

RECEIVED
SEP 03 2020

TOWN OF AYER
TOWN CLERK

Approved

Town of Ayer Conservation Commission

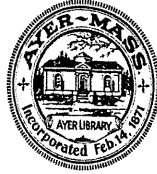
Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 7/23/2020

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 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**
 - Signing a Certificate of Compliance (COC) for 156 Washington Street was added.
 - GB moved to confirm the agenda as amended; MP 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 7/9/2020 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Accounts Payable**
 - Solitude Lake Management: \$14,250, Task 2, chemical treatments for invasive weeds performed in Sandy, Flannagan and Pine Meadow ponds on July 13th..
 - GB moved to approve payment of \$14,250; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion : Enforcement Order Update (EO) – 0 Central Avenue, John Hillier**
 - Assessor's Map 26, Parcel 281
 - Participating via Zoom were Attorney Amy Kwesell, of KP Law (Ayer Town Counsel); John Hillier; Attorney David McCay, of Mirick O'Connell Attorneys At Law, representing Mr. Hillier; and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR).
 - Mr. McCay stated, and JS confirmed, that a Notice of Intent (NOI) was filed earlier in the afternoon.
 - ConCom will have to formally advertise a Public Hearing before it can open this application for official consideration, but meanwhile JS opened the topic for discussion under the EO.
 - Mr. McCay asked that ongoing ticketing be suspended now that an NOI has been filed.
 - JS deferred consideration of this until later in the discussion and asked for a description of the substance of the NOI.
 - Mr. McCay said the NOI includes a plan as well as the deed restrictions put on the property when sold to Mr. Hillier in 2012.



Town of Ayer Conservation Commission

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

Minutes for 7/23/2020

- He said the deed restrictions obligated Mr. Hillier to maintain the drainage channel running across the parcel for the Boston & Maine Railroad.
- He also said an Operations & Maintenance Plan is included in the submission for performing required maintenance using hand tools.
- JS clarified that the so-referenced drainage channel is the intermittent stream.
 - This intermittent stream carries water downhill from the top of Washington Street near Page Hilltop School, under Central Avenue and across this property, through another culvert that passes under the railroad tracks, and then on into School House Pond.
- JG raised the question of continued parking on bare dirt on the parcel.
 - Temporary permission to do this had been granted by ConCom in 2019 (see minutes for 9/26/2019) when it had appeared that Mr. Hillier was working with GPR at that time to prepare a plan and NOI.
 - Mr. Hillier said that area was used for years by the railroad for parking, prior to any issuance of EOs, and therefore parking would continue as he saw it as a property right.
 - Mr. McCay said parking was not addressed in the NOI as they were not aware of any negative impact, but said the NOI could be amended to include this.
 - JS said ConCom's goal was to protect the resource area, noting that two wrongs don't make a right.
 - Mr. Hillier said the resource area is protected by a large earthen berm and that there was no risk to the "drainage ditch."
- ConCom also clarified that it has never said that Mr. Hillier could not use this parcel in some manner, just that use has to be planned and permitted in such a way that the resource area is not damaged.
 - Mr. McCay said he appreciated that ConCom was not saying Mr. Hillier could not make any use of the property, and that they knew that if Mr. Hillier did want to develop it in some manner in the future, he would need to submit a new NOI, but at this point there are no grand plans for the property.
- Regarding current use, Attorney Kwesell said that just because a use has been taking place does not mean it can continue without review.
 - Under the local wetland bylaw, there is no grandfathering, therefore any activity or use within 100 ft. of a resource area needs to be addressed.
- CA said the terms of the EO require not only an NOI but also a restoration plan.
 - Mr. McCay confirmed for JS that Mr. Hillier's plan is to let the lot grow back in naturally.
 - JS then said the disturbed resource area is not very big and therefore would not take much to implement a restoration plan.
 - Mr. Burchard said no work previously was done in the resource area, and the NOI proposal only includes maintenance obligations to remove sediment build-up and bring the channel down to its armored state.

