

RECEIVED  
SEP 03 2020  
TOWN OF AYER  
TOWN CLERK

*scopeland*

## **Town of Ayer Conservation Commission**

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

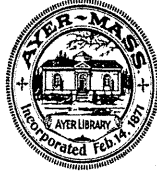
Minutes for 7/9/2020

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 Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)  
Not Present: Scott Murray (SM, Associate Member)

### **Broadcast and Recorded by APAC**

#### **7:00 PM – Open Meeting**

- Throughout the meeting, JS periodically asked for input (questions or comments) from members of the public viewing the meeting remotely (via Zoom or live broadcast), and calling in to participate either by Zoom or telephone connection.
- **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 6/25/2020 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **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
  - DPW Superintendent Mark Wetzel has approved the NHESP (Natural Heritage & Endangered Species Program) language for the Order of Conditions (OOC), and has send it to the DPW's consultant for final review.
  - CA expects ConCom will be able to vote and sign off on the NOI at its next meeting.
  - There being no public comments, GB moved to continue the Public Hearing to 7/23/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **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
  - Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), participated remotely via Zoom.
  - CA said a Zoom meeting between GPR and the third-party peer review engineers has been scheduled for Monday, July 13, from 4-5 p.m.
    - CA, JS, and MP will also participate in this meeting (note, ConCom will not have a quorum present).
  - Mr. Burchard provided a very brief update, noting the Oxbow Associates habitat report is in the works, test pits have been dug for the stormwater basins, and that GPR has redesigned the stream-crossing.

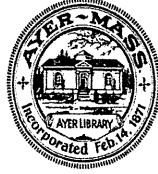


## **Town of Ayer Conservation Commission**

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

Minutes for 7/9/2020

- There being no further comments or discussion, GB moved to continue the Public Hearing to 7/23/2020; MP 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 5-0.
  
- **Public Hearing: NOI – Lot 6, Shaker Road, Shaker Nominee Trust, Dan Aho, Trustee, MassDEP # 100-0446**
  - Assessor's Map 38, Parcel 68
  - Neil Gorman, of David E. Ross Associates, participated remotely via Zoom on behalf of Dan Aho.
  - This is the last of three duplexes constructed by Mr. Aho, and the only one with bordering vegetated wetlands (BVW) and buffer zone.
    - Lot 6 is 1.21 acres, two-thirds of which are in Ayer, the other third in Harvard.
    - All of the proposed construction is in Ayer, in a field with already disturbed soils from the previous owner, and amounts to 16,125 sq. ft. of total buffer zone disturbance.
    - The wetlands were delineated on Dec. 21, 2017 by Stephen Sears, of Ross Associates.
  - The 1600 sq. ft. duplex is situated outside of the 50 ft. buffer zone line, with just a small corner of a deck inside the 50 ft. line.
    - It will connect to a town sewer line at the rear of the building running to Rte. 2A (Littleton Road), and to town water on Shaker Road.
    - Two rain gardens are proposed:
      - One at the southwest corner of the structure to collect roof stormwater runoff via gutters;
      - A second one just south of the driveway to collect driveway and lawn runoff.
        - The rain garden near the driveway and road will have a stone diaphragm to handle filtering contaminants.
    - As with the other duplexes, a footing drain around the proposed foundation will move non-surface ground water away from the structure.
      - An easement has been extended to allow a 6 in. drainage pipe convey uncontaminated groundwater from the footing drains of all the neighboring upland duplexes, not just this one, to discharge onto on Lot 6, approximately 25 ft. from the BVW.
      - The outlet of the corrugated pipe will daylight onto a rip-rap apron to reduce velocity and disperse ground water flow.
      - No sump pumps are involved with these footing drains; the basement elevations were set at groundwater level and the footing drain system is designed to capture and redirect groundwater before it can enter into basements.

