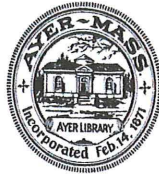


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OCT 23 2020

TOWN OF AYER
TOWN CLERK

Ronan Gopland



Town of Ayer Conservation Commission

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

Minutes for 9/10/2020

Location: Remote Meeting via Zoom, accessible to public, due to Pandemic State of Emergency

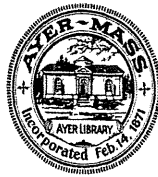
Present: Jon Schmalenberger (JS, Chair), Mark Phillips (MP, Vice-Chair), George Bacon (GB, Member), Jennifer Amaya (JA, Member), Jessica Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)

Also Present: Town Manager Robert Pontbriand

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 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 8/27/2020 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: Notice of Intent (NOI) – Groton-Shirley Road, Ayer Department of Public Works (DPW), MassDEP # TBD**
 - DPW Superintendent Mark Wetzel presented the NOI via Zoom participation.
 - The project proposes utility improvements along a 2700 ft. section of Groton-Shirley Road, extending from the intersection with Groton School Road to the Hood Distribution Company driveway.
 - The improvements include:
 - installation of a new 8 in. water main extension (loop), from the end of the existing water main around 1,300-feet from Groton School Road to the existing water main at the end of the Hood driveway;
 - a stub will be left near James Brook Way in case there is a future need to extend the water main;
 - installation of a new low pressure sewer from Groton School Road to the intersection with James Brook Way;
 - re-grading, re-crowning, and repaving of Groton-Shirley Road;
 - construction of several 3-ft. wide grassed drainage/infiltration swales on the south shoulder of the road, within the right-of-way;
 - during the sewer installation portion of the project, replacement of a partially collapsed culvert near Groton School Road, that directs overland sheet flow to James Brook, with a new 12 in. encased pipe.
 - Funding for this project was approved at Spring Town Meeting 2020 on June 15.



Town of Ayer Conservation Commission

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

Minutes for 9/10/2020

- This project will improve drinking water quality, improve water pressure and therefore fire protection; eliminate contamination from failing septic systems, and improve the roadway surface and drainage.
 - Mr. Wetzel said this road currently has the worst pavement rating in Ayer.
 - Residents of this road had also petitioned the Town to have the sewer line installed due to multiple failing septic systems.
- The project passes through 100 ft. buffer zones to three sections of bordering vegetated wetlands (BVW).
 - The wetlands were flagged by Brooke Monroe, of Pinebrook Consulting, on 1/17/2020.
- With the exception of the new drainage swales, all of the proposed work is located within the existing roadway and there will be no widening of the road.
 - This road currently has no drainage infrastructure whatsoever, leading to frequent flooding on the road itself.
 - 5 mature trees within the limit of work (LOW) will need to be taken down due to their proximity to the edge of the pavement.
 - Wattle filter socks will be employed as erosion and sediment control measures.
 - Excavated material will be stockpiled away from the resource areas and any dewatering will be filtered.
 - The road will be swept as needed and the trenches will be temporarily paved weekly.
- The project, which is located within Priority Habitat, was submitted to the Natural Heritage & Endangered Species Program (NHESP) for review.
 - A letter was received from NHESP earlier in the day confirming its exemption as a public utility.
 - As a utility project, it is also exempt from MESA filing (Mass. Endangered Species Act).
- CA asked Mr. Wetzel to provide ConCom with the field data forms from the consulting firm Environmental Partners.
- In terms of timetable, Mr. Wetzel said they hope to start the project this fall, after public bidding, shut down for the winter, and then complete it in the spring.
 - In response to a question from abutter Sara Withee, the 5 trees won't be taken down until spring.
- A site walk was scheduled for 8:30 a.m. on Saturday, 9/12.
- 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 -- 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 Cal Goldsmith, of Goldsmith, Prest & Ringwall (GPR), on behalf of the applicant.



