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TOWN OF AYER
TOWN CLERK

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 1/14/2021

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 12/17/2020 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
 - By email, Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), requested a continuance on behalf of the applicant.
 - With ConCom's next agenda already full and with Mr. Burchard's previous email consent, GB moved to continue the Public Hearing for 100-0451 to 2/11/2021; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
 - Related to this, but at the end of the meeting, resident David Bodurtha called in to ask if any consideration was being given to the applicant plowing snow through the buffer area.
 - This had not previously come up.
- **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 of paved Snake Hill Road and 2A.



Town of Ayer Conservation Commission

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

Minutes for 1/14/2021

- The applicant, through Mr. Burke, has no issues with the draft Order of Conditions (OOC).
- GB moved to approve the OOC for 100-0454, with CA to sign on the Commission's behalf; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- GB moved to close the Public Hearing for 100-0454; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- **Discussion: Request for Certificate of Compliance (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, of Omni Environmental; and Seth Donohoe, of Dillis & Roy Civil Design Group Inc.
 - CA said the conditions of the OOC, issued 8/23/2018, had basically been met:
 - wetland replication plan submitted 10/4/2018;
 - restoration plan submitted 11/8/2018;
 - planting list submitted, with tally of plants observed 7/20/2019 also submitted;
 - replication completion report submitted 5/26/2020, updated 10/20/2020;
 - as-built plan submitted;
 - letter from professional engineer submitted confirming work completed according to all of these plans.
 - Mr. Donohoe also confirmed his credentials as a professional wetland scientist, submitted via email earlier in the day.
 - CA also spoke this week with the third-party peer reviewer of this project, Paul McManus, of EcoTec.
 - Both agreed that at least 75% plant cover had been reestablished within 2 growing seasons, per Special Condition #36 in the OOC.
 - The remaining question was whether the survival of more woody plants – in particular the Red Maples that had not done well – was worth pushing for.
 - Mr. McManus's opinion was that going into the now re-vegetated restoration area with more woody plants would create more of a mess, and best now to let nature take its course.
 - In addition, it does appear that part of the restoration area was already likely in the process of transitioning from a swamp to a wet meadow, prior to events on the site.
 - With the wetland in its own transition state, Mr. McManus thought it reasonable to consider that the conditions of the OOC have been met satisfactorily.
 - At its previous meeting, ConCom had discussed delaying issuance of the COC until the Commission could do a site walk or until it had consulted with Mr. McManus.
 - The latter having been done, commissioners were in agreement that things could now move forward.



Town of Ayer Conservation Commission

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

Minutes for 1/14/2021

- GB asked if the landowner had been contacted as to his satisfaction with the clean-up and restoration.
 - CA said that Calvin Moore was not available but she had spoken to his LSP, Brian Snow (Licensed Site Professional), and he had indicated they had no further issues with the oil spill clean-up.
- GB moved to approve and issue a Certificate of Compliance for 100-0425; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
 - CA will sign the COC on ConCom's behalf next week.
- **Public Hearing: NOI – 1 Bishop Road, UCC LLC, MassDEP # 100-0449**
 - Assessor's Map 19, Parcel 199
 - Thomas Christopher, of Christopher Environmental Associates (CEA), was present via Zoom on behalf of his client, Carlos Obregon, of UCC (Ultimate Car Car), also present via Zoom.
 - An Enforcement Order was issued to Mr. Obregon in March 2020 for the placement and grading of multiple loads of dirt/gravel fill in a buffer zone without a ConCom permit.
 - The edge of the compacted fill is 30-32 feet from the wetlands.
 - The area filled had been primarily perennial weeds; no trees had been cut down.
 - Mr. Obregon, who had recently purchased the property, had been unaware of regulations pertaining to wetlands and buffer zones.
 - The fill had been placed to level and grade an area at the rear of his auto service facility in order to create safer vehicle access to the building's rear door.
 - Mr. Obregon said there had been a 2 ft. drop in the back from the narrow existing graded base and that there had been an incident where a car had its undercarriage damaged from going over this drop.
 - CEA was brought in to prepare an after-the-fact NOI, per requirement of the Enforcement Order.
 - Mr. Christopher delineated and flagged the wetlands, calculated that approximately 1,312 sq. ft. of fill material had been placed in the buffer zone, and confirmed that none of the fill had entered the adjacent wetlands.
 - CEA also submitted additional information, per MassDEP comments when it issued the file number.
 - An additional plan showing property boundaries as well as the estimated elevation level of the site prior to its being filled were submitted.
 - The fill material used was gravel, roof drains connect to the ground, and Mr. Christopher said the drainage pattern has not been disrupted by the fill.
 - He also said most of the water entering the wetland area comes from the parking lot of a nearby building on Park Street, which has created a natural sluiceway that crosses the Obregon property.
 - Mr. Obregon was apologetic about the infraction and was willing to put up fencing or perform additional grading or anything else the Commission might require.
 - CA thought the NOI and plan were good, and said she'd recommend the placement of conservation signs at the tow of the fill's slope to prevent any further expansion.



