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TOWN OF AYER  
TOWN CLERK

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## **Town of Ayer Conservation Commission**

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

Minutes for 5/28/2020

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).
- **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 5/14/2020 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Announcements**
  - JS referred to the recent newsletter from the Nashua River Watershed Association reporting on why we celebrate and protect wetlands.
    - CA will forward this article onto ConCom members once the office has received the newsletter.
- **Discussion: Status of Certificate of Vote**
  - At its previous meeting (5/14), ConCom voted to approve the wording of a Certificate of Vote that authorizes CA to sign permits on behalf of ConCom.
    - This authorization is only for signing permits during the State of Emergency, when the Commission must still meet remotely, and may be used only after ConCom members have voted to approve permits.
  - CA reports that the draft Certificate of Vote is now being reviewed by Town Counsel.
    - It will then be submitted to the Registry of Deeds for recording.
    - Once this has been done, CA will be able to use the Registry's book and page number reference to complete permits.
      - Certain permits (i.e. Orders of Conditions) must be filed at the Registry by applicants, with an original ink signature page, before project work can commence.
- **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



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- CA learned that the DPW will not be putting this project out to bid until mid-July, with construction to start mid to late September.
- Meanwhile, details are being sorted out between the applicant's representatives and the Natural Heritage & Endangered Species Program regarding NHESP's requirement of a turtle protection plan.
  - The turtle protection plan has now been prepared by Oxbow Associates and submitted to NHESP.
  - The plan must be approved by NHESP in the calendar year during which construction activities will take place, when those activities take place during the time period where the turtles must be protected.
    - Because construction won't start until fall, the plan won't need to be approved until 2021.
- The OOC that ConCom drafts will have to reference the NHESP requirements for this project, one of which is the development of the protection plan.
  - CA will proceed to work on a draft OOC while, in the meantime, she and the Commission await written language from NHESP as well as the resolution of the Certificate of Vote discussed above.
- There being no public comments, GB moved to continue the Public Hearing to 6/11/2020; 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
  - EcoTec has begun its third-party review of the project.
    - CA has received queries from their wetland scientist, engineer, and solar engineer looking for additional information from the project's engineer, Goldsmith, Prest & Ringwall (GPR) and CA will relay these on to GPR.
  - GB moved to continue the Public Hearing to 6/11/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **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
  - Awaiting the recording of the Certificate of Vote, GB moved to continue the Public Hearing to 6/11/2020; MP 2<sup>nd</sup>.
    - 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
  - Awaiting the recording of the Certificate of Vote, GB moved to continue the Public Hearing to 6/11/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.



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- **Enforcement Orders Update (EOs): 0 Central Avenue, John Hillier**
  - Assessor's Map 26, Parcel 281
  - March 4, 2020 EO – unpermitted paving by Mr. Hillier's workers within buffer zone on property owned by Ruth Maxant Schultz.
    - At the request of JS, CA read the email sent to ConCom yesterday (5/27) from Mr. Hillier providing an update on progress re the paving.
      - Mr. Hillier said he has requested written permission from Ms. Schultz to proceed but has not yet received that permission.
      - He hopes to get this resolved as soon as possible.
    - Meanwhile, CA has heard from Ms. Schultz that she, in consultation with her attorney, is working on a response to Mr. Hillier in an effort to move this forward, both to respond to the Commission's EO and to resolve separate but related legal property usage issues between her and Mr. Hillier.
  - Regarding the March 21, 2020 EO, Mr. Hillier said he has "engaged legal counsel for the remaining issues that the Commission has communicated."
    - This EO imposes a 6/15 deadline for Mr. Hillier to submit a Notice of Intent and engineered plan to redress other unpermitted work (excavation, stump removal, grading) within the buffer zone to an intermittent stream and while the parcel is under a previous unaddressed EO/Cease & Desist (February 2019).
  - There was some discussion as to whether ConCom should now contact Denise Child, MassDEP Wetlands Section Chief, to hand over enforcement of the EOs, given the difficulty in gaining Mr. Hillier's cooperation and compliance.
    - However, members generally felt the paving issue would be regarded by DEP as a lesser issue than the March 21 EO which has the 6/15 deadline.
    - Better then to wait to see if Mr. Hillier meets that deadline or lets it pass after receiving his own legal counsel.
      - If he doesn't meet that deadline, ConCom are in unanimous agreement to seek to have DEP take over enforcement on all 3 outstanding EOs.
      - MP asked that CA communicate to Mr. Hillier (and Ms. Schultz regarding her own March 4 EO for the work done by Mr. Hillier on her property) that all of these issues need to be satisfactorily resolved soon or the Commission will be asking DEP to take over.
      - CA said her understanding also was that Mr. Hillier has yet to respond directly to Ms. Child regarding her previous multiple attempts to contact him.
  - JG brought up reference to Mr. Hillier's argument at ConCom's 5/14 meeting that the Commission had not provided him with documentation on the intermittent stream being a stream rather than, as he contends, a drainage ditch.
    - JG noted he had cut off her reference to the 1947 Public Spirit article on the 'unnamed brook of the week'.
      - She also stated for the record that the burden of proof here in any case falls on Mr. Hillier, not on the Commission.