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 9/10/2020

- Mr. Goldsmith said GPR expects to have everything requested to the review engineer by the following Tuesday.
 - GB moved to continue the Public Hearing to 9/24; 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
 - Third-party reviewer Art Allen, of EcoTec, will be meeting Seth Donohoe, of Ducharme & Dillis, Civil Design Group, and CA to begin the wetland delineation review process on site next Thursday, 9/17/2020, at 8 a.m.
 - GB moved to continue the Public Hearing for 100-0445 to 9/24; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – 0 Taft Street, Brian Anderson, MassDEP # 100-TBD**
 - Assessor's Map 19, Parcel 119
 - Brandon Ducharme, of David E. Ross Associates, participated via Zoom on behalf of the applicant.
 - ConCom conducted a site walk on 8/15/2020.
 - Earlier in the day (9/10), Mr. Ducharme submitted a revised plan reflecting comments from the site walk.
 - Additional mitigation has been provided, especially in the area where mowing has taken place within the BVW.
 - To prevent future mowing or other work, boulders will be placed in between the existing maples along Taft and Nashua streets.
 - Conservation signs will also be placed.
 - The existing pile of loam will be spread over the area that was being mowed.
 - In order to have time to review the revised plan and additional information, GB moved to continue the Public Hearing to 9/24; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: Enforcement Order (EO) – 111 Fitchburg Road, Watt Phnom Serie, Inc.**
 - Assessor's Map 1, Parcel 2
 - Paul McManus, of EcoTec, participated via Zoom on behalf of Watt Phnom Serie, which has engaged his services for help in evaluating the work done and planning mitigation in response to the EO.
 - As discussed previously on 8/27, the EO was issued after it was found that small trees and brush were cleared by the bank to the Nashua River, and steps were cut into the steep slope leading down to the bank as well.
 - The steps were cut into the slope about 50 ft. down from the parking lot area.
 - The canopy itself was not affected, just the understory which now has more of the look of state park grounds.

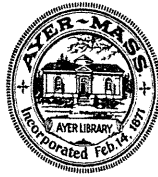


Town of Ayer Conservation Commission

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

Minutes for 9/10/2020

- This work, within the inner riparian zone to a river, was done without notification or a permit, but the Buddhist organization had not realized this was in violation of the Wetland Protection Act (WPA).
 - The old David E. Ross building was purchased earlier in the summer and will be turned into a Buddhist temple and meditation center.
 - Access to the water, for both recreation and religious purposes, was the reason for the clearing and steps.
 - Mr. McManus said the organization would also like to put in a fence at the top of the slope, for safety concerns.
 - As long as it doesn't prohibit wildlife movement, this would be an exempt activity.
 - A certain amount of vista pruning may also be considered exempt.
 - While the steps are not exempt, Mr. McManus suggested they could potentially be permissible for safety under water dependent use.
 - The steps are held in place by 8-10 ft. long cut logs, exposed on the downward face, with the upper face at gradient with coarse sand on the level top.
 - CA said the parking lot area does not drain toward the river or, more specifically, toward the steps where sheet flow could otherwise cause erosion.
 - She suggested removal of the steps at this point, or their replacement with something else, would cause greater disturbance to the buffer zone than to leave them in place.
 - Mr. McManus said the steps were well constructed, and if ConCom decided to allow them to remain, he would suggest they be reinforced with 1/4-in. rebar driven through them.
 - He also said that if the steps are allowed to remain, the Buddhist group would like to replace the lowermost log with a longer one the matches the length of the others.
 - A site walk was scheduled for 9:30 a.m. on Saturday, 9/12.
- **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.
 - MP, who is employed by National Grid, recused himself.
 - Ms. Millman and CA have agreed on a final draft of the Order of Conditions (OOC).
 - The only other special condition that CA removed at Ms. Millman's request was one requiring the removal of trash and debris.
 - Since the easement crosses private properties, it was reasonable that the power company not be held responsible for this on property not their own.
 - GB moved to approve the OOC and authorize CA to sign on the Commissioner's behalf; JA 2nd.
 - Motion approved unanimously by Roll Call Vote, 4-0 (MP recused).



Town of Ayer Conservation Commission

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

Minutes for 9/10/2020

- JG moved to close the Public Hearing for 100-0448; GB 2nd.
 - Motion approved unanimously by Roll Call Vote, 4-0 (MP recused).
- **Discussion: Conservation Restriction (CR), 54 & 56 Littleton Road, “John Carroll Reserve,**
 - Assessor’s Map 36, Parcels 3, 21, 22 & 24
 - Town Manager Pontbriand participated in this portion of the meeting.
 - In the time period since ConCom’s last meeting on 8/27, CA received an unexpected request from GPR to be put on the agenda for the purpose of ConCom accepting and signing a CR for the Town’s first ‘Open Space Residential Development’ (OSRD) under the new Zoning Bylaw.
 - ConCom had not seen any previous drafts of ther CR, nor been previously informed that it was to be asked to accept the CR on behalf of the Town.
 - The draft was submitted by GPR and previously circulated to John Gioia, CR Reviewer for the Division of Conservation Services.
 - On short notice, CA facilitated circulating the draft to KP Law, Ayer’s Town Counsel, as well as Town Planner Mark Archambault.
 - Neither ConCom, nor the Select Board, can sign a CR that has not first been vetted by Ayer’s Town Counsel.
 - CA also reviewed GPR’s 10/10/2019 letter to Mr. Pontbriand, “Request for Determination of OSRD Open Space Ownership,” as well as the Planning Board’s “Notice of Decision” (10/10/2019, amended 7/28/2020) when it issued its definitive subdivision plan approval.
 - The Planning Board’s “Decision” mandates that the first certificate of occupancy for the OSRD cannot be issued until a final copy of the CR is filed with the Town Planner, Town Clerk, and appropriate county and state departments.
 - CA initially opposed the submitted draft as it had significant omissions and did not address a number of requirements laid out in the Planning Board’s “Decision,” including, prior to Planning Board approval, identification of the party of standing who would hold the CR, along with an approximate schedule of CR monitoring inspections.
 - The Planning Board’s “Decision” was issued without this condition having been met.
 - It was also noted that the holder of a CR cannot be the same entity as the owner of the land.
 - Also missing from the CR draft was mention of an access easement to the CR.
 - In addition, CA noted that “Exhibit B,” a reduced copy of the plan of premises, was not included with the draft, even though mentioned.
 - This plan later had to be revised as it also initially did not depict the location of the access easement at all.
 - Also, while ConCom was newly being asked to hold the CR, the ownership of the land was listed in the CR as the developer (LR Properties), not a homeowner’s association.



