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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 6/25/2020

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.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 6/11/2020 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Accounts Payable**
 - MACC: \$518, annual dues to Mass. Association of Conservation Commissions, for 5 commissioners, 1 associate member, conservation agent, and online access to MACC electronic handbook.
 - GB moved to approve payment of \$518; MP 2nd.
 - 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
 - CA has been in contact with Misty-Anne Marold, of Natural Heritage & Endangered Species Program (NHESP), and now has the language to include in the Order of Conditions (OOC) to cover NHESP's concern for turtle protection.
 - CA has forwarded this draft language to DPW Superintendent Mark Wetzel for his feedback, and expects the final OOC should be ready for ConCom to vote on at its next meeting.
 - There being no public comments, GB moved to continue the Public Hearing to 7/9/2020; MP 2nd.
 - 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
 - Cal Goldsmith, of Goldsmith, Prest & Ringwall (GPR), provided an update remotely via Zoom.

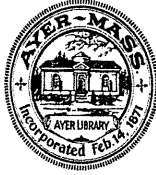


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- Test pits for the stormwater basins were scheduled for the next day (6/26), along with GPR's analysis of tree types in the area proposed for tree-topping.
- The habitat study being prepared by Oxbow Associates will be done next week.
- GPR reached out to Mass. Fish and Game's Division of Ecological Restoration (DER) to consult their expertise on the application of Mass. Stream Crossing Standards to this project, but Mr. Goldsmith said DER has declined offer their input.
 - GPR still maintains that it would be excessive to apply these Standards to the intermittent stream crossing design proposed in the NOI.
 - Compliance with the openness ratio required by the Standards would raise the road by 2-3 ft.
 - JS reiterated that, from his reading, every stream crossing is important, no matter how small, and needed to be studied carefully.
- The Commission declined to hear more detail on this argument without a representative from the third-party peer reviewer, EcoTec, present.
- Mr. Goldsmith said GPR was trying to finalize their plans as much as possible before scheduling the working session between their engineers and EcoTec, with CA and MP to be present.
 - Mr. Goldsmith said they anticipated being able to schedule the working session for the week of July 6th.
 - MP asked if this meeting could be scheduled in the morning on Friday, July 10, when he would be able to participate.
 - Mr. Goldsmith will try to arrange this.
- Abutter Ken Diskin said his overriding concern with the stream crossing is the substrate material below the retaining walls in the culvert system.
- There being no further comments or discussion, GB moved to continue the Public Hearing to 7/9/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - It is likely this Hearing will then be continued to 7/23 as there should be little new to report, given the working engineering session likely won't take place until 7/10.
- **Enforcement Order Updates (EOs):**
 - Enforcement Order: 0 Central Avenue, John Hillier
 - Assessor's Map 26, Parcel 281
 - Mr. Hillier was informed of this agenda item but was not present to participate.
 - CA received a letter earlier in the day, June 25, from Mr. Hillier's retained counsel, David K. McCay, of Mirick O'Connell Attorneys At Law, requesting available documentation regarding the several EOs issued to Mr. Hillier, as well as documentation supporting the Commission's position on the intermittent stream which Mr. Hillier insists is instead just a drainage ditch.
 - Mr. Hillier was given a deadline of June 15 to submit an NOI for work on this parcel to expand parking, in proximity to the intermittent stream.



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- No NOI was submitted.
- The Commission proceeded with an extended debate about whether to begin issuing fines, the possibility of which Mr. Hillier was warned if he did not provide ConCom with an engineered plan by the above deadline.
 - Because Mr. Hillier has now officially retained counsel, CA contacted Town Manager Robert Pontbriand who, in turn, reached out to Ayer's Town Counsel, KP Law.
 - Town Counsel encouraged the Commission to continue to seek to work toward a resolution with Mr. Hillier and his lawyer, suggesting not issuing fines at this time.
 - Initially some commissioners expressed reservations about implementing fines because of this.
 - CA said Mr. Pontbriand verbally told CA the Commission should do what it thinks is best.
 - CA's recommendation was that since Mr. Hillier missed his deadline and was warned, ConCom should proceed with fining.
 - She also said that, since legal counsel has been brought in, she wasn't sure MassDEP would be inclined to take over enforcement at this point, although they have been kept up to speed on the various enforcement actions taken by ConCom.
 - JS said one option would be to begin issuing fines, on a daily basis, but not ratify them until the Commission hears from Mr. Hillier and Mr. McCay and gets a sense of whether a good faith effort to reach a satisfactory resolution is at all possible.
 - Since the first recent EO was issued in Feb. 2019 and no substantive progress has been achieved, issuing fines at this point is necessary to show that the Commission means business.
 - JS said he was a fan of working things out and turning the other cheek, but at this point, the Commission has run out of cheeks!
 - In this way, fining can be used as leverage, and if satisfactory progress begins to be made, the Commission has the ability to negate them by not ratifying.
 - MP asked if it was possible to fine at a lower rate and ratchet up the amounts daily when there is no sign of progress.
 - After discussion, it was generally agreed that the fines should be imposed at the full amount of \$300 per day.
 - JA expressed concern about accumulating a large sum total of fines.
 - The point of the fines, however, is not for the Commission to make money out of this, but to show its seriousness on requiring a resolution by applying the fines as leverage.
 - Again, the Commission is willing to hold off on ratifying fines in hopes of seeing progress.



