

Town of Ayer Conservation Commission

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

Minutes for 8/13/2020

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),

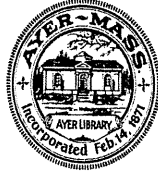
Jo-Anne Crystoff, (CA, Conservation Administrator)

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 amended; MP 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 7/23/2020 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion (cont'd.): Enforcement Order Update (EO) – 0 Central Avenue, John Hillier**
- **Public Hearing: 0 & 31 Central Avenue, Central Realty Trust, MassDEP # 100-0tbd**
 - Assessor's Map 26, Parcel 281
 - Participating via Zoom were John Hillier; Attorney Amy Kwesell, of KP Law (Ayer Town Counsel); and Attorney David McCay, of Mirick O'Connell Attorneys At Law, representing Mr. Hillier.
 - The previous week, CA, Town Manager Robert Pontbriand, and Mr. Hillier met via Zoom to discuss a restoration plan to address the EO and came up with 3 options:
 - 1) Replacing the two cut trees in the resource area adjacent to the intermittent stream, and Mr. Hillier then chooses where, on the rest of the parcel, to plant an additional 10 trees;
 - 2) Replacing the two cut trees in the resource area, and planting the additional trees along the course of the intermittent stream;
 - 3) Replacing the two cut trees in the resource area, and planting the additional trees at the top of the slope, along the guard rail, to East Main Street (Rte. 2A).
 - Trees on this slope and near the guard rail had been cleared by Mr. Hillier back in late 2018/early 2019, when he cleared much of the rest of the lot without an OOC.
 - CA recommended against option 3 because, according to the plan submitted with the NOI, Mr. Hillier's property line ends about halfway up this slope (approximately 25 ft. from the top).

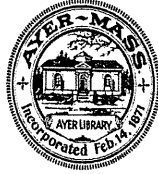


Town of Ayer Conservation Commission

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

Minutes for 8/13/2020

- Records for ownership of the land continuing up the slope to the guard rail are not easily found, leaving open the question of whether this land is possibly owned by the railroad, the town/DPW, or the state given 2A is a state highway.
 - Even though trees had been cleared beyond this line by Mr. Hillier, ConCom cannot approve an option for tree-planting on land not owned by Mr. Hillier.
- In response to JS's question, Mr. Hillier said he was fine with either option 1 or 2.
 - MP said he would like to see a few trees planted on Mr. Hillier's portion of that slope, as well as some along the intermittent stream where they wouldn't encumber any future plans Mr. Hillier might have for the parcel.
 - JG agreed with MP; JA was torn, liking the option of planting trees to follow the contour of the stream.
 - Mr. Hillier said it would be difficult to successfully plant 6-10 ft. tall trees on that slope, and CA later agreed that trees of that size planted on that slope were not likely to do well.
 - GB and JS said they were happy to have a few trees planted along the stream, and the others wherever Mr. Hillier chose to put them.
- JS asked CA if options 1 or 2 would adequately satisfy the EO requirement of a restoration plan and CA said yes.
- JS then suggested a site walk, the idea being to coordinate the restoration plan with the NOI plan.
 - MP agreed, noting that while ConCom does not deliberate on site walks, a site walk could help evaluate whether placing some trees at least at the bottom of the slope, for visual appeal, might be feasible.
 - Mr. Hillier asked what the objective was of a site walk.
 - JG said ConCom almost always performs site walks for NOIs, and that whether there was a berm that protected the stream from potential parking runoff, as mentioned in the last meeting, needed to be evaluated, etc.
- There was then some discussion as to whether the EO needed to be kept separate and distinct from the NOI.
 - Attorney McCay said in his view they were tied together, as the need for a restoration plan in the NOI came out of the requirement of the EO.
 - Attorney Kwesell agreed they were tied together and said that resolution of the EO would come through the 'solution' of an Order of Conditions (OOC) issued through the NOI process.
- In addition, Attorney Kwesell said another issue needed to be addressed, that of the EO's Cease & Desist (C&D) for activity in the buffer zone, which would also include parking as an activity.
 - Parking was not addressed at all in the NOI or its plan.



