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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 5/27/2021

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 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 5/13/2021 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Beaver management plans**
  - Also present via Zoom was DPW Town Engineer Dan Van Schalkwyk.
  - CA reported that on 5/20, Beaver Solutions installed a beaver deceiver/flow levelling device at the Nonacoicus Brook culvert area off West Main Street.  
Beaver activity had blocked the destroyed culvert yet again but the DPW was able to clear the blockage the day before this installation.
    - CA reports that the beaver deceiver appears to be working beautifully to prevent excess impoundment of water.
  - Also on 5/20, CA took the Beaver Solutions installer over to where there is beaver dam flooding onto Bligh Street, adjacent to Pirone Park and between Bligh and Grove Pond.
    - Mr. Van Schalkwyk secured an Emergency Certification from ConCom as well as a permit from the Board of Health to remove this dam, which will be done tomorrow (5/28).
    - After looking at the conditions, the installer will talk to Mike Callahan, owner of Beaver Solutions, to see if they can devise a viable beaver solution for this area.
  - CA also received an email and phone call from Pat Fennessey of Kearsarge Energy, which operates the solar array called 'Solar 1', accessed from the end of Rosewood Avenue.
    - The extension of Rosewood Avenue crosses a stream culvert and, although the culvert has been screened off, beaver activity has now raised the water level to the extent that it has begun to overflow onto the road, preventing safe access.



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Conservation office has been overwhelmed with permit applications for well more than a year and our agendas reflect this. With limited Zoom meeting time during the pandemic, we've had to adopt a time control plan to assure we can accommodate large numbers of agenda items. We've heard that our time control method has irritated some applicants. The result of all the applications and issuing of permits is that many aspects of the office have fallen behind to a point that is unworkable. There is far more work than one very capable person can do while keeping up with statutory responsibilities, resident calls and inquiries, and interdepartmental work. The situation has become critical and is unsustainable as the office is currently staffed. We need more help. I need more help. I've spoken to each of you individually about the situation and I appreciate all your support and encouragement. We do have a meeting in the works with Robert next week for Jon, Jess, and I to talk about the situation. I'd like to know if you have any ideas for how to provide adequate staffing so we can continue to do our good work without grinding me into the dust."

- JS asked Mr. Pontbriand if he had any comments.
- Mr. Pontbriand noted that the past 15 months, with the pandemic, have imposed unprecedented pressures on everyone, and that the Town was nevertheless able to continue operating effectively during this trying time.
  - He also said that, in addition to the pandemic, it is clear that the land-use departments (Conservation, Planning, Building, DPW) have been most impacted by the pressures of this ongoing record development.
  - He said that substantive structural changes needed to be made and that he was committed to resolving this.
  - Regarding Conservation, he focused on two aspects of the job, one the clerical side, the second area requiring professional conservation expertise.
    - He has asked CA to provide feedback on what would help balance things out with this second area, as well as whether specific resources would be needed on a project-by-project basis or some other manner, etc.
- Resident Sara Withee, via Zoom, expressed her support for the Commission and the work that it does.
- JG said the Commission has only seen the true potential of the CA job with the arrival of Ms. Crystoff.
  - When Ms. Crystoff was hired in 2017, the job entailed juggling a lot of balls – that number has since doubled or tripled.
  - The current workload is unsustainable by one person.
  - Human resources are a precious commodity and should not be squandered.
  - ConCom needs help and does not want to lose Ms. Crystoff from this position.
  - At the same time, it is apparent other departments, such as planning and building, are also swamped given the town's continuing growth.
- MP agreed, saying it is evident that Ms. Crystoff does as much as she can to make sure the work of the Commission progresses.



