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Town of Ayer Conservation Commission

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

Minutes for 4/8/2021

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**
 - Two brief office updates were moved on the agenda to follow meeting minutes approval.
 - GB moved to confirm the agenda as amended; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 3/25/2021 as written; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Office Updates**
 - Open Space Residential Development (OSRD) Zoning Bylaw (Section 10.1)
 - Town Planner Mark Archambault has convened a working group to make changes to the OSRD bylaw as well as recommendations to the Planning Board for regulations for the OSRD design process.
 - The group will meet the second and fourth Thursday of each month, via Zoom, at 10 a.m.
 - In addition to CA's participation, Mr. Archambault is also seeking the participation of one or two ConCom commissioners.
 - If no one else was interested, JG said she would volunteer.
 - Site walk to investigate possible wetlands violation
 - CA has received two complaints from residents on Groton-Shirley Road about a neighbor possibly doing destructive work in the riverfront to James Brook.
 - JS and JG will join CA tomorrow (4/9) to try to see if a violation is taking place from one of the neighbor's yards.
- **Discussion: Emergency Certification submitted after-the-fact for removal of beaver dam blockage**
 - Town Manager Robert Pontbriand and Department of Public Works (DPW) Town Engineer Dan Van Schalkwyk were present via Zoom.
 - Mr. Van Schalkwyk was traveling and had not yet seen the culvert site.

SCANNED

05.24.2021



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- Background:
 - The previous week, CA had responded to calls from residents about a large volume of water being impounded upstream of a culvert in Nonacoicus Brook, just off of West Main Street.
 - Upon inspection on Tuesday, 3/30, CA photographed a beaver dam constructed on the inside of the culvert and blocking the flow of water.
 - CA informed the Land Use Committee of this at its Thursday, 4/1 meeting, upon which she learned from Superintendent Mark Wetzel that the DPW had also received some complaints and that he had already handled it.
 - At CA's request, Mr. Wetzel submitted an after-the-fact Emergency Certification form.
 - On Friday, 4/2, CA, JS and JG went to check on the culvert to see what had been done.
 - The DPW had used a backhoe to pull the dirt on top of the culvert away into a loose soil pile, and then used the backhoe like a can-opener to open up the culvert and remove the beaver dam blockage.
 - The sudden release of so much water had an observable scouring effect on the downstream side of the culvert.
 - In attempting to unblock the culvert in this way, significant damage was done to the area.
 - In addition, the area was left with the loose soil pile immediately adjacent to the wetland stream, a gaping hole from the opening of the 84" corrugated metal culvert, and the mangled metal edges of the destroyed culvert left open, presenting a potential safety hazard to people as well as wildlife.
 - Access to the culvert from its north side, coming from the DPW's facility on Brook Street, is blocked by a locked chain-link fence.
 - Access to the culvert from the south side, a couple hundred feet in from West Main Street, is not blocked, although one Jersey Barrier crosses part of this approach.
- At Town Manager Pontbriand's request, Mr. Wetzel prepared and submitted a memo, dated 4/7, titled "DPW Culvert Temporary Restoration."
 - Mr. Pontbriand outlined the three issues he saw as arising from this incident:
 - 1) the need for the immediate and proper securing of the site for public safety;
 - 2) a 'best-practices' solution to address this culvert area in the long-term;
 - Mr. Pontbriand anticipated this could cost from \$50,000-200,000 and he would handle this;
 - 3) addressing the breakdown in communication between DPW and ConCom that led to this.