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- GB added that the Commission has precedence on its side here as well, given previous permitting.
- Resident Dave Bodurtha called in to the meeting to express his concern that the Commission keeps allowing Mr. Hillier to drag this out.
  - JG said the March 21 EO's June 15 deadline, however, ties the Commission's hands at the moment.
  - MP suggested that CA not only communicate the June 15 deadline as a "hard and fast date" to both parties, but also copy Ms. Child at DEP, along with previous minutes of relevant discussions, so that if the Commission has to ask DEP to take over enforcement, she'll have been kept apprised of ongoing progress, or lack therein.
- Resident Ken Diskin, online, added his agreement with Mr. Bodurtha's frustration, and hoped that the Commission could get more support from the Town Manager and Board of Selectmen.
  - He also was upset at the clearing of so many of the trees on the lot before the Commission had been notified (the February 2019 EO), and which has changed the look of the downtown area greatly.
- **Public Meeting: Determination of Applicability – 145 Oak Ridge Drive, Julian Zhao**
  - Assessor's Map 21, Parcel 66
  - At the Commission's last in-person meeting on 3/12/2020, it had voted to issue a Negative Determination of Applicability with two conditions to Mr. Zhao.
    - Due to the shutdown of Town Hall, ConCom has not been able to meet in person since then, and therefore has not been able to sign the DOA.
    - Given the Commission's vote on the Certificate of Vote on 5/14, and since DOAs do not have to be recorded at the Registry, CA can now proceed with completing the form with electronic signatures of Commission members.
  - CA also provided a draft copy of the letter she will be sending Mr. Zhao with the signed DOA, containing instructions for procedures he will have to follow to contact MassDEP directly about their 10-day appeal period for all permits.
    - The Governor's Municipal Relief Act gives the State and municipalities an extension to 45 days after the end of the State of Emergency for required responses to applications.
    - The appeal period for abutters to contest a permit remains 1-0 days from issuance of a permit, while the State's appeal period now extends to 45 days after the State of Emergency.
      - DEP has now recognized that this produces a very difficult situation for people wanting to move forward with projects.
      - DEP's fix is to have applicants contact DEP – both by hard copy and email (with a specific subject line) – asking if DEP will appeal their project.
      - DEP expects to be able to respond within 2-3 weeks.
        - In the meantime, no work may take place.

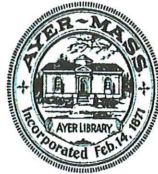


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- CA said it had been a source of confusion that the two appeal periods, for the State and for abutters, are being treated so differently.
- **Discussion: Discretionary criteria for accepting applications and scheduling meetings during pandemic State of Emergency**
  - ConCom reviewed the draft criteria grid CA prepared for scoring project applications.
    - Some of the criteria will have a simple Y/N answer, while others will be scored low-medium-high, or something to that effect.
    - One axis will list the projects under consideration; the other will list the criteria.
  - At the moment, the criteria axis includes the following:
    - Emergency
    - Amount of public interest
    - Amount of resource area impact
    - Order of receipt
    - Other permits in hand?
    - Subdivision of greater than 3 lots
    - Septic system
    - Complexity
    - Urgency
  - CA will fill in the grid with her evaluation of the 7 current applications (i.e. NOI, ANRAD, RDA, COC) that have been received since the start of the State of Emergency, and ConCom will review at its next meeting.
  - CA also noted the range of responses that other commissions are taking during the shutdown.
    - Some are developing processes and procedures to allow their agents and commissions to do inspections and site walks.
    - Other commissions have been prohibiting their agents from going 'out into the world'.
  - This adds to the importance of coming up with a rational, fair, and safe process was stressed.
- **CA Office Updates**
  - Field and trail guides
    - CA received a great response from her Town Facebook post advertising the availability of extra field guides, trail maps, etc., in the office, and has thus far mailed out about 20 packages.
  - Town Hall
    - Staff are now back full-time in the building, with safety protocols in place, but Town Hall remains closed to the public.
  - 2019 Annual Report
    - The Annual Report is available for download on the Town's website or residents can request a hard copy from the Town Manager's office.
  - Sheds



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- CA will next week be sending out a request for department head comments on what to do about the sheds on the Pine Meadow Conservation Land, located just behind 102 Oak Ridge Drive.
- Page-Hilltop School Oil Spill Cleanup (MassDEP # 100-0425)
  - Omni Environmental and Trident will be scheduling work to equalize the flow from a stormwater outfall to better distribute the flow into the two pre-existing channels.
- Accounts Payable
  - CA was reminded by Assistant Town Manager Carly Antonellis that, under the Town Manager form of government (as opposed to the old Town Administrator form), the Town Manager can now approve payment of bills without the Commission having to use meeting time to do this.
    - JS said bill approval has never taken that much time.
    - JG said she was reluctant to let go of Commission oversight and control.
    - GB was less concerned if it was something the Commission had previously approved.
  - At the Commission's request, CA will get more information on this before the Commission makes its own decision.
- Enforcement Order: 156 Washington Street, Michael Mazzola, MassDEP # 100-0394
  - GB asked for an update on the status of this EO (see 4/23/2020 minutes).
    - CA has been in contact with the owner who has some questions as to how to proceed.
- **8:18 PM – Adjourn Meeting**
  - MP moved to adjourn; GB 2<sup>nd</sup>.
    - Motion approved unanimously.

**Minutes Recorded and Submitted by Jessica G. Gugino, Clerk**

**Date Minutes Approved by Conservation Commission:** \_\_\_\_\_

6/11/2020

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

*Jessica G. Gugino*