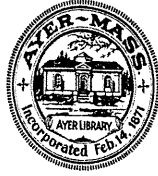


Town of Ayer Conservation Commission

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

Minutes for 7/23/2020

- After JS questioned this, Mr. Burchard said that maybe a tree or two had been taken down in the resource area.
- Mr. McCay said he was open to discussion of what kind of restoration plan ConCom would have in mind.
 - JS said primarily restoration of some of the trees cut in both the resource area and the adjacent buffer zone.
- Mr. Hillier said that, after receiving feedback from residents as well as the Commission on the impact of the tree removal, he wondered if replanting trees along the steep upper slope to the bridge (East Main Street/Rte. 2A) would break up the visual impact and soften the view.
 - He would be willing to put 8 or so trees of a decent height (6-10 ft.) along that area to mitigate and restore his previous activities as subject to the EO.
- Mr. McCay said he was happy to have this kind of conversation with ConCom.
 - He visited the property earlier in the day and said that, from a wetland perspective, he thought the parcel was revegetating and that the previous work done by Mr. Hillier has not created a problem for the functioning of the resource area.
 - A beautification plan therefore makes more sense in his view.
- MP returned to the issue of continued parking on dirt in the buffer zone to an intermittent stream channel, given the possibility of leaking fluids into the ground.
 - He also asked if there was something that could be done that protects the resource area regardless of what Mr. Hillier does in the future, and so that ConCom doesn't have to have this same conversation again in a few years.
 - Mr. Hillier said he has no plans for the next few years.
 - He does want to remove the big machine currently on the lot.
 - CA asked if it was possible to park cars outside of the buffer zone.
 - Mr. Burchard said that 80% of the property is buffer zone, and access to the small area that isn't would require crossing the buffer zone regardless.
 - Mr. Hillier said he only plans to continue parking around 8 cars in that area, and Mr. Burchard said that, with the drainage grades, there is no chance for drainage to reach the resource area.
- GB pointed out that the slope Mr. Hillier is offering to plant trees on is not jurisdictional to ConCom.
 - His main interest in restoration is along the resource area, noting that the scrub brush that is naturally revegetating the area is not comparable to the trees that were taken down.
- JS asked that Mr. Hillier work with CA to develop a restoration plan and Mr. Hillier agreed to this.
- Regarding the question raised by Mr. McCay at the beginning of the meeting, ConCom discussed and agreed that it would not issue any further tickets at this time (the last one



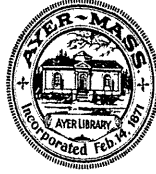
Town of Ayer Conservation Commission

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

Minutes for 7/23/2020

issued having been Monday, 7/20), but would also defer any decision on the ratification of the previously issued tickets until the NOI has been fully reviewed.

- Following further discussion, GB moved to cease issuing new tickets, and to hold off on ratifying existing tickets, with a deadline of August 10 added for submission of a restoration plan prior to opening the Public Hearing for the NOI on August 13; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- GB moved to continue discussion of the Enforcement Order to August 13; 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
 - GB moved approve the Order of Conditions for 100-0443; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - GB moved to close the Public Hearing for 100-0443; 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
 - Present via Zoom were Kyle Burchard, of GPR, on behalf of the applicant, and Arthur Allen, of EcoTec, the third-party peer reviewer for the project.
 - Mr. Burchard provided an update and said that the Natural Heritage & Endangered Species Program (NHESP) review of the project is almost complete, pending resolution of some issues regarding a 35-acre Conservation Restriction.
 - NHESP has already issued a 'no-take' letter for protection of the Blanding's Turtle.
 - The previous week an engineers meeting was held between GPR and the peer reviewers, with JS. MP, and CA also participating.
 - Mr. Burchard said the sticking point has to do with the stream crossing.
 - Mr. Allen has also raised some questions regarding the bank.
 - Mr. Burchard said they are currently proposing to slightly redirect the stream channel at the crossing but in a manner that maintains the continuity of water flow.
 - He said that maintaining an existing channel is not required by the Wetlands Protection Act (WPA) nor Massachusetts Stream Crossing Standards as long as continuity and functionality are preserved.
 - Mr. Allen asked Mr. Burchard to address the performance standards for a bank as detailed in the regulations under the WPA, 310 CMR 10.54.4 (a) (6) and Mr. Burchard said he would.
 - There being no further comments or discussion, GB moved to continue the Public Hearing to 8/13/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