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- For tonight's discussion, Mr. Pontbriand focused on #1, what needs to be done to immediately stabilize the site in the interest of public safety and for liability purposes.
- Mr. Van Schalkwyk then reviewed page 2 of the 4/7 memo listing the steps Mr. Wetzel proposed to immediately secure the site:
 - folding back the rough edges of the galvanized steel culvert as much as possible;
 - removal of roots and debris;
 - installation of an erosion control blanket between the culvert and the bank;
 - filling in the space between the culvert and the bank with clean gravel;
 - folding the erosion control blanket over the gravel and staking with wooden stakes;
 - keeping the gate locked and putting a No Trespassing sign on the Jersey barrier.
- Mr. Van Schalkwyk said the culvert and dirt crossing over Nonacoicus Brook had been installed ages ago to potentially create another roadway access to the DPW's Brook Street facility.
 - He said it is possible that the long-term solution would be to remove the culvert entirely and open up the stream as no access road is contemplated any more.
- Commission members followed with comments:
 - Regarding folding the culvert edges, JS asked if they could also be buried in order to cover the jagged edges, or if something could temporarily be put across the top of the opened culvert.
 - JG said the Jersey barrier only covered a portion of the southern approach and that the No Trespassing sign would not protect wildlife.
 - She seconded JS's suggestion of something covering the top of the opened culvert, such as the temporary metal plates used during roadwork.
 - Mr. Van Schalkwyk said it was possible the hole is too wide for metal plates to be used.
 - MP agreed that the use of erosion control blankets and something like metal plates were necessary.
 - He also suggested the use of several Jersey barriers, not just one, to block or surround the site.
- Mr. Van Schalkwyk agreed to keep CA notified, and CA said she would be happy to participate.
 - CA also noted that the big pile of loose dirt next to the culvert hole needs to be secured perhaps by a jute blanket to prevent material from washing into the stream.
 - CA and Mr. Van Schalkwyk will be in contact once he has returned.
- Mr. Pontbriand summarized that he understood ConCom's preference was that there be something temporarily covering the top of the opened culvert, including for the protection of wildlife, and that he thought this was a good point.



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- **Public Meeting: RDA – 219 Woodland Way, Anne Nee**
 - Assessor's Map 36, Parcel 117
 - Anne Nee participated via Zoom.
 - CA, JS and JG did a site visit on 4/2 to observe the backyard area where Ms. Nee would like to install a swimming pool, fencing, deck, and cabana.
 - Ms. Nee's backyard is flanked on each side by stormwater detention basins still undergoing construction.
 - CA also spoke to Luke Pyburn, the site work contractor for the Pingry Hill subdivision that is doing the work in this area.
 - He is aware of Ms. Nee's time frame to install the pool in June and will do all he can to accommodate.
 - In addition, it was noted that the roof drain infiltration system had now been installed since the site walk took place.
 - CA said this project will have little impact to the buffer zone as most of the pool and decking will be outside.
 - GB moved, and MP 2nd, to issue a Negative Determination of Applicability (DOA) with the following conditions:
 - if Pyburn cannot use the soil excavated from the pool hole, that soil will be removed from the site;
 - appropriate erosion control measures will be used.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: RDA – 69 Nashua Street, Richard Zolla**
 - Assessor's Map 13, Parcel 43
 - Richard and Mary Zolla were present via Zoom.
 - CA, JS, JG and JA did a site visit on 4/2 to observe the backyard area where the Zolla's would like to install a saltwater swimming pool, retaining wall, and decrease somewhat the grade on the steep slope at the back.
 - Only dirt from the excavated pool hole would be used to flatten the grade of the slope a bit.
 - The Zolla's also plan to stabilize the back slope further with native plantings.
 - Since the last meeting, Mr. Zolla also talked to the pool company regarding a concern previously raised.
 - For winterization, water no longer has to be drained below the pipe and filter level.
 - Instead, the company caps the pipe after blowing it out.
 - ConCom members had wondered about draining saltwater into a wetland system.
 - GB moved, and MP 2nd, to issue a Negative DOA with the following conditions:
 - any excess soil not used for flattening the grade will be removed from site;
 - appropriate erosion controls will be used;
 - the back slope to be stabilized with native plantings;



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- no tree removal at the base of the slope, but some boulders may be used.
- Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – 1 Nemco Way, Catania Oils, Inc., Joseph Basile, MassDEP # 100-0(to be determined)**
 - Assessor's Map 17, Parcel 21
 - Present via Zoom and speaking on behalf of the applicant (also present), were Carolyn Gorss, of Epsilon Associates; Scott Whitney, Design Builder from Concord Building Services; Paul Chisholm, Project Manager, and Bridget Souza from Keach-Nordstrom Associates; Dan Brackett, of Catania Oils, Inc.
 - Others were also present but did not speak.
 - CA and ConCom did a site walk on 3/20/2021.
 - Ms. Gorss since provided ConCom with supplementary materials addressing some of the issued raised during the site walk:
 - Regarding the question as to the location of a compensatory wetland area installed in the 1980s:
 - This compensatory area is not the stormwater detention basin Catania is proposing to fill in for the building addition.
 - It is not even located on the Catania property.
 - Regarding 2016 flagging done on the eastern edge of the stormwater detention basin/'pond' to be filled in, Ms. Gorss said this basin was created purely for stormwater purposes and that therefore wetlands flagged are not jurisdictional.
 - She also said this 'pond' has been referenced on other plans as a detention basin, further establishing this as precedent for its nonjurisdictional status.
 - Regarding a question raised as to a USGS map showing a perennial stream in this area, Ms. Gorss said whatever stream may have been there once, it is currently now ponded and there is no observable channel.
 - All agreed this was confusing – 1992 and 1993 maps showed an intermittent stream running into a pond and where it exited, this was previously mapped as a perennial stream.
 - However, Ms. Gorss cited as precedent that previous plans have not shown this area as riverfront.
 - As Ms. Gorss noted, this area has been heavily altered over time; there is no evident channelization anymore in the project site vicinity.
 - It is possible but unknown whether the stream was culverted underground at some point.
 - Regarding the Certificate of Compliance that was not finalized from 2015-2016 work done by Catania, Ms. Gorss said the appropriate paperwork will be submitted shortly to ConCom.
 - All commissioners being satisfied, GB moved, and MP 2nd, to approve the NOI and begin drafting an Order of Conditions (OOC) – pending receipt of the DEP file number, and



