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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 8/12/2021

Location: Ayer Town Hall, 1st Floor

Present: Jon Schmalenberger (JS, Chair), Mark Phillips (MP, Vice-Chair), George Bacon (GB, Member), Jen Amaya (JA, Member), Jessica Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)

APAC taped: YES

### 7:15 PM – Open Meeting

- The meeting was called to order at 7:15 PM, following adjournment from an Executive Session that commenced at 6:30 PM.
  - The Executive Session was held pursuant to MGL, Chapter 30A, Section 21a (3), to discuss litigation strategy relative to John Hillier v. Town of Ayer Conservation Commission et al., Middlesex Superior Court C.A. No. 2181CV00651, as an open meeting would have a detrimental effect on the litigating position of the public body.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 7/22/2021 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Meeting: Request for Certificate of Compliance (COC): New England Power Company, MassDEP # 100-0448**
  - Samantha Walker, from BSC Group, was present on behalf of New England Power Company.
    - This project was for soil test borings located cross-country at 9 transmission line structures.
  - GB moved to issue a COC for 100-0448; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – 43A Groton Harvard Road, Ayer Department of Public Works (DPW), for work on a Town easement on property owned by Edward Ouelette, MassDEP # 100-0459**
  - Assessor's Map 20, Parcel 39
  - Town Engineer Dan Van Schalkwyk was present via Zoom.
  - The project is for a stormwater outfall improvement that will likely commence this fall.
    - A revised plan, following ConCom's site walk on 6/29 and Mr. Van Schalkwyk's subsequent conversations with the property owner, has been submitted,
      - The new plan shows the relocation of the proposed raingarden closer to the shore of Flannagan Pond, and includes other construction details.
  - GB moved to approve the NOI and draft an Order of Conditions (OOC); MP 2<sup>nd</sup>.
    - Motion approved unanimously.
  - GB moved to continue the Public Hearing to 8/26; MP 2<sup>nd</sup>.
    - Motion approved unanimously.



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- **Public Meeting: Request for Determination of Applicability (RDA) – 252 Woodland Way, Alexis Sanders**
  - Assessor's Map 36, Parcel 180
  - No one appeared, either in person or via Zoom, to support this application.
  - CA said the proposed project is for landscaping in the buffer zone, including plantings around a stormwater basin to make the yard area more attractive.
    - She had previously met with the homeowners and a landscaper and sees no problem with this project.
  - CA will check with Ms. Sanders to see where the Sanders were and if they can attend the next meeting.
- **Public Hearing: NOI – 0 Washington Street, Lot A, Northeast Site Development, Joseph Levine, MassDEP # 100-0461**
  - Assessor's Map 13, Parcels 12, 13 & 14
  - This is an ANR lot (Approval Not Required by Planning Board under its subdivision regulations, and will be associated with the Panther Place subdivision.
- **Public Hearing: NOI – 0 Washington Street, Lot B, Northeast Site Development, Joseph Levine, MassDEP # 100-0462**
  - Assessor's Map 13, Parcels 12, 13 & 14
  - This is also an ANR lot associated with the Panther Place subdivision.
- These two NOIs, for adjacent lots, were then discussed together.
  - Present in person were Joe Levine, of Northeast Site Development; and Brian Butler, of Oxbow Associates. Present via Zoom was Attorney Alex Parra, of D'Agostine, Levine, Parra & Netburn, P.C.
- **Existing Conditions:**
  - The land for both Lot A and Lot B was included under ConCom's confirmation of the delineation of wetlands for the broader Panther Place subdivision that will abut these properties to the north.
    - The Order of Resource Area Delineation (ORAD) for MassDEP # 100-0453 was issued by ConCom on 11/23/2020.
  - The existing conditions for both lots is undeveloped mixed deciduous forest.
  - Both properties slope downhill from Washington Street to the north.
  - Neither property contains Estimated and Priority Habitat for Rare Species.
- **Proposed work:**
  - Lot A is approximately 17,682 sq. ft. (0.4 acre) in size with a small section of Bordering Vegetated Wetlands (BVW) on the northwest corner of the lot, part of the "A" BVW series in the ORAD.
  - Lot B is approximately 18,130 sq. ft. ((0.4 acre) in size, with a small portion of the same BVW at the northeast corner of the lot.
  - No work or disturbance is proposed within the 0-50 ft. inner buffer zone on these lots.
    - This conforms with the 'no disturb in previously undisturbed buffer zone' standard established under the local wetlands bylaw (Article XXVI).