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- JG also noted that, if this issue were to go to civil court, it is likely possible to settle for a lower amount or perhaps no amount, if a resolution were agreed upon.
- CA noted that she has told Mr. Hillier all along that it was likely the Commission would approve a plan to expand parking on the lot, but she and the Commission needed an engineered plan in the first place.
 - JG also noted that when use of this lot first came up in 2013-2014 (when Mr. Hillier was issued his first EO, and then later dropped doing anything further until the sudden tree-clearing in 2019), that Mr. Hillier was explicitly told then that the Commission was not opposed to him doing something, but that he needed to submit an NOI and provide a plan given the presence of the intermittent stream/wetlands.
 - CA added that parking of up to 10 cars daily continues on the lot, and that this involves crossing the buffer zone.
- The Commission also discussed when to start fining, and it was agreed that, because of the deadline set, daily fines should begin backdated to June 16th.
- JS asked for a motion to begin daily fining Mr. Hillier for the EOs on 0 Central Avenue, to be written by CA, at \$300/day, backdated to June 16, to remain in effect until compliance with the EOs has been reached, and subject to final ratification by the Commission.
 - GB so moved; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - JS asked CA to let Mr. Hillier and his lawyer know that ConCom was not immediately ratifying the tickets, in hopes of some progress.
- Enforcement Order: 156 Washington Street, Michael Mazzola, MassDEP # 100-0394
 - Assessor's Map 13, Parcel 36 (previously discussed 4/23/2020)
 - The NOI from Mr. Mazzola is being finalized along with payment checks required.
- **Discussion: Ranking of applications during pandemic State of Emergency**
 - CA has learned that the Conservation Analysis for 76 Groton-Harvard Road, begun in March, is no longer a priority for the developer, so no action to be taken further at this time.
 - CA will check with the Stratton Hill developer to see if they are still interested in pursuing the ANRAD (Abbreviated Notice of Resource Area Delineation), given the state of the world.
 - If they are, it might be possible to open the Public Hearing at ConCom's next meeting on 7/9.
 - The developer who submitted the NOI for Lot 6, Shaker Road, is anxious to have the Public Hearing opened.

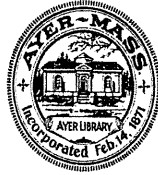


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- Of note is that a foundation drain daylights on this lot from the other non-jurisdictional duplexes in this development, but there is no drainage easement shown.
 - CA will check with the engineer to see if this is an oversight.
- The NOI for 1 Bishop Road is not ready yet.
- ConCom's next meeting on 7/9 will therefore likely include the following:
 - Stratton Hill ANRAD;
 - Lot 6, Shaker Road NOI;
 - RDA (Request for Determination of Applicability) for 71 Nashua Street;
 - RDA for 3 Trevor Trail.
- **Public Meeting: Request for Partial Certificate of Compliance (PCOC) – 25 Longview Circle, Unit 92, John Mulone, MassDEP # 100-0288**
 - Assessor's Map 30, Parcels 24 & 25
 - CA drove by; there are no wetlands in sight of this particular unit.
 - Since the whole project, The Willows subdivision, is complete and the replication areas are done and near the end of their monitoring time, perhaps a full COC for the entire project could be issued in the fall.
 - CA will check with MassDEP to see if they have any outstanding issues related to their previous enforcement actions on the developer.
 - GB moved to issue a PCOC for Unit 92 at The Willows, MassDEP # 100-0288; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0 and CA will sign the COC on behalf of the Commission.
- **Public Meeting: Request for COC – 0 (2) Sedgeway, Paul Bresnahan, MassDEP # 100-0427**
 - Assessor's Map 15, Parcel 2
 - CA performed a site walk and outlined the differences observed between the approved plan and the as-built:
 - the configuration of the driveway changed and has approximately 430 sq. ft. more paving;
 - the yard between the house and the Limit of Work was to be mulch and pine but has instead been planted with grass;
 - the access way to the beach used $\frac{3}{4}$ in. crushed stone;
 - only a deck was built on the side; the 3-season porch was left off;
 - the sediment basin at the end of Sedgeway to control run-off is functioning well (this was not required but had been offered by the engineer and the Bresnahans as an improvement);
 - the big pile of junk (cars and wheelbarrows) has been cleaned up.
 - CA said the site is stable, looks good, and that the plusses outweigh the minuses.
 - GB moved to issue a PCOC for 0 (2) Sedgeway, MassDEP # 100-0427; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0 and CA will sign the COC on behalf of the Commission.

