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TOWN OF AYER
TOWN CLERK

Michael Copeland

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 12/17/2020

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), Scott Murray (SM, Associate Member), 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 posted; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 12/3/2020 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): Notice of Intent (NOI) -- 0 & 31 Central Avenue, Central Realty Trust, John Hillier, MassDEP # 100-0451**
 - Assessor's Map 27, Parcel 33 and Assessor's Map 26, Parcel 352
- **Enforcement Order (EO) Update: 0 Central Avenue, John Hillier**
 - Assessor's Map 26, Parcel 352
 - Attorney David McCay, of Mirick O'Connell Attorneys At Law, and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), were present via Zoom on behalf of the applicant.
 - Mr. McCay said that the NOI has been amended to address comments received from MassDEP, and Mr. Burchard said the Stormwater Management Checklist has been submitted.
 - Mr. McCay said the primary DEP issue seemed to be the need to flag the bank of the intermittent stream channel, and that language has been added to the NOI to indicate that the channel will be flagged whenever maintenance work is to be done.
 - CA said the amended NOI still checks work impact as 'Buffer Zone only', but maintenance work in the channel (i.e. to clean out sediment build-up) is work in a *resource area*, not buffer zone.
 - Mr. Burchard will update the NOI to correctly check "Land Under Water."
 - CA will add as a perpetual condition in the Order of Conditions (OOC) that the bank must be flagged, or existing flags refreshed, whenever maintenance work is to be performed, AND that ConCom must be notified as well.
 - GB moved to accept the NOI, to be amended as noted under CA's supervision, and to draft an OOC for 100-0451 with the perpetual condition noted above; MP 2nd.



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- Motion approved unanimously by Roll Call Vote 5-0.
- **Enforcement Orders**
 - At its 11/5/2020 meeting, ConCom had agreed to forgive the tickets/fines previously issued to Mr. Hillier, but to keep the EOs in place until the restoration plantings have been completed by the June 1, 2021 deadline.
 - Mr. McCay again requested on behalf of Mr. Hillier that the EOs be lifted on the grounds that their conditions (submission of an engineered restoration plan and an NOI) had been met.
 - MP asked why the EOs needed to be lifted if the fines had been forgiven; nothing further would be done regardless unless the June 1, 2021 deadline is missed.
 - Mr. McCay said it was up to the Commission, but that he thought the OOC to be issued handled the imposition of the deadline that, if not met, would result in a new EO and new tickets/fines.
 - JS noted there had been a loss of trust over the past two years, but acknowledged that, with the NOI filed, Mr. Hillier's intentions now seemed good.
 - It was again affirmed that the OOC would state that lack of compliance for the restoration work by the June 1, 2021 deadline would result in an immediate EO and new tickets/fines.
 - To lift the current EOs, CA said a letter could be drafted to Mr. Hillier that states that the previous issues have been 'resolved'.
 - GB moved to issue a letter to Mr. Hillier that the Commission finds the issues noted in the previous EOs have been resolved satisfactorily, letter to be signed by the Chair and copied to MassDEP; JA 2nd.
 - Motion approved by Roll Call Vote 4-1, with MP voting nay.
 - CA will circulate an amended draft OOC for 100-0451 to ConCom members for review comments prior to ConCom's next meeting.
- GB moved to continue the Public Hearing for 100-0451 to 1/14/2021 for the purpose of review and signing of the OOC; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- **Public Hearing (cont'd.): NOI – Snake Hill Road Right-of-Way (ROW), Aho Development, MassDEP # 100-0454** Assessor's Map 36
 - Patrick Burke, of Places Associates, participated via Zoom on behalf of the applicant.
 - This project is for horizontal directional drilling to connect the upcoming Shaker Mill Pond subdivision (MassDEP # 100-0437) with the water main on Rte. 2A (Littleton Road) and with sewer at the intersection end of paved Snake Hill Road and 2A.
 - Mr. Burke has submitted a revised monitoring plan in the case of an accident.
 - Via Zoom, Harvard resident Daniel Tracey, a nearby abutter, said he had spoken to the Town Administrator of Harvard, and Harvard's Town Counsel is still reviewing Mr. Tracey's questioning of the location of the town line between Ayer and Harvard.