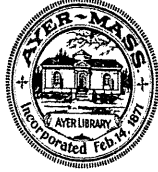


Town of Ayer Conservation Commission

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

Minutes for 7/23/2020

- **Public Hearing (cont'd.): NOI – Lot 6, Shaker Road, Shaker Nominee Trust, Dan Aho, Trustee, MassDEP # 100-0446**
 - Assessor's Map 38, Parcel 68
 - Prior to the meeting, Neil Gorman, of David E. Ross Associates, contacted CA to request that ConCom continue the Hearing to 8/13 while stormwater issues with the DPW are worked out.
 - A site walk for this project was done on Saturday, July 11.
 - There being no further comments or discussion, GB moved to continue the Public Hearing to 8/13/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): 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
 - CA will be preparing the Request for Proposals (RFP) for third-party review in the coming week.
 - There being no further comments or discussion, GB moved to continue the Public Hearing to 8/13/2020; MP 2nd.
 - 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. Clinton participated via Zoom.
 - The Commission did a site walk on Saturday, 7/11/2020.
 - CA prepared a Determination of Applicability (DOA) with the following conditions:
 - the material used to widen the driveway must be permeable;
 - CA must be contacted to inspect erosion controls prior to the commencement of work;
 - 3 trees in particular were identified as having root systems that would likely be compromised by the widening and therefore might need to be taken down – if so, no additional RDA is needed.
 - GB moved to issue a Negative DOA with the above conditions; MP 2nd
 - Motion approved unanimously by Roll Call Vote 5-0.
 - CA will provide Mr. Clinton with the contact information and procedures to follow with MassDEP regarding their right to appeal.
- **Public Meeting: RDA – 3 Trevor Trail, Rob Steeman**
 - Assessor's Map 13, Parcel 9
 - Mr. Steeman participated via Zoom.
 - The Commission did a site walk on Saturday, 7/11/2020.
 - CA prepared a DOA with the following conditions:



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 7/23/2020

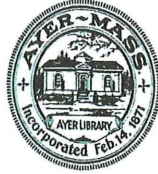
- CA must inspect the erosion controls prior to the commencement of work;
 - no wash-out of the contractor's concrete pouring equipment can take place on the property as this would be in the buffer zone.
 - Mr. Steeman asked if the erosion controls already in place from the house construction would suffice?
 - CA will make a quick site visit to determine this, but added they might not be in the right location for this project.
 - GB moved to issue a Negative DOA with the above conditions; MP 2nd
 - Motion approved unanimously by Roll Call Vote 5-0.
 - CA will provide Mr. Steeman with the contact information and procedures to follow with MassDEP regarding their right to appeal.
- **Public Hearing: NOI –Littleton Electric, Light and Water, Spectacle Pond seasonal drawdown, MassDEP # 100-0447**
 - Littleton Assessor's Map R-24, Parcel R-24-16-0
 - Bob Hartzel, of Comprehensive Environmental Inc., addressed ConCom via Zoom on behalf of the Town of Littleton.
 - The NOI seeks an OOC, in coordination with a like permit from Littleton, for a Limited Project to seasonally draw down the water in Spectacle Pond for the purpose of plant management/weed control.
 - Targeted invasive weeds include milfoil and fanwort.
 - Per recommendation of MassDEP reviewer Judy Schmitz, the applicant is seeking an OOC that covers 5 years rather than the usual 3 year span.
 - While chemical treatment is also applied, the drawdown helps with weed control as well.
 - NHESP has issued a 'no take' letter for protection of the Blanding's Turtle.
 - The letter specifies the drawdown can start Sept. 15 and be completed by Oct. 14.
 - The drawdown must be ended and the pond allowed to naturally refill by April 1.
 - Mr. Hartzel said the fall drawdown period would have a rolling average drop rate of 3 in. per day.
 - The release will be controlled by a new 12 in. adjustable valve at the pond's Outlet Control Structure
 - The maximum vertical drawdown proposed is 2 feet.
 - Massachusetts Fish & Wildlife has also issued a no objection letter.
 - There being no further questions or discussion, GB moved to issue an OOC for a 5-year permit for 100-0447; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Request for Certificate of Compliance (COC) – 156 Washington Street, Michael Mazzola, MassDEP # 100-0394**
 - CA has inspected the new house construction and found no issues.
 - GB moved to issue a COC for 100-0394; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 7/23/2020