Town of Ayer Conservation Commission

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

Minutes for 9/10/2020

- When ConCom last discussed the CR for this project (see 9/26/2019 and 10/24/2019), it had been its understanding that the Town, not ConCom, would hold the CR and a homeowner's association would own the property and fund the cost of the monitoring.
- The CR draft submitted by GPR therefore contained a number of details that needed to be resolved before CA could recommend ConCom accept and hold the CR.
 - It then underwent an accelerated process of review and editing by attorney Alex Parra, of D'Agostine, Levine, Parra & Netburn, for LR Properties; Katherine Klein, of KP Law, for the Town; John Gioia of DCR; as well as input from CA and Town Planner Mark Archambault, and guidance from Mr. Pontbriand.
- Important corrective changes and additions to the GPR-submitted draft included:
 - details about the access and utility easement, including the addition of easement language for access between Lots 13 and 14;
 - specified public access to the open space CR for passive recreational activities was added;
 - detail requiring the CR property owner to reimburse the Town up to \$2000 yearly for annual CR monitoring costs.
- These corrections, changes and omissions were resolved over the course of the last 10 days.
 - The most recent draft, just completed, requires final approval from DCR's John Gioia, but this was not expected to be a problem.
- Mr. Pontbriand thanked all those who worked swiftly to resolve problems in the initial GPR draft and respectfully recommended that ConCom consider voting to approve and sign the CR.
 - The interests of the Town have been successfully met by the revised CR.
- It was noted that a Certificate of Vote cannot, in this case, apply to having CA sign on behalf of the Commissioners as this would be unacceptable to the Registry of Deeds.
 - Provisions were made for Commissioners to sign the final CR at Saturday's planned site walk, with Chair Schmalenberger waiting to sign his on Monday, 9/14, with a notary present.
 - Mr. Pontbriand said that ConCom's vote tonight satisfied the requirements of open session deliberation; signatures added at another time did not constitute deliberation but just fulfillment of the open session vote.
- The Select Board is meeting on 9/15 and will vote on the CR then, followed by their own signatures.
- In order to avoid having future CRs rushed like this, Mr. Pontbriand suggested a future meeting to discuss pathways moving forward for future OSRD CRs.
 - CA underscored that CRs are multi-party negotiated agreements, and that future CR drafts need to address the concerns of all parties earlier in the draft process.
- GB moved to approve the CR as revised, including ConCom's holding of the CR, pending final review and approval by DCR's Mr. Gioia; 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 **9/10/2020**

- Mr. Goldsmith thanked CA and the other parties involved (Town Planner, Town Counsel, Town Manager) for their efforts.
 - CA reminded Mr. Goldsmith that the CR still will not be complete until it gets a final signature from the Commonwealth's Secretary of Energy and Environmental Affairs.
- **Discussion: Special Conditions Boiler Plate Update**
 - With the rush job on the CR above and other office business, CA has had no time to work on the boilerplate.
- **Upcoming Applications**
 - NOI, 1 Bishop Road
 - CA spoke to Tom Christopher, the environmental consultant for 1 Bishop Road.
 - He is waiting for a copy of the survey plan done by another surveyor.
 - MassDEP is also waiting for a copy of the survey plan before it will issue an NOI file number.
 - RDA, MBTA
 - This application will be put off until October, per the request of the environmental consultant for the MBTA.
 - Related to applications like this, MACC (Mass. Association of Conservation Commissions) sent out a notice on 9/4 requesting conservation commission member and staff input on "Rail Vegetation Management in Your Municipality."
 - MassDEP is also applying a fair amount of pushback to Keolis's vegetation management plans in general.
 - Violation Notice, 21 Oak Ridge Drive
 - CA met with the homeowners recently and they will be on ConCom's next agenda.
 - The homeowners have indicated their willingness to accept a ConCom site walk.
- **8:23 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature Indicating Approval:

10/24/2020

Jessica G. Gugino