

## **Town of Ayer Conservation Commission**

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

Minutes for 11/19/2020

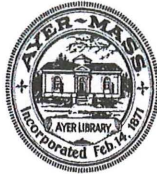
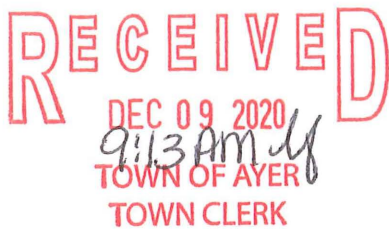
Location: Remote Meeting via Zoom, accessible to public, due to Pandemic State of Emergency

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)

### **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 participating either by Zoom or telephone connection.
- **Confirmation of Agenda**
  - GB moved to confirm the agenda as posted; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 11/5/2020 as corrected; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Accounts Payable**
  - Solitude Lake Management: \$2000, Task 5, post-treatment surveys of Sandy, Flannagan, and Pine Meadow ponds, performed on 10/22/2020.
    - GB moved to approve payment of \$2000; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
    - CA noted that Solitude has one remaining task to complete in this year's contract, submission of the Final Report.
  - EcoTec: CA had two invoices from EcoTec, but the invoices did not specify which project they were attached to (Stratton Hill ANRAD or Ayer Solar IIB NOI).
    - CA will ask them to re-issue the invoices with more specific information.
      - Accounting will not pay incomplete invoices.
- **Public Meeting: Request for Determination of Applicability (RDA) – 52 Sandy Pond Road, Meryl Hoffman**
  - Assessor's Map 28, Parcel 134
  - Ms. Hoffman participated via telephone connection.
  - ConCom members did a site walk on 11/7 to observe 8 trees tagged by Ms. Hoffman for removal.
    - Several members questioned whether all the trees marked needed to come down, especially a few furthest from the house, by the shore of Flannagan Pond, where they presented little danger.



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**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)

### **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 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 10/22/2020 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Comment**
  - ConCom briefly addressed a 10/29 letter received from Hugh Hurd, property owner at 38 East Main Street.
    - Mr. Hurd participated remotely to complain about the build-up of sediments in the western end of School House Pond.
      - Mr. Hurd owns part of the land under the pond, and estimated the build-up of sledge is 4-6 ft. deep.
    - He said the source of the build-up is stormwater run-off coming primarily from Central Avenue and said the Town should be responsible for addressing this.
    - Mr. Hurd was advised to talk to the DPW and perhaps the Select Board.
      - ConCom has no authority or budget to do anything about this, especially given the build-up of sediments is on private property under the pond.
- **Public Meeting: Request for Determination of Applicability (RDA) – 52 Sandy Pond Road, Meryl Hoffman**
  - Assessor's Map 28, Parcel 134  
Meryl Hoffman participated via telephone.
  - Her RDA requests permission to remove several large pine trees on her property abutting Flannagan Pond.
    - One tree in particular seems to present a hazard, and she has been advised by a friend, who was a former tree warden, that its removal would require the use of a large crane.



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- While the arborist Ms. Hoffinan is consulting suggested taking down more trees while a crane was already present rather than 5 years or so from now, several members were not convinced this justified taking some of the trees down now.
  - Ms. Hoffinan also said she wasn't sure she had accurately tagged the right trees.
  - JS asked Ms. Hoffinan to provide a rough sketch showing the location of the trees she is asking to take down.
  - He also asked if he could stop by on Saturday morning, at 8 a.m., 11/21, to take another look and some measurements.
    - Ms. Hoffinan agreed to this.
  - GB moved to continue discussion of this RDA to 12/3/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): Notice of Intent (NOI) -- 0 & 31 Central Avenue, Central Realty Trust, MassDEP # 100-0451**
  - Assessor's Map 27, Parcel 33 and Assessor's Map 26, Parcel 352
- **Enforcement Orders Update: 0 Central Avenue, John Hillier**
  - Assessor's Map 26, Parcel 352
  - The applicant requested this Hearing be continued to ConCom's next meeting.
    - GB moved to continue the Public Hearing to 12/3/2020; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
  - Under CA Updates, CA later directed Commissioners to see the email forwarded from the MassDEP Circuit Rider about this application.
    - CA consulted the Circuit Rider for advice on how to fill out Form 5 of the Order of Conditions (OOC), given the information provided in the NOI.
    - The Circuit Rider responded that the NOI itself is inadequate and incorrectly filled out and, as it stands, said ConCom cannot issue an OOC based on the way information was presented.
    - CA will be contacting Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), as well as Attorney David McCay, about this development.
- **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
  - Kyle Burchard, of GPR, and applicant Rohit Garg participated via Zoom.
  - The draft OOC has been reviewed and edited and all parties are now satisfied with it.
  - GB moved to approve the OOC, with CA signing on the Commissioners' behalf; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0444; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - Mr. Burchard then asked if there was time to add discussion of the Conservation Restriction being planned but Mr. Garg broke in to say that this would not be taken up at this meeting.