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- He therefore asked that ConCom delay ruling on the NOI until this dispute has been resolved.
 - JS said issues pertaining to town lines were not within ConCom's purview, and that every document Ayer ConCom has seen for this project indicates that the town lines as drawn are correct.
 - ConCom will therefore proceed on that basis.
 - Mr. Tracey disagreed.
 - Mr. Burke said the town lines have been researched and stamped by engineering professionals as correct.
 - Via Zoom, Ayer resident and Planning Board member Ken Diskin agreed with Mr. Burke that the drawings had been stamped by registered professionals.
 - JG asked if there had been a response from Harvard to Ayer Planning Board Chair Geoff Tillotson's 12/9 letter requesting that Ayer be provided with a copy of the completed engineer's report, prepared by Ducharme & Dillis (now Dillis & Roy) pertaining to this matter.
 - Mr. Tillotson, via Zoom, said there had been no reply from the Harvard Select Board.
 - GB moved to approve the NOI for 100-0454 and draft an OOC for vote at ConCom's next meeting; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
 - GB moved to continue the Public Hearing for 100-0454 to 1/14/2021; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- **Discussion: Solitude Lake Management, 2020 Year-End Report**
 - Dominic Meringolo, of Solitude Lake Management, participated via Zoom to review the Year-End Report for 2020's invasive weed control treatments on Sandy, Flannagan, and Pine Meadow ponds.
 - A pre-treatment survey of the ponds was done on 7/6/2020.
 - Minimal invasive species were observed in Pine Meadow at this time, while Flannagan had a fair amount of curly-leaf pondweed along with small amounts of variable milfoil and fanwort.
 - On Sandy Pond, trace amounts of milfoil and fanwort were observed at the southeastern and northwestern inlets as well as near the Town Beach.
 - All three ponds received treatments on 7/13 for invasives, using Tribune and Sonar One, and then again on 9/23, using AquaNeat, for spot treatment to control nuisance overgrowth of floating leaf plants (e.g. water lilies).
 - A post-treatment survey was performed on 10/22.
 - At that time, no invasives were observed in Pine Meadow and only 2 milfoil plants were observed in Sandy Pond.
 - Flannagan Pond had no observed curly-leaf pondweed or milfoil, but fanwort had expanded substantially from the previous survey.



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- It was underscored that, to control costs, the Commission had elected not to treat Flannagan for fanwort during 2020.
- JS asked if there was any feedback or questions from the public viewing the meeting remotely and there was none.
- JS also said he had heard residents complain about excessive water lilies on Flannagan Pond.
 - Mr. Meringolo said it was not feasible to manage water lilies in Flannagan in certain areas because the pond was too shallow.
 - People's expectations of what can and cannot be done using herbicides should adjust accordingly.
- Resident Geoff Tillotson, who lives on the northwestern corner of Flannagan, asked if increased nitrogen in the water led to more or less growth of milfoil.
 - Mr. Meringolo said rooted plants like milfoil derive nutrients such as phosphorous and nitrogen not only from the water but also sediments that were there originally or have built up over the years ("legacy nutrients").
 - Sandy Pond sees less growth of invasives because it is a natural kettle pond whereas both Flannagan and Pine Meadow ponds are flooded wet meadows.
- MP asked for Mr. Meringolo's opinion if Sandy Pond were not to be treated in the coming year.
 - Mr. Meringolo said treatments in the last couple years have concentrated on the inlet areas and suggested taking a year off from treatment was feasible, but pre- and/or post- treatment surveys should still be performed.
- GB asked for a summary of the options suggested for 2021 management.
 - Mr. Meringolo said he would recommend continuing the same treatment on Pine Meadow Pond.
 - For Flannagan, he suggested adding spot treatment with Sonar to areas that have seen re-growth of fanwort (less than 50% of the pond).
 - He also said the Town could decide to wait another year and then do a whole-pond treatment instead.
- JS again asked if there was any feedback or questions from the public viewing the meeting remotely and there was none.
- Regarding the Year-End Report, MP asked that it be amended to note that there was not adequate public notification of the second round of treatment in September.
 - Mr. Meringolo said this was definitely an error on the part of Solitude and the report would be amended.
- CA said she has received complaints from residents about expanding growth of cattails and phragmites along the shore of Sandy Pond.
 - Cattails are a native species, while phragmites are not.
 - Mr. Meringolo said Solitude could expand its permit to cover treatment of these, which would use the same herbicide as is used for water lily control.
- MP asked that the revised Year-End Report include a cost range for treatments of cattails and phragmites.