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with the understanding that ConCom might need to revisit the plans if DEP's technical comments warranted further discussion.

- Motion approved unanimously by Roll Call Vote 5-0.
- MP asked a follow-up question, based on a June 2019 aerial provided by Ms. Gorss, regarding a rusty silo visible in the photo and whether it posed a leakage risk at some point in the future.
 - Mr. Brackett, who works for Catania now but used to work at neighboring Nasoya, said it is a trickling filter, not a tank that holds wastewater or other substances.
 - It is also part of Nasoya and not Catania's property.
- GB moved to continue the Public Hearing to 5/13/2021; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – 9 Victor Drive, Sean Matthews, MassDEP# 100-0456**
 - Assessor's Map 12, Parcel 71
 - Seth Donohoe, of Dillis & Roy Civil Design Group, Inc., was present via Zoom on behalf of the applicant.
 - Mr. Matthews has requested permitting and a waiver to allow for the construction of a garage addition and replacement of a retaining wall on the western side of the property that abuts BVW (Bordering Vegetated Wetlands).
 - The addition would be located partially within the footprint of the existing driveway and a terraced boulder retaining wall would be installed next to the BVW to replace a crumbling timber retaining wall.
 - This would prevent further erosion of the slope.
 - CA and ConCom did a site visit on 3/20/2021.
 - Mr. Donohoe has since submitted a revised plan that addresses ConCom and DEP comments, and went over some of the changes:
 - An existing storage container will be permanently relocated outside of the 25-ft. buffer zone line.
 - The chicken coop will be relocated to a yard location outside of the 50-ft. buffer zone line.
 - Accumulated chicken waste on the slope down to the BVW next to the current coop location will be removed when the slope is remediated with a new retaining wall.
 - Any excess material, including soil, will be removed from the site on a daily basis so no stockpiling will take place.
 - A red maple on the slope is now shown to be removed as it will not survive the retaining wall construction, but 5 new red maples will be placed in the area, along with conservation seed mix, when the slope is stabilized.
 - Creeping juniper will be planted in between the boulders, with 15 plants anticipated.
 - The Building Inspector has indicated that, since the addition will rest on a slab foundation, a dripline recharge trench is permissible.



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- The erosion control line will be extended further south to prevent material from entering a neighbor's yard during construction, per DEP's comment.
- Regarding sequencing, the storage container and coop will be relocated at the beginning of the project, and the new retaining wall has to be completed before the addition can be constructed.
- GB moved, and MP 2nd, to approve the NOI and draft an OOC with the following Special Conditions:
 - the storage container and chicken coop are to be moved prior to construction;
 - the replacement red maples should be either 1-1/2"-2" caliper or at least 6 ft. tall;
 - the creeping juniper plantings will be extended to the end of the downslope, just below where the chicken coop currently is located, to add an additional barrier for nutrients (upping the number of plants from 15 to 17);
 - 2 conservation signs (no dumping, no disturbance, provided by ConCom @ \$15 each) will be installed on sturdy posts at the top of the slope, with the post material (e.g. pressure treated wood, green metal, etc.) determined by the homeowner's preference.
- Motion approved unanimously by Roll Call Vote 5-0.
- Mr. Donohoe will update the plan to reflect additional changes as discussed.
- GB moved to continue the Public Hearing to 5/13/2021; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: Notice of Intent (NOI) – 2 Sandy Pond Road, McDonald's, MassDEP # 100-0457**
 - Assessor's Map 35, Parcel 4
 - James Cranston, of Bohler Engineering, was present via Zoom on behalf of the applicant.
 - CA and ConCom performed a site walk on 3/27/2021.
 - Mr. Cranston addressed the comments received from MassDEP:
 - While adjacent wetlands not on the McDonald's property were not flagged, Mr. Cranston said the site improvements proposed were within the already-existing paved area and would not have an impact on those wetlands;
 - The applicant is taking a conservative approach by conceding that the entire site is completely within the 200-ft. riverfront area to an adjacent stream, and they are doing their best to limit disturbance;
 - They will be providing a stormwater checklist;
 - To improve conditions on the site, they are willing to install a stormwater quality unit in line with an existing outfall pipe where no treatment is currently provided.
 - They will provide an Operations & Maintenance (O&M) plan;
 - CA said there was an exemption for redevelopment in riverfront if there are improvements to existing conditions.