Town of Ayer Conservation Commission

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Minutes for 8/13/2020

- She had no problem with resolving the restoration plan portion of the EO, but the C&D still needed to be addressed and an OOC could not be issued without that second part.
- Attorney McCay said that the first time he had heard any ConCom issue with parking was at the previous meeting on 7/23.
 - The EOs, in his view, were issued for the removal of vegetation in the resource area without a permit.
 - To the extent cars are parked there, they have been parked there for a long time.
 - JS said he had not been aware parking was going on there until last fall.
- Mr. Hillier said he had a right to pass across his property and that cars would not be parked in the buffer zone.
 - Attorney Kwesell said that detail needs to be shown on the plan.
- JS said the Commission's concern was with oil or gas leaking from vehicles directly onto bare ground.
 - Mr. Hillier claimed that with Massachusetts's strict inspection standards, vehicles don't leak.
 - He also referenced untreated stormwater flow from Central Avenue onto his property and that such concerns should be applied equally to everyone.
- JS said that vehicles do leak, even with inspection stickers.
 - What ConCom was asking for was information as to where the cars would be parked and how many; if they were outside of the buffer zone, ConCom's jurisdiction did not therefore apply.
- Attorney Kwesell said, re the NOI and per the Town's wetland bylaw (for which she added there is no grandfathering), that activity in the buffer zone needs to be shown on the plan.
- Attorney McCay said he had a different opinion on the parking issue and that 'no grandfathering' was not as straightforward.
 - He also noted there were a lot of issues in Ayer that the Town was not enforcing.
- Attorney Kwesell referenced the unpermitted paving within the buffer zone that Mr. Hillier had also received an EO for, although it was also noted that this issue has since been corrected with the removal of the paving material.
 - She again reiterated that ConCom needs a plan that shows detail on parking, or whether parking will take place outside of buffer zone jurisdiction.
- Attorney McCay said that parking had not been mentioned in the last two EOs and that the notion that parking needed to be addressed was new to them.
 - He would therefore have to consult further with his client.
- Mr. Hillier agreed, saying he felt his rights as a property owner were being taken away and that standards were being applied to him that were not being applied to others.
- JG said that, in her view, the issue of parking had always been an implied assumption.
 - When Mr. Hillier was first issued an EO and use of the parcel was first discussed in 2013-2014, ConCom had been told a plan and NOI would be forthcoming from an engineer Mr. Hillier was then working with – and then that was dropped.

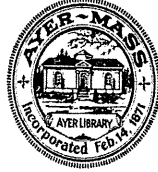


Town of Ayer Conservation Commission

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Minutes for 8/13/2020

- Issues with the parcel resurfaced when Mr. Hillier subsequently went ahead and cleared the lot without a permit, leading to the Feb. 2019 EO.
- In fall 2019, Mr. Hillier was working with another engineering company (GPR) and ConCom was told an NOI and plan would soon be forthcoming – and then that was dropped as well.
- All along ConCom has been expecting and waiting for a plan that would show how the property was to be used and how the resource area would be protected.
- Resident David Bodurtha called in to the meeting via telephone to make a few points.
 - He first made clear that, contrary to what Mr. Hillier implied, Mr. Hillier does not own the property across which he is accessing his property to park cars.
 - That strip is owned by Ruth Maxant Schultz.
 - Secondly, he said that he has heard that the DPW determined that their paving on Central Avenue may have affected the stormwater flow, but it is onto the strip that Mr. Hillier does not own.
- Mr. Hillier acknowledged the strip is owned by Ms. Schultz, said there is a disagreement on his use of it, but said that in his opinion, he has a right-of-way to cross it.
 - Attorney Kwesell noted that Mr. Hillier had earlier stated that he had the right to pass across *his* property, and yet it was now clarified that his access was across a section that he does not own and on which he claims to have a right-of-way.
- At this point, JS suggested that it would be best if Mr. Hillier and Attorney McCay consulted further and that this be taken up again at ConCom's next meeting.
- Mr. Hillier said he thought the NOI would be resolved at this meeting.
 - JS said again that ConCom needs a complete plan, and also noted that the NOI and submitted plan had only been submitted perhaps hours before ConCom's 7/23 meeting, leaving the Commission no time then to have reviewed it prior to that meeting.
 - Mr. Hillier said he thought ConCom had everything it needed to make a decision, but that it keeps asking for more.
- Attorney McCay acknowledged that the NOI had only briefly been submitted prior to the Commission's last meeting (and its content couldn't be reviewed or discussed until this meeting).
- JG referenced the section of the 7/23 minutes (approved at the beginning of this meeting) where the issue of parking had been raised in that meeting, and that Attorney McCay had then said that while it had not been addressed in the NOI, the NOI could be amended to include this.
 - Attorney McCay did not remember that exchange.
- CA said the EOs contained a C&D for all activity within the resource area.
 - Following passage of the Town's wetland bylaw, the buffer zone now *is* a resource area, and parking *is* an activity.
- JG said that she had no interest in taking away Mr. Hillier's property rights to use the parcel, but underscored that the Commission has been waiting years (from 2013-2014, and 2019-2020) to see a plan of how the parcel was to be used and the resource area protected.