- **Public Meeting: RDA – 75 Sandy Pond Road, Cannongate**
 - Assessor's Map 29, Parcel 4
 - Kyle Burchard, of GPR, participated via Zoom on behalf of the applicant.
 - In 2018, ConCom previously issued a Negative DOA for Cannongate's project to improve the safety of its driveways by eliminating all parallel parking spots, replacing them with head-in parking instead.
 - Merrimack Engineer Services did the original design, but it has been found since that some of the parking stalls won't work as planned and are too close to abutting properties.
 - This RDA proposes shifting the location of 12 parking spaces.
 - All relocated parking spaces will drain back toward the road, not toward an isolated wetland.
 - In addition, water that had been draining to an inlet has now been diverted, reducing the discharge onto adjacent parcel as well as the overall TSS content (total suspended solids).
 - Mr. Burchard said this overall improves the stormwater discharges for this property.
 - He also noted that a portion of an existing drainage pipe had a rotting invert.
 - Per DPW review, the last 15 ft. of corrugated pipe will therefore be removed, leaving an open ditch to be stabilized with turf.
 - Additional light poles, 18 in. in diameter, have been added, but their fixtures will be fully shielded to avoid casting light onto abutting properties.
 - JS asked about performing a site walk.
 - Mr. Burchard said the owner had thought he had the correct permits in hand until he learned he needed a new permit.
 - While the owner will defer to ConCom, Mr. Burchard requested that ConCom move forward without a site walk, given that it is familiar with the site from the 2018 RDA.
 - ConCom members did not have objections to this.
 - There being no further comments, GB moved to issue a Negative DOA for the project as proposed; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – K137/K137W Sandy Pond-Ayer Tap ROW, New England Power Company, MassDEP # 100-0448**
 - Assessor's Map 19, Parcels 11 & 12; Map 12, Parcels 2 & 26
 - Alison Millman, of BSC Group, participated by Zoom on behalf of the applicant.
 - Ms. Millman was made aware that ConCom's allotted Zoom time was now running short and this Hearing would likely need to be continued.
 - Ms. Millman described the project involving exploratory soil borings for pole replacements.
 - This qualifies as a "Limited Project."



Town of Ayer Conservation Commission

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

Minutes for 7/23/2020

- All activities and impacts in the wetlands and buffer zone will be temporary in nature.
 - As a Best Management Practice (BMP), temporary construction mats will be used to cross resource areas and disburse the heavy weight of the soil boring equipment.
 - The borings will be 4-6 in. in diameter.
 - The holes will later be backfilled with excess material and stabilized with straw mulch.
 - The project is anticipated to take approximately a week and have no negative impacts to existing vegetation.
 - Portions of the project area are within NHESP Priority Habitat.
 - Fish & Wildlife has no objections and has indicated the work described is an exempt activity under MESA (Mass. Endangered Species Act).
 - The area, with wetlands, is not easily accessible to a site walk.
 - CA noted that abutters have expressed some concerns but that they had not understood the nature of the project.
 - GB said he was surprised this was being presented as an NOI and not an RDA.
 - Time having run out, GB moved to continue the Public Hearing for 100-0448 to 8/13; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **9:00 PM – Adjourn Meeting**
 - MP moved to adjourn; GB 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: August 13, 2020

Signature Indicating Approval: Jessica G. Gugino