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- Mr. Tillotson said he had seen a huge difference in the condition of the ponds over the last 6 years, when annual treatments were more regular, and hoped that ConCom would not scale back treatments and lose the ground that has been gained.
- JS thanked Mr. Meringolo for his report.
 - ConCom will discuss this further at its next meeting.
- **Discussion: Request for Certificate of Compliance (COC) – 270 Woodland Way, David Grubb, MassDEP # 100-0442**
 - Assessor's Map 36, Parcel 181
 - Mr. Grubb participated via Zoom.
 - CA performed a site visit and said the re-grading had been done beautifully and that the lawn has now grown in.
 - Water is no longer pooling in the backyard nor flooding over a retaining wall into an adjacent yard.
 - Mr. Grubb thanked the Commission and especially CA for their help.
 - He was pleased with the results and had also managed to successfully transplant a few of the small pines from the re-graded area.
 - GB moved to issue a COC for 100-0442; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- **Discussion: Request for COC – Page-Hilltop School Oil Spill Cleanup, Omni Environmental/ Diesel Direct, MassDEP # 100-0425**
 - Assessor's Map 12, Parcels 158, 159 & 162, Map 13, Parcels 11 & 42
 - Present via Zoom were : Stephan Landry and Greg Morand, of Omni Environmental; and Seth Donohoe, of Dillis & Roy Civil Design Group Inc.
 - Mr. Landry summarized the history of the project, dating to the February 2018 spill of 800 gallons of #2 fuel oil from an underground storage tank at the school at 115 Washington Street.
 - The oil migrated across and down Washington Street where it entered a storm drain in front of 112 Washington Street, and from there was able to travel downhill through wetlands, reaching as far as the Nashua Street Extension and Trevor Trail areas where subdivisions were under construction.
 - Approximately 50,000 sq. ft. of wetlands were affected, with 98% of the oil contamination located on parcels 13-11 and 13-42.
 - OOC 100-0425 was issued by ConCom in September 2018 for both oil clean-up and restoration/replication of the site, both wetland and upland areas.
 - 934 tons of #2 oil contaminated wetland material was removed from the site, along with an extensive amount of invasive species.
 - The Immediate Response Action Completion and Permanent Solution Statement with No Conditions, for RTN 2-20459, was submitted to MassDEP on September 30, 2019.



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- This constituted regulatory closure with the MassDEP Bureau of Waste Site Cleanup.
- Replication activities to replace soils and plants, including woody plants, began January-February 2019, with ConCom's OOC requiring the completion of two growing seasons (2019 and 2020), and at least 75% ground cover, before a COC request could be made.
 - The Restoration Plan was prepared by Durcharme & Dillis (now Dillis & Roy), dated November 8, 2018.
 - Approximately 960 total woody plantings were distributed – 40% Red Maple, 40% Wintergreen Holly, and 20% Speckled Adler – across a plotted replication grid of 32 40'x40' remedial cells.
 - Mr. Landry said this totaled 321 Red Maples, 160 Speckled Adler, and 320 Winterberry Holly, along with 160 plantings of Sensitive Fern.
 - 20 lbs of wetland seedmix was also spread evenly across the site and performed better than expected.
 - Mr. Morand said growth was significant and that the site is now well-established with new ground cover and is stabilized in an erosion-resistant state.
 - The replication areas were inspected nearly weekly.
- Mr. Donohoe, serving as wetland specialist, showed screen photos documenting growth in November 2019, May 2020, and October 2020.
 - He said that approximately 90% of vegetated coverage had been achieved across the site.
- GB asked about the resolution of issues at the stormwater outfall behind 112 Washington Street where two stream channels emerged.
 - Mr. Morand said the use of crushed stone and larger rocks had enabled them to even out the flow of the two channels.
- JG asked about the professional engineer's stamped certification letter of 11/24/2020.
 - In it, P.E. Philip Wheeler, of Omni Environmental, stated that the observed woody plant species count in 2019 was 78.6% of available upland area within the wetland replication area, but in 2020, the observed woody plant species count declined to 42%.
 - The Red Maples in particular had not thrived as well as the Speckled Adler and Wintergreen Holly.
 - Mr. Donohoe said that much of the previous woody cover had been comprised of invasive species.
 - He also said the wetland seedmix, which was very successful, may have overwhelmed the survival of the woody species that were planted.
 - Mr. Morand added that extensive emergent natural regrowth may also have inhibited the woody plantings.
 - CA said her concern was that while the site was revegetating well, replication of the previous woody understory was not as successful, especially the Red Maples.
 - At the beginning of the replication activities, there were more new small trees observed – and then, as time progressed, there were not.