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- The proposed plan for each lot includes clearing, grading, the construction of a driveway and a single family house, landscaped yard, and installation of a dry well to collect roof runoff.
- Erosion and sediment controls will be used and the Limit of Work will be the same as the erosion control line.
- No stormwater structures are proposed as they are not required for single family house lots, however stormwater runoff from these two lots has been accounted for in the proposed Panther Place subdivision downslope to the immediate north.
- The use of conservation signs (no dumping, no disturbance) and a boulder line at the 50 ft. buffer zone line, to prevent homeowners from expanding yards into the No Disturb inner buffer zone, was discussed, with the agreement that 3 signs per lot would be sufficient.
  - CA asked that the engineers revise the plans to show the signs/boulders detail, as well as a number of other important dimensions that were not included on the plans, e.g. closest dimension to resource area.
- An existing guardrail along Washington Street will be removed and the drop-off there filled in.
  - The DPW will determine whether the guardrail will be replaced at the end of construction.
- Resident Sharon Woods, of 142 Washington Street, whose property directly abuts the eastern border with Lot A, asked if trees between her property and Lot A would be cut down.
  - Mr. Levine said they would have to be as the construction process would damage root systems and likely kill the trees anyway.
  - In an effort to be a good neighbor, though, he offered to meet with Ms. Woods to discuss landscaping options, at the end of the project, to address her concerns.
- A site walk for Lots A and B was scheduled for Thursday, 8/19, at 4:30 p.m.
- GB moved to continue the Public Hearing for Lot A, DEP # 100-0461, to 8/26/2021; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- GB moved to continue the Public Hearing for Lot B, DEP # 100-0462, to 8/26/2021; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Hearings, 14 NOIs and Discussion of Waiver Requests – 0 Washington Street, “Panther Place” Open Space Residential Development (OSRD) subdivision, Northeast Site Development, Joseph Levine**
  - Lot 1, DEP # TBD
  - Lot 2, DEP # TBD
  - Lot 3, DEP # TBD
  - Lot 4, DEP # TBD
  - Lot 5, DEP # TBD
  - Lot 6, DEP # TBD
  - Lot 13, DEP # TBD
  - Lot 14, DEP # TBD
  - Lot 15, DEP # TBD



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- **Lot 16, DEP # TBD**
- **Lot 17, DEP # TBD**
- **Lot 19, DEP # TBD**
- **Lot 20, DEP # TBD**
- **Lot 21, DEP # TBD**
- Assessor's Map 13, Parcels 12, 13 & 14.
- Mr. Levine, Mr. Butler, and Attorney Parra remained present from the previous Hearings, in person and via Zoom, for this agenda item.
- JS suggested ConCom open and then continue this discussion given ConCom's limited time, limited ability to process all 14 lots at one time, and having other business on the agenda to discuss.
  - JG said she was uncomfortable proceeding under a newly opened Hearing for 100-0460 as ConCom did not have individual NOIs for each lot and the infrastructure, as requested.
- Discussion then focused on the proper form of submission for these lots.
  - Attorney Parra said they were submitting the 14 jurisdictional lots and infrastructure within the Panther Place OSRD under a single consolidated NOI, MassDEP # 100-0460, under the Wetlands Protection Act (the Act), and then 14 individual applications, using DEP's NOI Form 3, under Ayer's local wetlands bylaw (Article XXVI).
  - Per the local bylaw and regulations, ConCom expected a single individual NOI submissions for *each* house lot under both the Act and the bylaw, as well as an additional separate NOI, also under both the Act and the bylaw, for the infrastructure.
    - That would mean 15 NOIs total, each with its own MassDEP-issued file number.
  - Attorney Parra asked the Commission to open discussion for all 14 lots at the same time anyway to allow for a presentation.
    - Since landclearing in the outer buffer zone (50-100 ft.) will take place across all of these lots at the same time, Mr. Levine asked that ConCom let them discuss the entire OSRD project tonight.
    - Attorney Parra said they did not want to jam ConCom up with multiple submissions, and that consolidating the applications would make for a more coherent presentation on the 14 lots and the related stormwater infrastructure drainage system.
      - If the lots were opened together, they could then be discussed in an interrelated fashion.
  - JS said it was not ConCom's intention to stall the project, but there were procedural issues.
  - JG objected to moving forward at this time by opening a Public Hearing under 100-0460 as the current submission was unacceptable under the local bylaw and regulations requiring individual lot submissions and a separate submission for