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- **Public Hearing (cont'd.): NOI – Abbreviated Notice of Resource Area Delineation (ANRAD) – Off Wright Road, “Stratton Hill,” Fox Meadow Realty Corporation, Dave Moulton, MassDEP # 100-0445**
  - Assessor’s Map 17, Parcels 1-3, 7, 8, 11-5
  - CA received an email from Seth Donohoe, of Ducharme & Dillis Civil Design Group, on behalf of the applicant, saying they were happy with the draft ORAD (Order of Resource Area Delineation).
  - GB moved to approve the ORAD, with CA signing on ConCom’s behalf; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0445; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: ANRAD – 0 Washington Street, Northeast Site Development, LLC, Joseph Levine, MassDEP # 100-0453**
  - Assessor’s Map 13, Parcels 12, 13 & 14
  - Brandon B. Faneuf, of Ecosystem Solutions, Inc. was present via Zoom.
    - Ecosystems Solutions was the third-party reviewer selected by ConCom on 11/5.
  - Also present was applicant Joseph Levine, Scott Smyers and Kyle Cormier of Oxbow Associates, and Attorney Alex Parra, of D’Agostine, Levine, Parra & Netburn.
  - Mr. Faneuf did his site walk on the 21.2 acre parcel on 11/11, examining the soil, vegetation, hydrology, and site conditions in his review of the ANRAD and wetland delineations.
    - He provided an overview of his findings, as summarized in his 11/13/2020 report to ConCom.
    - He said he only made a few changes in his review of the wetlands – the BVW (Bordering Vegetated Wetlands) located along the eastern property line (flag series A1-A59) and along the western property line (flag series B1-B18).
    - A swamp/marsh BVW on the northern portion of the parcel was not delineated as this area is not being considered for development of the OSRD (Open Space Residential Development) subdivision.
    - His report also noted the presence of wetlands off-site, along the fringes of the parcel to the north, east, and west, that should be kept in mind.
    - Some flagging changes were suggested, which Oxbow has now done, submitting revised data sheets as well.
  - Mr. Faneuf’s report included:
    - notation of a seasonal intermittent stream running south to north within the A-flag series;
    - observation that the B-flag series delineates wetlands that continues in a NNW direction off-site but still within 100 ft. of the property boundary – indicating that the extent of the Buffer Zone on the parcel in that area should be extended further north;



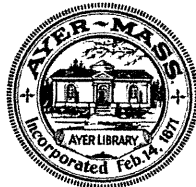
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- the existence of a Potential Vernal Pool off-site but within 100 ft. of the western property line, near flag B1, whose Buffer Zone should also be kept in mind as it might cross into this parcel.
  - GB moved to approve the ORAD, with CA signing on ConCom's behalf; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0453; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Conservation Analysis and Conservation Recommendation: 0 Washington Street, Northeast Site Development, Joseph Levine**
  - Assessor's Map 13, Parcels 12, 13 & 14
  - Associated with the OSRD currently being planned, related to the above ANRAD for MassDEP #100-0453.
  - Present were applicant Joseph Levine, Scott Smyers and Kyle Cormier of Oxbow Associates, and Attorney Alex Parra, of D'Agostine, Levine, Parra & Netburn.
  - Mr. Smyers used screen-share to review the Conservation Analysis prepared by Oxbow, 10/24/2020.
    - In particular, he drew attention to the individual maps that indicated Priority Habitat, stone walls, and the location of large trees (30 in. DBH or greater), as well as the colored-in Conservation Priority Areas map that will be key in planning the location of the OSRD subdivision as well as the Bylaw-required Conservation Restriction.
      - A little bump-out was added to the Priority Habitat map, based on the Ecosystems Solutions peer review and suggestions re amending the flagging in a few places.
  - Mr. Smyers will get a GPS location on the very large boulder ConCom observed on its 11/7 site walk.
    - Per MP, this might be a geological feature worth preserving in the OSRD.
  - GB suggested Oxbow revise the Conservation Analysis to include definitions with the Conservation Priority Areas map, clarifying what is meant by the High (red), Medium (yellow), and Low (green) designated areas.
  - CA will work on a draft of ConCom's formal recommendation that will go to the Planning Board along with the revised Conservation Analysis.
    - The Planning Board will be meeting to review preliminary subdivision plans for the OSRD on 12/9, and ConCom will plan too have its recommendation submitted prior to that meeting.
    - CA said she was comfortable with the red "High Priority" areas serving as the basis of ConCom's recommendation for the Conservation Restriction.
    - In response to Mr. Parra's question, CA will make sure he and the applicant have the opportunity to review the draft recommendation and discuss at ConCom's next 12/3 meeting.