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- Doing resource planning for his own job, MP is familiar with how certain over-stretched departments can become bottlenecks for processing work, so that only the bare minimum gets done.
- He did not want to see this happen to the Conservation Commission office.
- MP also noted that ConCom is 'never fully done' with a property that has resource areas or is in the buffer zone.
- Homeowners repeatedly come back with new projects that require ConCom review or guidance, noting several backyard swimming pool projects that came before ConCom just the previous month as one example.
- JA said she strongly agreed with JG and MP.
  - As a homeowner, prior to joining the Commission, she and her neighbors used Ms. Crystoff as a resource on multiple occasions.
    - That positive contact was how she herself became interested in joining the Commission when a vacancy came up.
  - Efforts need to be made to address this situation.
- JS concluded remarks by noting his frequent interactions, as Chair, with Ms. Crystoff, and finding her always to be both cheerful and professional.
  - If the Commission – and town – lose her, we will be losing a very valuable asset.
  - The current and growing workload is not sustainable.
  - At the same time, and expressing the view held by the rest of ConCom, JS added that the Commission cannot get along without her.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – 29 Jonathan Drive, Ayer Department of Public Works (DPW), Cross-country water main, MassDEP # 100-0455**
  - Assessor's Map 12k Parcels 58, 2, 152 & 151
  - Town Engineer Dan Van Schalkwyk participated via Zoom.
  - The draft Order of Conditions (OOC) has been reviewed.
    - Mr. Van Schalkwyk asked ConCom if it would be willing to remove the perpetual conditions (#s 31-43) in the Special Conditions for this project as he felt it would not be fair to the property owner of 29 Jonathan Drive.
  - JS noted that many of the items addressed as perpetual conditions are covered by the Wetlands Protection Act anyway.
    - GB said that since this OOC involves a Town easement on private property, he didn't see the need for these perpetual conditions to be included.
  - It was also noted that the boilerplate for Special Conditions was a document inherited by CA when she took the job, and it was also noted that ConCom has been trying, unsuccessfully so far, to find time in its agendas to review and amend the boilerplate.
  - GB moved to approve the draft OOC for 100-0455 for issuance as amended (removing Special Conditions 31-43); MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0455; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.



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- **Public Hearing (cont'd.): 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.
  - The draft OOC for improvement to the site (see minutes for 3/25/2021) has been reviewed with no issues on the part of Mr. Cranston.
    - An Operations & Maintenance plan, covering stormwater operations and maintenance, and covering landscaping and invasive species mitigation and control, are part of the OOC.
  - CA is not worried about debris from landscaping spreading invasives as the O&M plan specifies that all clippings are to be disposed of off-site.
    - CA also stated her appreciation that the applicant was willing to include aesthetic and environmental improvements alongside the site improvements proposed in the NOI.
  - GB moved to approve the draft OOC for 100-0457 for issuance as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0457; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: Request for Determination of Applicability (RDA) – 8 Calvin Street, Jose Mercado**
  - Assessor's Map 21, Parcel 39
  - Mr. Mercado participated in the meeting via Zoom,
  - He is seeking permitting to construct a permanent 8'x10' deck on the shore of Flannagan Pond, supported by 4 pillars, with the deck overlapping above the pond by 2 feet.
    - Mr. Mercado's property line extends under the water so ownership is not an issue.
    - The plan indicated that the pillars would go down 4-5 ft., and part of the slope of the yard would be cut into to allow for leveling of the deck.
    - The work would be done by Mr. Mercado's brother and nephew.
  - Given the extent of potential ground disturbance, ConCom scheduled a site walk for 5:30 p.m. on Tuesday, June 1.
- **Public Meeting (cont'd.): RDA – 103 Oak Ridge Drive, John Delcore**
  - Assessor's Map 19, Parcel 28
  - Mr. Delcore was unable to be present for tonight's meeting, but ConCom previously performed a site walk on Tuesday, May 18, and had enough information to proceed.
  - Mr. Delcore has proposed replacing a deteriorating railroad tie retaining wall, that supports part of the foundation to the house, with a precast block wall.
    - He also asked if ConCom would allow him to extend the new retaining wall underneath an existing deck, to add reinforcement to the posts supporting that deck.
    - ConCom saw no issues with the proposed plan.