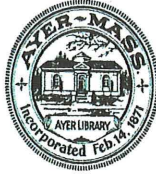


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- **Discussion: Sheds on Pine Meadow Conservation Land**
 - Location: Town property directly behind the private residence at 102 Oak Ridge Drive
 - JS summarized that the two sheds had been inherited when the Town purchased and added the 'Tooker' parcel to Pine Meadow Conservation Land in 2010.
 - The sheds are isolated and don't comply with various standards such as ADA.
 - They cannot easily be repurposed and moving them is impossible.
 - Department heads were asked to weigh in on their disposition and no one expressed opposition to the sheds being taken down.
 - Resident Dave Bodurtha called into the meeting via telephone.
 - In his view, the larger shed had no structural issues and he did not see why ConCom was in a rush to demolish it.
 - JS said there were liability issues, and that the sheds were not easily accessible nor close to wetlands for ConCom to use for educational purposes.
 - Mr. Bodurtha said people he had talked to on other commissions did not think there had to be ADA compliance, and that the sheds were not a problem to the town in his view.
 - JS said there was no expressed interest of anyone else in town to keep and use the sheds and the Commission was going to therefore proceed.
 - He asked for a motion to inform the DPW and the Town Manager that the Commission has no use for the sheds and advocated for their dismantling and removal from conservation land; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - GB suggested a letter from the Chair would be the best way to notify the DPW and Town Manager.
- **Discussion: Timing on receipt of materials for discussion at ConCom meetings**
 - Given GPR's attempt to submit new material to ConCom just an hour and half prior to the last meeting on 6/11, CA asked for Commission input as to what constituted acceptable submissions.
 - As a general rule, MP suggested that anything new to be discussed, or that needs to be deliberated on, should be submitted to CA by noon on the Tuesday before a meeting.
 - This gives commissioners reasonable time to digest new material prior to discussion or deliberation.
 - This standard shouldn't necessarily be applied to material submitted in response to ConCom requests for information.
 - GB suggested standards of submission could also be addressed in regulations.
- **Discussion: Proceeding with Wetland Bylaw Regulations**
 - JG suggested there was need for ConCom to move forward with regulations on at least 'Minor Activities' as guidance to residents.
 - Given CA fields phone calls on this, she thought this would be good as the first regulation.
 - GB offered to work with CA to begin to draft this.



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- MP will check as he had prepared a draft document on the regulations that he had intended to circulate but evidently had not.
- **Conservation Office and Member Updates**
 - 2020 Weed treatment on ponds
 - The SOLitude contract has now been signed by all parties.
 - SOLitude will be doing its pretreatment survey on July 6 and expects its first treatment to take place on July 13.
 - 0 Taft Street EO, Brian Anderson (see minutes, 5/14/2020)
 - CA has learned that the NOI to be submitted will just be for restoration of the lot, not for a dog park.
 - Powerboats speeding on Sandy Pond
 - CA was contacted by a resident concerned with certain powerboats appearing to speed excessively on Sandy Pond, in close proximity to kayaks/canoes, as well as the possible use of a jet ski.
 - CA is referring such calls to the Town Manager's office and/or the Environmental Police, as this issue is outside of ConCom's jurisdiction.
- **8:30 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: 7/9/2020

Signature Indicating Approval: 