified that ConCom can still accept applications that are deemed urgent and important.
 - CA underscored that acceptance of an application and opening of a Public Hearing is at the discretion of the Commission.
 - Per the Governor's Emergency Order declaring a State of Emergency, the requirement that municipal boards hold hearings on permit applications within a certain period is suspended until 45 days after the end of the State of Emergency.
 - (See *An Act to Further Address Challenges Faced by Municipalities and School Districts Resulting from COVID-19*, filed March 24, 2020.)
 - Going forward, ConCom will maintain its regular meeting schedule, via Remote Access, and move things ahead as it reasonably can.
 - This will be discussed further at ConCom's next scheduled meeting on 5/14.
- **6:20 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: 5/14/2020

Signature Indicating Approval: Jessica G. Gugino