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- **Public Hearing: NOI – Snake Hill Road Right-of-Way (ROW), Aho Development, MassDEP # 100-0454**
  - Assessor's Map 36
  - CA needs to review the plans in relation to the riverfront area to Bennett's Brook.
  - GB moved to continue the Public Hearing for 100-0454 to 12/3; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Conservation Office Updates and Member Updates**
  - Massachusetts Chapter 53 of the Acts of 2020
    - In the spring, Governor Baker signed Executive Order 17 declaring the COVID-19 State of Emergency, accompanied by a "Municipal Relief Act" that relaxed State time-limits on permitting filings to aid municipal boards that now had to meet remotely.
    - The MACC (Mass. Association of Conservation Commissions) sent out a notice in mid-November that Governor Baker just signed new legislation earlier in November that means that the discretionary power for ConCom's to delay opening hearings will no longer be in effect.
      - The 21-day period for opening a hearing after an application is filed now resumes on December 1, 2020.
      - Any applications that came in after March 10, 2020, that haven't already had their hearing process opened, must now therefore be opened by December 21, 2020.
      - Ayer ConCom is in good shape in this regard as it has been moving most applications along anyway.
  - 217 West Main Street (MassDEP # 100-0420)
    - CA received a call from Calvin Moore, who was told by the DPW that the shrubs in the tree box filters at this address were dead.
      - CA met with Mr. Moore on site and ascertained that the shrubs were not, in fact, dead.
      - He will be applying for a Certificate of Compliance (COC) on this project soon.
    - Resident Ken Diskin, a Planning Board member, said this issue came up during a site inspection by the Building Inspector and DPW for a final occupancy permit.
  - Beaver Solutions, Mike Callahan
    - Mr. Callahan recently performed the contracted annual maintenance on the Town's/ConCom's several installed beaver deceivers.
    - In the process, and investigating flooding reported by a nearby resident, Mr. Callahan discovered a new beaver dam in a 6 ft. culvert on Nonacoicus Brook (in the vicinity of the wetlands behind the new Fire Station).
      - The beaver dam is inside the culvert, which also has a sewer main pipe running through it.
      - The DPW is allowed to keep culverts clear without a permit.



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- Mr. Callahan also reported a smaller beaver dam just downstream of this culvert.
- 0 Taft Street, Brian Anderson, MassDEP # 100-0452
  - Mr. Anderson had been required to submit an NOI in response to unpermitted activities subject to an Enforcement Order.
  - CA used certified mail to send the OOC issued to Mr. Anderson following ConCom's approval at its 10/22/2020 meeting.
  - The certified mailing was finally returned to ConCom because Mr. Anderson did not respond to his notification of certified mail waiting for him to pick up at the Post Office.
- Spectacle Pond PFAS Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-0443
  - CA has inspected the erosion controls and this project is set to get underway.
- Groton-Shirley Road, Ayer Department of Public Works (DPW), MassDEP # 100-0450
  - Following CA's inspection, the contractor had to re-install erosion controls as they were initially not installed according to the approved plans.
- OOO signage
  - GB has suggested that site locations with open OOCs now be required to display signage indicating that.
  - CA plans to work on suggested wording and design and will circulate that soon.
- Annual Town Budget
  - Like other departments, ConCom has been asked to submit a level-funded budget, and has also been requested to consider scaling back any unnecessary spending.
    - The Select Board is concerned about future Town Meeting's willingness to approve all items on the annual budget, given the ongoing pandemic and economic uncertainty.
  - CA will work with JS to draft a budget request for submission to the Select Board by its deadline of 12/3.
- Ayer Solar IIB Conservation Restriction (CR)(see MassDEP # 100-0444)
  - Before he puts more work into it, Rohit Garg asked CA for feedback on whether the Commission was likely to accept holding the CR for the solar array project.
    - CA said it was in the Town's interest to accept this CR, especially because it will directly abut the CR that will go along with the 0 Washington Street OSRD in development (see DEP #100-0453 ANRAD above).
  - Commissioners indicated that their acceptance of the CR was likely, with MP adding that he still liked GB's suggestion at a previous meeting that there be public access to this CR.
    - CA said that better access to this CR could be provided through the 0 Washington Street OSRD/CR, if that goes through, as access from there would be dry and not too steep.

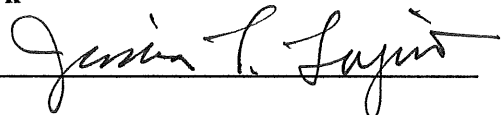


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- NOI / Draft OOC for 0 & 31 Central Avenue, Central Realty Trust, MassDEP # 100-0451
  - The information in this update was moved to the second Hearing item on the agenda, see above.
- Balch Street Dam Boards (aka East Main Street Spillway)
  - The new Fire Chief, Timothy Johnston, has indicated that he would like to transfer the responsibility for removing (in the fall) and re-installing (in the spring) the two boards that help regulate the height of the ponds (Sandy and Flannagan in particular).
- **8:37 PM – Adjourn Meeting**
  - MP moved to adjourn; GB 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.

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

**Date / Signature Indicating Approval:** 12/3/2020 

**Public Meeting: Enforcement Order (EO) – 111 Fitchburg Road, Watt Phnom Serie, Inc.**

Assessor's Map 1, Parcel 2

ConCom conducted a site walk on Saturday, 9/12.