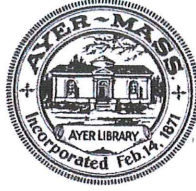


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- GB moved to issue a Negative Determination of Applicability (DOA) for 103 Oak Ridge Drive with one condition, that CA be notified to inspect the erosion controls; MP 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: RDA – PanAm Rights-of-Ways, Pan Am Railways, Inc.**
  - Environmental Consultant Keith Morris participated via Zoom on behalf of the applicant.
  - Per State statute, Pan Am is required to file a 5-year vegetative management plan in each community through which its tracks run.
    - This is for the application of herbicides within the railroad right-of-way.
    - Approximately 1-1/2 miles of track in Ayer have sensitive areas jurisdictional to the Wetlands Protection Act.
  - The RDA seeks a Determination verifying the same boundaries as previously agreed on in the 2016 filing.
    - These boundaries denote yellow for “no spray zone,” blue for “limited spray zone,” and red for “water supply zone” (spraying allowed only every other year).
    - The spray area is roughly 10 ft. on center to the edges of the stone ballast along either side of the tracks.
    - A tanker truck is mounted on the rails, with a multiple-nozzle spray boom mounted on the back about 18” off the ground.
    - Mr. Morris rides along with the licensed applicator to observe any change in conditions and adjust accordingly.
      - For example, spraying is not allowed within 10 ft. of any open water, even open water that is the result of beaver damming activity.
      - It has been Mr. Morris’s experience that significant changes in these boundaries rarely occur.
  - This routine vegetative management project is scheduled to start next week.
  - Resident Sara Withee asked if ConCom could delay a vote so that she would see a copy of the submitted material, but Chairman Schmalenberger said ConCom wouldn’t hold off on this vote.
  - GB moved to issue a Positive Determination of Applicability, box ‘2A’, for this project; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - Mr. Morris asked that the original of the DOA be sent to Bill Wallace, Chief Engineer of Track & Structures for Pan Am, and a copy sent to himself.
- **Public Meeting: RDA – 15 Oak Ridge Drive, Geoff and Bonnie Tillotson**
  - Assessor’s Map 27, Parcel 7
  - Geoff and Bonnie Tillotson were present via Zoom.
  - The Tillotson’s backyard abuts Flannagan Pond.
    - At the far edge of the buffer zone, they would like to put in a small patio, roughly 34’ x 14’, connecting to an existing deck, leveling the area, and also installing a small retaining wall, up to 3’4” high, along the east side of the patio.



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- The patio area would be pervious, and filtration would be enabled through the wall.
  - A site walk was scheduled for 5 p.m. on Tuesday, June 1.
- **Request for Certificate of Compliance (COC) – 1 Nemco Way, Catania Oils, Inc., Joseph Basile, MassDEP # 100-0380**
  - Assessor's Map 17, Parcel 21
  - Carolyn Gorss, of Epsilon Associates, and S. J. Whitney, Design Builder from Concord Building Services, were present via Zoom on behalf of the applicant.
  - On a previous site inspection, CA had observed that a swale, about 5 ft. off the building, was in poor shape and eroding.
    - Since then, the swale has been reconstructed.
    - On CA's subsequent inspection, it now extends 14 ft. off the building, is in excellent shape, and there should be no further issues with erosion.
  - GB moved to issue a Certificate of Compliance for 100-0380; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - Per Ms. Gorss's request, the COC will be sent to Epsilon's Maynard office for them to record at the Registry on behalf of the applicant.
- **Discussion: Exempt Minor Activities and other possible regulations for Ayer's local Wetlands Protection Bylaw (Article XXVI)**
  - No time remained for this discussion.
- **Discussion: Review and update of Conservation Commission OOC Special Conditions boiler plate**
  - No time remained for this discussion.
- **8:34 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: 6/10/2021 Jessica G. Gugino