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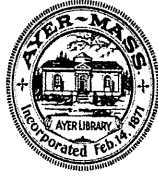
- On a side note, JS reminded Mr. Hillier that he still needs to provide a check to pay for the legal ad advertising the NOI/Public Hearing, as is standard for all NOI applications.
- GB suggested the Hearing now be continued to 8/27.
 - Mr. Hillier said he was unavailable for the end of August and first half of September.
 - After discussion and agreement, GB moved to continue the Public Hearing to 9/24/2020; MP 2nd.
 - Motion approved unanimously by Roll Call vote 5-0.
- **Public Hearing (cont'd.): 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 via Zoom on behalf of the applicant.
 - Ms. Millman recapped her presentation from the previous meeting, where time ran out.
 - The purpose of the project is to do soil borings, 4-6 in. in diameter, to evaluate substrate conditions prior to replacing existing power line structures in the future.
 - Some of these structures are in resource areas (BVW – bordering vegetated wetlands) or buffer zones.
 - Impacts to the BVW and buffer zone will be temporary, involving both the creation of access for heavy equipment and the borings themselves.
 - Access will be created via the laying down of mats ('versimats') to support equipment passage.
 - Larger equipment may be required at structure 4, and it is possible timber mats might need to be used there instead.
 - In compliance with NHESP (Natural Heritage & Endangered Species Program), Blanding's turtle sweeps will be conducted before and during the project.
 - The total project time is estimated to be under 2 months.
 - CA showed a photo of some mats she recently observed that were laid down by some power line structures right along Groton-Shirley Road and abutting wetlands/James Brook, and asked Ms. Millman if these mats were connected to this project.
 - Ms. Millman will look into it but thought it might have been related to emergency activity given recent storm activity and power outages.
 - This being a straightforward public utilities project in a relatively inaccessible area, ConCom waived doing a site walk.
 - Before ConCom made a motion to proceed, Ms. Millman asked that she be allowed to review a draft OOC because some Orders include boilerplate special conditions in perpetuity – i.e. regarding the use pesticides or herbicides – and these are inherently problematic for utility transmission line right-of-ways.
 - CA will be sure to confer with Ms. Millman as she prepares an OOC.
 - GB moved to approve the NOI and proceed with drafting an OOC; JA 2nd.
 - MP, being an employee of National Grid, abstained from voting.
 - Motion approved unanimously by Roll Call Vote 4-0 (MP abstained).
 - GB moved to continue the Public Hearing for 100-0448 to 8/27; JA 2nd.



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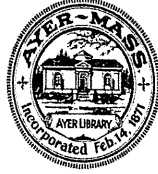
- Motion approved unanimously by Roll Call Vote 4-0 (MP abstained).
- **Request for Partial Certificate of Compliance (PCOC) – 11 Mountain Laurel Road, Deschanes & Ferrell, MassDEP # 100-0220**
 - Assessor's Map 23, Parcel 61
 - CA finds no concerns with issuing a PCOC; sale of this house takes place next week.
 - GB moved to approve a PCOC for 100-0220, 11 Mountain Laurel Road; 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 was Kyle Burchard, of GPR, on behalf of the applicant.
 - Regarding Mr. Burchard's inquiry, CA has not received any additional information from NeoVirtus, the solar array peer reviewer.
 - Mr. Burchard provided an update that GPR is working to address NHESP requirements for instituting a Conservation Restriction (CR) on parts of the project area.
 - CA received an email from Anne Gagnon, of Mass. Fish & Wildlife, who had been contacted by Rohit Garg about F&W possibly agreeing to take the CR, which will require monitoring and maintenance.
 - Ms. Gagnon was confused as she hadn't heard anything about this previously.
 - CA said ConCom also has not received any direct information on the CR requirement either.
 - Mr. Burchard said the letter from NHESP addressing this is still in process.
 - There being no further comments or discussion, GB moved to continue the Public Hearing to 8/27/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): 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 via Zoom on behalf of the applicant.
 - A site walk for this project was done on Saturday, July 11.
 - DPW Superintendent Mark Wetzel had had some outstanding issues that needed to be resolved.
 - When Mr. Wetzel did his first review, he was lacking the correct site plans.
 - Earlier today (8/13), Mr. Wetzel issued a new memo stating that he has reviewed the project according to the correct plans and that the DPW has no further issues.
 - Mr. Gorman said the only thing changed on the plans was the addition of existing spot grade elevations between Lot 5 and Lot 6.