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- Overall impervious surfaces would be slightly reduced, an improvement.
 - The addition of a stormwater treatment unit would also be an improvement.
 - So would removal and cleanup of the accululated debris, including grass clippings, that has been deposited on the bank down to the stream.
 - So would removal of the invasive plants in that back area as well.
- MP built on CA's point by asking for an overall 'landscaping O & M plan' as well.
 - He also asked that conservation signs (no dumping, no disturbance) be required along the top of the bank area across that side of the site.
- Details were requested for the stormwater water quality unit.
 - Mr. Cranston said this would require a 10-12-ft. deep excavation for the unit and it would be located off the pavement, in line with existing discharge pipes that currently do not provide any treatment.
 - Haybales and silt fencing would be used for erosion control.
- This project is concurrently undergoing Planning Board review, including a forthcoming traffic study.
 - Mr. Cranston said he did not anticipate the Planning Board process would change the project in terms of ConCom issues.
 - Nevertheless, ConCom will want to see final plans before it takes a vote on the NOI.
 - ConCom will possibly be willing to move forward without the final results of the traffic study or Planning Board review, but making a future vote contingent on there being no increase in impervious surface nor increased impact to areas under ConCom's jurisdiction.
- For ConCom, additional information needed includes plan revisions showing the location and construction detail for the stormwater unit as well as the requested landscape O&M plan.
 - Summarizing ConCom's requests and likely Special Conditions:
 - conservation signage (estimated 6-10 signs, provided by ConCom @ \$15 apiece);
 - clean-up of the backslope down to the stream;
 - pulling and removal of invasives;
 - preparation of a landscaping O&M plan that also attends to the continuing control of invasives.
- GB moved to continue the Public Hearing to 5/27/2021; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: RDA – 43 Willow Road, F & M Littleton Realty**
 - Assessor's Map 30, Parcel 2
 - Joe Corsello and Russ Abell, of Sanborn, Head & Associates, were present via Zoom on behalf of the applicant.
 - FBS Tire Recycling, at 43 Willow Road, has had a private water supply well, but this well was recently found to have elevated levels of contaminants.
 - This triggered an Immediate Response Action from MassDEP which requested that potential exposures from the contaminated well be either eliminated or mitigated (MassDEP Release Tracking Number 2-17951).



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- The applicant has chosen the elimination route and proposes installation of a private underground water service line from the tire facility at 43 Willow Road to tie into the existing public water main on Berkshire Boulevard.
 - The approximately 500 ft. long waterline would be installed beneath an existing access road, owned by 0 Willow Road and to which 43 Willow Road has right-of-way within.
 - All of the work would be conducted within the existing access road and other paved areas.
 - No disturbance to the adjacent wetlands marsh, vegetated areas, or the unnamed tributary to Bennett's Brook will take place.
 - Mr. Corsello said the method would be to dig a trench, install the waterline, backfill, then repave.
- However, ConCom raised questions about the unnamed tributary to Bennett's Brook that passes underneath the access road owned by 0 Willow Road, and across which the waterline would have to pass.
 - Neither Mr. Corsello nor Mr. Abell knew for sure if the tributary was culverted but thought it likely.
 - MP asked if the new waterline would pass underneath or over the culvert but this was not clear as well.
 - It was noted by both MP and CA that waterlines have to be at least 4 ft. deep to prevent freezing.
- Because construction detail is lacking as to how the waterline would cross the tributary area and the process by which this would be done, ConCom requested more information.
 - Mr. Abell said that Sanborn, Head & Associates are the environmental consultants and are not doing the engineering, but Mr. Abell thought that the waterline would pass underneath the culvert.
 - To do this, he thought the waterline trench would be excavated, that portion of the culvert removed and then replaced once the waterline was installed.
 - They will try to get more information on this from the engineering company.
- ConCom agreed with CA that more definitive information is needed, especially the construction plans, before ConCom can proceed.
- Mr. Abell asked the Commission to consider that the tire facility has been without drinking water and asked if there was a way to expedite the process.
 - JS said how quickly this happens depends on how quickly ConCom gets to see the construction plans.
- ConCom agreed, though, to go ahead and schedule a site walk in the meantime, which was scheduled for 5 p.m. on Tuesday, 4/13.
 - To expedite things further in light of the situation, ConCom will also find room on its next agenda, on 4/22, for this application and will hope to have more information at that time.