Town of Ayer Conservation Commission

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

Minutes for 1/14/2021

- Resident David Bodurtha called in to confirm that no outdoor carwashing took place behind the building.
- A site walk was scheduled for 9 a.m. on Saturday, 1/16.
- GB moved to continue the Public Hearing to 1/28/2021; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.
- **Discussion: Scope of Work for Aquatic Weed Control, Ayer Ponds (Sandy, Flannagan, Pine Meadow), 2021**
 - ConCom continued its discussion, having heard the 2020 year-end report summarized at its previous meeting on 12/17 by Dominic Meringolo, of Solitude Lake Management.
 - CA said the budget process for FY2022 is underway and ConCom will have to submit a figure soon for a Warrant Article for Spring Town Meeting.
 - She also said that, despite the pandemic and economic downturn, Ayer's FY2021 revenues were on target and the town was in strong financial condition.
 - Commissioners generally agreed that keeping to a regular treatment schedule was preferable to letting things get out of hand again.
 - The Commission would also like to see the treatments begin earlier this year, but was aware 2020's delayed treatment schedule had been affected by the pandemic and ensuing shut-down.
 - CA also said that Joe Onorato, formerly of Solitude, has started his own company and ConCom may therefore be able to get a viable second proposal in response to an RFP (Request for Proposals) for 2021 treatments.
 - CA will also contact Solitude for the revised year-end report, as requested 12/17, and to remind them to include an additional cost range for adding treatment of cattail overgrowth and phragmites along the shore of Sandy Pond, per complaints of several residents.
 - ConCom will submit a Warrant Article budget request for \$35,000 – the upper end of Solitude's projected cost estimate for treatment.
 - It was noted that Town Meeting can always amend an amount downward, but it cannot raise it higher.
- **Discussion: Adopting Regulations for Ayer's local Wetlands Protection Bylaw (Article XXVI)**
 - With several new subdivisions likely to come before ConCom for permitting in the coming year, CA stressed that ConCom should try to implement some minimal Regulations now, while it still can.
 - ConCom began working on its Regulations a year ago, but with full agendas and the time limitations of meeting remotely via Zoom because of the pandemic, it has been hard to make progress.
 - CA suggested looking at the language and items covered in the Town of Maynard's Regulations as a model to use.
 - JG and MP will work on a draft, with CA scheduling a Public Hearing on this for ConCom's next meeting on 1/28/2021.



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Minutes for 1/14/2021

- **Discussion: Coordination of Open Space Residential Development (OSRD) process with Planning Board**
 - A joint Zoom meeting between ConCom and the Planning Board has been scheduled for Friday, 1/22/2021, from 6-7 p.m. – the first date available.
 - (Because of the need to provide public access, the Town cannot schedule more than one board's Zoom meeting at a time.)
 - JG and Jonathan Kranz, of the Planning Board, conferred earlier in the week about preparing an agenda for the 22nd.
 - In that discussion, it became clear that both boards need a better understanding of what the other board's needs, legal stature, and limitations are.
 - For example, ConCom needs a better understanding of the 'time clock' pressures under which the Planning Board operates when reviewing definitive subdivision plans.
 - In turn, JG had reiterated the important point that MP had raised when this was last discussed on 12/17 – that ConCom, regardless of any conservation recommendations made to the Planning Board, only has legal jurisdiction over wetlands and their buffer zones, not the whole of a subdivision parcel.
 - JA noted the comment made by representatives of the Planning Board on 12/17 – that if it fits, they have to approve.
 - She asked what is ConCom's authority to say no.
 - GB had also raised a question as to what extent, if any, ConCom can have an impact on the drawing of lot lines or the number of lots proposed in an OSRD subdivision.
 - CA will be talking to the MassDEP circuit rider about this.
- **8:31 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously 5-0 by Roll Call Vote.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: _____

1/28/2021 