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- There being no further comments or discussion, GB moved to approve the NOI and proceed with drafting an OOC; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- GB moved to continue the Public Hearing to 8/27/2020; 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
 - Seth Donohoe, of Ducharme & Dillis, Civil Design Group, was present via Zoom on behalf of Fox Meadow Realty.
 - The Request for Proposals (RFP) for third-party review has now gone out, and proposals must be submitted by 8/24.
 - Mr. Donohoe said he was concerned about the scope of review.
 - The applicant acknowledges the likely existence of vernal pools and does not object to having them included in consideration of the whole project.
 - However, Mr. Donohoe asked that the RFP peer review for the ANRAD concentrate on confirming the wetland delineation lines only.
 - It having been a dry summer and now being late in the season, it is likely too late to be able to accurately evaluate for vernal pools this year.
 - This would delay proceeding with an NOI, and so Mr. Donohoe asked that verification of vernal pools be done later in the project, but not for this ANRAD.
 - CA said verification of vernal pools was added to the RFP based on MassDEP's technical comment when issuing the file number.
 - She will get DEP feedback on the intent of that comment prior to the next meeting.
 - The scope of the RFP can be amended if necessary
 - There being no further comments or discussion, GB moved to continue the Public Hearing to 8/27/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – Littleton Electric, Light and Water, Spectacle Pond seasonal drawdown, MassDEP # 100-0447**
 - Littleton Assessor's Map R-24, Parcel R-24-16-0
 - The OOC having been prepared, 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.
 - GB moved to close the Public Hearing for 100-0447; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – 0 Taft Street, Brian Anderson, MassDEP # 100-0tbd**

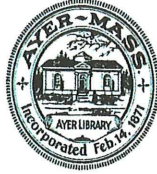


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Minutes for 8/13/2020

- Assessor's Map 19, Parcel 119
- Brandon Ducharme, of David E. Ross Associates, participated via Zoom on behalf of the applicant.
- The NOI was submitted in response to a previous Enforcement Order for unpermitted alteration of BVW, adjacent to an intermittent stream, on the 0.27 acre lot at the corner of Taft and Nashua streets.
 - Top soil was scraped off and stockpiled on site, and piles of stone had been deposited.
 - The stone piles have since been removed.
- The EO required an NOI and restoration plan, as now submitted.
 - The wetlands have now been delineated.
 - Much of the site has revegetated on its own since the EO was issued.
 - Mr. Ducharme said that the loam pile would be spread back on-site.
 - New England "Wetmix" would be used to overseed the altered BVW area.
 - New England "Conservation Mix" would be used to overseed the altered buffer zone area.
- A site walk was scheduled for Saturday, 8/15, at 9 a.m.
- In response to CA's request, Mr. Ducharme said they would complete and submit the DEP field data forms prior to the next meeting.
- GB moved to continue the Public Hearing to 8/27; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Action Items: Upcoming Applications**
 - NOI, 1 Bishop Road – still forthcoming as the owner waits to find a surveyor.
 - RDA, MBTA – for vegetation management along the railroad tracks.
 - CA will ask that this meeting be delayed until September as there is some back and forth taking place between Keolis (the MBTA) and MassDEP.
 - NOI, DPW, Groton-Shirley Road – for utility and drainage improvements.
 - This will involve some tree-cutting in a few areas along the road.
- **CA and Member Updates**
 - Oak Ridge Drive
 - A resident has created a pile of loose sandy soil at the edge of Flannagan Pond.
 - For enforcement, CA will begin with taking a more educational approach with the resident.
 - 111 Fitchburg Road
 - The former David E. Ross Associates building is closing on its sale next week.
 - The building is being purchased by a Buddhist monk to repurpose as a meditation center.
 - The buyer received permission to begin some landscaping ahead of the closing, but got carried away and wound up clearing brush on the bank right down to the Nashua River.



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

Minutes for **8/13/2020**

- In since talking to CA, he has assured her that he will do whatever restoration is required.
- Onyx Corporation, Acton
 - CA was contacted by Onyx to set up an appointment.
 - They are refreshing erosion controls in advance of finishing roadwork on Pleasant Street Extension, Trevor Trail, and the loop.
- Sandy Pond Road
 - JS said he had paddled along the shore to view a new handrail put in leading down to Sandy Pond.
 - It looks like the stairs and railing work are repairs to existing structures.
 - CA will check but it doesn't look like ConCom need be concerned.
- 113 Oak Ridge Drive
 - MP asked CA to contact Mary Walker to see where she is at with work on her property.
 - The soil pile has not been touched for the past year.
- **8:56 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: 8/27/2020

Signature Indicating Approval: Guinn L. Gugino