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- Mr. Donohoe hypothesized that a new driveway and culvert at the bottom of the site (Nashua Street Extension new construction) may now be creating a damming effect that has made the cells in the lower portion of the replication area wetter.
 - Alders tend to do better than maples in such conditions.
- JS noted that this would amount to a change in area conditions that was not the result of the oil spill or cleanup efforts.
- CA recommended that, while the new herbaceous cover was in fantastic shape while the woody cover was not, ConCom consider having the initial third-party reviewer – Paul McManus, of EcoTec – engaged to look over the site now and comment.
 - She reminded the Commission that the intent of the restoration plan was to restore conditions as closely as possible to what had been removed during the cleanup.
- Mr. Donohoe said he thought that the photographed initial conditions looked fuller but that fullness was dominated by invasives.
 - He said the canopy was still in place and that he thought the area would come back naturally.
- Given the decline in woody plant growth, ConCom members generally agreed that either having ConCom take a site walk later next spring or Mr. McManus review the site would be necessary to evaluate the success of the restoration effort prior to issuing a COC.
 - CA and Commission members were all in agreement, however, that Omni Environmental had done a great job with the cleanup and the restoration work thus far, especially given the size of the spill impact site and the degree of contamination.
- Mr. Landy asked if issuance of a COC was delayed, could Partial COCs be issued for everything but this?
 - CA said some PCOCs had already been issued for two lots on Trevor Trail affected under this DEP file number.
- Running out of allotted time, ConCom will discuss this further at its next meeting.
 - GB moved to continue the discussion of 100-0425 to 1/14/2021; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- **Discussion: Coordination of Open Space Residential Development (OSRD) process with Planning Board**
 - Planning Board members Geoff Tillotson (Chair) and Ken Diskin were present via Zoom.
 - Questions have arisen about coordination between ConCom and the Planning Board in determining Conservation Restriction (CR) land to be set aside in OSRD subdivision applications to the Planning Board.
 - Part of the issue appears to be the wording in Section 10.1 (OSRD) of the new Zoning Bylaw (amended 10/22/2018).
 - Mr. Tillotson said he envisioned the two boards working in coordination and said he would like to see them working more closely together.



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- JS said he was under the impression that CA and Town Planner Mark Archambault were already working closely together, which CA agreed with.
- Based on the wording of Section 10.1, CA and ConCom members have felt that ConCom's role was advisory, whereas decision-making was only under the purview of the Planning Board.
 - Section 10.1.3-B.3 reads "The Planning Board, in consultation with the Conservation Commission, shall study the conservation analysis, may conduct field visits, and shall formally determine which land should be preserved and where development may be located."
- In addition, currently the Guidance Document, which ConCom prepared for the Planning Board to use when OSRD subdivisions begin the process of Planning Board review, also states a specific order:
 - 1) Developer performs a conservation site analysis and submits to ConCom;
 - 2) ConCom performs a site walk, meets with and reviews with developer, then makes recommendation to Planning Board for priority areas to be preserved in an open space CR;
 - 3) *After* the Planning Board's review and acceptance of the open space recommendation, the developer then lays out the lot plan, roadways and dwelling locations.
- Currently developers still appear to be following typical procedures for a regular subdivision, going ahead with doing at least preliminary subdivision layouts ahead of the recommendation stage.
- Settling the details of the new OSRD review process is still a work in progress.
 - Some options suggested included having the two boards do their site walks together or having the two boards hold a joint meeting.
 - What is currently not working well is for ConCom to submit just a written report and graphic of priority CR areas.
- MP also noted that a complicating factor is that the Planning Board reviews an entire subdivision site, and while ConCom can make a recommendation, ConCom itself only has legal jurisdiction over resource areas and their buffer zones.
- An agreement was made that the two boards would meet together in the new year to work on fine-tuning the OSRD process further.
- **9:08 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval:

1/14/2021 