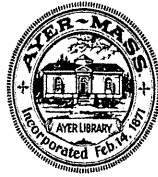


## **Town of Ayer Conservation Commission**

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

Minutes for 7/9/2020

- To even this lot with the adjacent duplexes, the grade will be raised approximately 4 ft.
  - While all of the work is in a previously disturbed field, the project proposes planting numerous trees and shrubs outside of the Limit of Work, between the proposed grading and the BVW.
    - The aim of this mitigation, which is not required, is to improve the quality of the vegetated buffer zone and habitat, restoring over 5300 sq. ft. of previously disturbed area.
    - The footprint for this duplex is also about 330 sq. ft. smaller than the other duplexes to minimize impact in the buffer zone.
  - JS asked what would prevent the homeowners from encroaching closer to the BVW?
    - Mr. Gorman said the proposed additional plantings are intended to buttress the vegetated buffer, but if the Commission wants, sign markers could be put along the vegetated line to discourage dumping of leaves or grass clippings, etc.
    - The Commission agreed, and to do this every 50 ft., around a half dozen will be needed.
  - CA referred to technical comments received from the DPW about peak stormwater runoff rates and compliance with Mass. Stormwater Standards.
    - Mr. Gorman said the stormwater calculations were reviewed when the project went through the Planning Board, and that the post-development drainage calculations show a slight improvement from existing conditions for 2-, 10-, and 100- year 24-hour storm events.
    - Superintendent Wetzel has been away, but CA will confirm this with him on his return.
  - Since part of the parcel is in Harvard, though outside the project area, CA has sent a copy of the NOI to Harvard's Conservation Commission for their comments but has not yet heard back.
  - A site walk was scheduled for 8:30 a.m. on Saturday, July 11.
  - There being no further comments or discussion, GB moved to continue the Public Hearing to 7/23/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – Abbreviated Notice of Resource Area Delineation (ANRAD) – Off Wright Road, Fox Meadow Realty Corporation, Dave Moulton, MassDEP # 100-0445**
  - Assessor's Map 17, Parcels 1-3, 7, 8, 11-5
  - Seth Donohoe, of Ducharme & Dillis, Civil Design Group, was present via Zoom on behalf of Fox Meadow Realty.
  - The initial start of this project dates back to 2005-2008 when a previous OOC was issued and preliminary site work began.
    - Work progress ceased some time in 2008.
  - The currently existing site contains a partially constructed dirt loop-road ("Stratton Hill Road" in the NOI) and partially constructed stormwater management infrastructure along a portion of the road.



## **Town of Ayer Conservation Commission**

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

Minutes for 7/9/2020

- In addition, the road and project site are bisected by powerlines and an easement held by New England Power Company.
  - Bordering vegetated wetlands (BVW) have been flagged to the east, north, and west of this road.
    - The flagging numbered A1-A61, A128-A178, and A311-A320 delineate the BVW wetlands to the east of "Stratton Hill Road," bordering Long Pond, and curving around north to encompass a beaver pond.
    - The flagging series D1-D9, E1-E30, and F1-F64 delineate BVW to the west of the road, all draining toward Wright Road.
    - Ducharme & Dillis conducted site visits in February and March 2020 to evaluate the above resource areas.
  - CA cited MassDEP's technical comments that recommended the project use and submit DEP field data forms with the application.
    - DEP also suggested the possibility of third party review as their aerial imagery suggests the presence of potential vernal pools.
  - Mr. Donohoe said they would be happy to provide the data forms and, if the Commission chose, would be willing to work with a third party reviewer.
    - With the Commission's agreement, CA will put together a Request for Proposals (RFP) for bids to provide third party review.
  - There being no further comments or discussion, GB moved to continue the Public Hearing to 7/23/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: Request for Determination of Applicability (RDA) – 71 Nashua Street, Ryan Clinton**
  - Assessor's Map 13, Parcel 42
  - Mr. and Mrs. Clinton participated remotely via Zoom.
  - The Clintons seek permission to widen their driveway 8 ft. along a 73 ft. stretch, and to add a 26 ft. x 22 ft. turn-around area.
    - The driveway is very narrow, with drop-offs on both sides in one curved section that present safety concerns, and direct access to the garage is difficult.
    - They would remove around a foot of soil, replace it with crushed stone, then cap the area with either compacted crushed stone or asphalt.
    - While bordered on both sides by buffer zone, this area contains already disturbed upland soils.
  - CA said the approved subdivision plan for this lot differs from what was actually built, and she therefore recommended this as a reasonable project to correct for the existing driveway set-up.
  - A site walk to review this project was scheduled for 9 a.m., Saturday, 7/11.
- **Public Meeting: RDA – 3 Trevor Trail, Rob Steeman**
  - Assessor's Map 13, Parcel 9
  - Mr. Steeman participated remotely via Zoom.