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- **Public Hearing (cont'd.): NOI – Jonathan Drive, Cross-country water main, Ayer Department of Public Works (DPW), MassDEP # 100-0455**
 - Assessor's Map 12, Parcel 158
 - DPW Town Engineer Dan Van Schalkwyk was present via Zoom.
 - This Hearing was continued from its opening on 2/11/2021.
 - The DPW proposes to use underground horizontal directional drilling to install a new water main connecting the end of Jonathan Drive with the water main at Lots 4 and 5 of the Riley Jane Farm subdivision (Pleasant Street Extension).
 - The new water main will cross 5 parcels – 29 Jonathan Drive, the DCR Nashua River Rail Trail, the National Grid powerline, and Lots 4 and 5 in the subdivision.
 - A site walk could not be scheduled during the winter months.
 - A site walk was now scheduled for Saturday, 4/17, at 8 a.m.
 - GB moved to continue the Public Hearing to 4/22/2021; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **DPW RDAs for stormwater improvements**
 - Town Engineer Van Schalkwyk presented the following three RDAs together as a single presentation.
 - He is hoping to complete all three by the end of June.
 - He also thought all three projects might qualify as limited projects under the Wetlands Protection Act but added that it would be up to the Commission how to condition them.
 - **Public Meeting: RDA – Snake Hill Road Right-of-Way, DPW**
 - Assessor's Map 36
 - This improvement involves installation of a right-of-way bioswale as well as a sidewalk extension to keep people from walking in the road.
 - The bioswale would be similar to a rain garden.
 - Erosion controls would be installed along the boundary of the project.
 - In response to MP's question, maintenance of the bioswale would be added to the DPW's stormwater management plan, and it would likely be cleaned out perhaps twice a year.
 - **Public Meeting: RDA – Nashua Street Right-of-Way, DPW**
 - Assessor's Map 19
 - This project involves replacement of a culvert.
 - The existing culvert is 12" corrugated metal and is falling apart.
 - A catchbasin exists in the middle of the culvert and there is no stormwater treatment.
 - The culvert would be replaced with a 17" x 13" arched galvanized pipe culvert that would allow smaller critters to pass through.
 - The existing catchbasin would be removed and a new deep sump catchbasin would be installed offset from the culvert and tee-ed into it.



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- This would provide TSS (total suspended solids) treatment to stormwater.
- Erosion controls would be placed both upstream and downstream.
- **Public Meeting: RDA – Highland Avenue Right-of-Way, DPW**
 - Assessor's Map 20
 - There is no current stormwater treatment in the area of the proposed project.
 - Instead, stormwater flows directly from the road into a culvert and an intermittent stream.
 - DPW plans to have a contractor install a stormwater treatment unit at the low point in the road, going down 8-10 ft. deep.
 - All work here would be done within the roadway, which might make it eligible for the utility exemption.
 - Erosion controls would be placed along the downstream side, and although not indicated on the plan, Mr. Van Schalkwyk said they would place some upstream as well.
 - It was noted that the intermittent stream in question here flows downhill from Washington Street, crossing Highland and Central Avenue, across the Compassionate Care parcel, and thence on to School House Pond.
- Since ConCom is doing a site walk with Mr. Van Schalkwyk on the 17th for Jonathan Drive (above Hearing), the Commission will also visit these 3 project sites at the same time.
- **Discussion: Regulations for exempt minor activities within buffer zones**
 - No time remained for this discussion.
- **Discussion: Review of Ayer Conservation Commission Special Conditions Boiler Plate**
 - No time remained for this discussion.
- **9:22 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 / Signature of Approval: 4/22/2021 *Jessica G. Gugino*