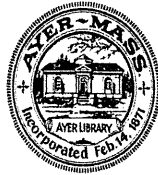


## **Town of Ayer Conservation Commission**

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

Minutes for 7/9/2020

- He is seeking permission to construct a stamped concrete 17 ft. x 13 ft. patio and attached 7 ft. x 7 ft. barbeque area in his backyard, all within buffer zone.
- In addition, a 5 ft. wide stamped concrete walkway would run from the backdoor landing to the patio, and similarly a 3 ft. walkway would run from the front side of the garage around the corner of the house to the patio.
  - This is to provide wheelchair access for Mr. Steeman's handicapped daughter.
- CA said this area is well away from the wetland line and should not be a problem.
- A site walk to review the project was scheduled for 9:30 a.m., Saturday, 7/11.
- **Discussion : Enforcement Order Update (EO) – 0 Central Avenue, John Hillier**
  - Assessor's Map 26, Parcel 281
  - Participating via Zoom were John Hillier, his attorney David McCay, of Mirick O'Connell Attorneys At Law, and Kyle Burchard, of GPR.
    - Not being aware that Mr. McCay would be attending this meeting, ConCom did not have Town Counsel present on its behalf.
  - CA updated the Commission that 21 tickets, at \$300/ticket, have now been issued to Mr. Hillier, backdated starting June 16, the day after the deadline given for Mr. Hillier to submit an NOI and plan.
    - CA was also notified by Mr. Burchard that GPR has now been hired to produce an NOI for Mr. Hillier.
  - Mr. McCay began by thanking CA for her prompt provision of background documents that he requested (previous correspondence, minutes, stream-stats, etc.).
    - He understands ConCom's concerns and said it is now the intent of his client to file an NOI.
    - One issue delaying this on Mr. McCay's part is his need to thoroughly review the deed for this property, only just received earlier in the afternoon.
      - This parcel is legally burdened with restrictions and easements related to the adjacent railroad.
        - This includes preservation of drainage on the property.
    - The NOI will therefore need to reference this as well as reserve sufficient authority for Mr. Hillier to maintain the drainage where necessary, and in a manner that addresses the deeded obligation to the railroad while not violating the Commission's understanding of conditions imposed by the Wetlands Protection Act.
  - Mr. McCay said the forthcoming NOI will not anticipate any additional work, and that Mr. Hillier understands that if he does want to do additional work at some point, he will have to file another NOI.
    - Mr. McCay also requested that, in advance of the next meeting where they intend to file the NOI, the Commission not ratify the tickets already issued, and not issue any further tickets.

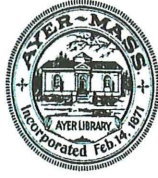


## **Town of Ayer Conservation Commission**

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

Minutes for 7/9/2020

- He understands that they would have to file a dismissal of the existing tickets with the District Court, and that the Commission will move forward with enforcement if an NOI is not filed.
- JS, as Chair, said he appreciated this project moving forward now in a timely fashion, but that ConCom will continue issuing tickets until it has an NOI in hand – noting ConCom can also choose to not ratify the new ones as well once the conditions of the Enforcement Orders have been met.
  - MP said just filing the NOI won't be enough, the NOI itself has to be deemed adequate as well.
- JG raised the issue of restoration work, as this was required in the Enforcement Order.
  - Mr. McCay said that he understands work was done at the site, but this work did not negatively impact the resource area or drainage conditions.
    - The NOI therefore won't include restoration measures in its plan.
  - CA said some tree clearing was done in the resource area itself (the intermittent stream and wetlands), and suggested ConCom request replanting some of those trees.
  - Mr. Hillier said trees were removed but are regrowing on their own and he didn't think there was any need for restoration.
    - He said any possible development on that property is now out of the question, nothing more will happen, the NOI will say that, and the land will heal itself.
    - He asked that ComCom forgo the ticket fines and that he and the Commission walk away as friends.
  - CA asked that ConCom hold off on committing to waive restoration until it has seen the condition of the property.
  - Mr. Hillier said he has spent thousands of dollars to remove oil drums, railroad ties, etc. from the property.
  - Mr. McCay said he recognized the history of how the Commission got to where it is in this matter, but hoped that if they held up their end, the Commission will choose not to ratify the ticket fines.
    - Given how much Mr. Hillier has already expended, he asked that his client be given the comfort of knowing ConCom won't ratify the tickets.
- JS said that ConCom will review the NOI once submitted, schedule a site visit, and continue the discussion from that point.
  - Mr. McCay ended the discussion by saying that if some fines or restoration are required, that will be a problem for them.
- **Discussion: New application review during pandemic State of Emergency**
  - CA said that an NOI for 1 Bishop Road is not ready yet.
  - The next meeting will likely contain as new business:
    - RDA, Cannongate paving – but Mr. Burchard still needs to submit a hard copy;
    - NOI, New England Power, soil boring;
    - NOI, OOC, COC, 156 Washington Street;



## **Town of Ayer Conservation Commission**

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

Minutes for 7/9/2020

- NOI, Town of Littleton, Spectacle Pond seasonal drawdown.
- **Discussion: Wetland Bylaw Regulations**
  - Time being extremely short, GB did a very brief review of his draft list of minor activities/limited projects for consideration in regulations.
  - In terms of shoreline maintenance by homeowners (i.e. raking or handpulling weeds), JG suggested ConCom consult the MassDEP Circuit Rider for advice.
    - ConCom won't want to encourage homeowners to do something that might be in violation of the Wetland Protection Act.
    - (Local bylaws need to be stricter than the Act to be viable, but cannot be more lenient.)
- **8:30 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: 7/23/2020

Signature Indicating Approval: Jessica G. Gugino