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infrastructure that served as a combined submission under both the Act and bylaw.

- CA described what ConCom intended with its bylaw and regulation requiring individual submissions for developments larger than 2 houses.
  - As an example, she also noted that this was how ConCom processed the jurisdictional work in the Pingry Hill subdivision.
- CA said she had also discussed this issue at length with Town Counsel Amy Kwesell, of KP Law, prior to tonight's meeting.
  - Attorney Kwesell had then contacted Attorney Parra prior to the meeting to clarify ConCom's expectation in this regard and had then told CA she had obtained Attorney Parra's agreement to comply.
- Attorney Parra then suggested that he and CA had "divergent understandings of the conversation" between himself and Attorney Kwesell.
- JS then read verbatim into the record the email received from Attorney Kwesell on 8/11/2021:
  - "Jo-Anne,  
I spoke with Alex Parra and he is fine with having the 14 lots as individual NOIs under the WPA & Bylaw with the 15<sup>th</sup> NOI being the subdivision infrastructure and stormwater.  
Please contact DEP to see what is the easiest way to accomplish this – can we just send the 14 NOIs to them seeking a DEP File #? All fees have been paid, we are really just shifting the house lots out of the 15<sup>th</sup> NOI and putting them with the bylaw NOIs.  
Thanks, Amy"
- JS said that if there was still a difference of opinion on how to proceed, then ConCom felt it would need to talk further with Town Counsel before moving forward.
- CA and JG also noted that the MassDEP Circuit Rider, Kim Roth, who CA also had spoken to on this, had indicated that, while not in State regulations, DEP considered it a BMP (Best Management Practice) to receive individual NOIs under the Act on each lot in a subdivision.
  - CA suggested that when the manner of submissions was previously discussed by the applicant and representatives, it would have been a good idea to have included CA/ConCom in that preliminary discussion.
- Attorney Parra then asked about opening the Public Hearing for 100-0460 for just the stormwater infrastructure.
  - MassDep # 100-0460 can be amended to be just for the infrastructure, but it has not yet been amended, and MP said to proceed at this time would be opening a can of worms, so no, the Public Hearing should not be opened tonight.
- Mr. Levine then asked if ConCom could nevertheless view the whole site where clearing will take place during the 8/19 site walk.

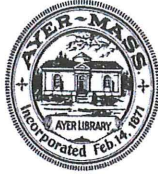


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- ConCom agreed to this, with the understanding, as expressed by GB, that ConCom's standard practice for reviewing house lot NOIs on site walks (which will now be forthcoming and not discussed tonight) usually included staking for house corner locations and other similar details.
    - Attorney Parra said he would like to set up a conference call with himself, the Circuit Rider, CA, and Town Counsel.
  - The Public Hearing for 100-0460 not having been opened, there was no need to formally continue this discussion.
- **Discussion: Fertilizer Use Bylaw Draft**
  - The draft bylaw, prepared by JG and JA, was then reviewed and edited per comments and suggestions made by various commissioners.
    - In particular, a section including the imposition of fines was deleted.
      - In the beginning, at least, enforcement will focus on education.
- **Discussion: Conservation Commission meeting with Select Board, 8/17/202; Office Workload**
  - ConCom will appear before the Select Board to give them an overview of what the Commission does both as fulfilling its statutory requirements under the Act as well as directly for the Town, how much work there is, and that there is much more than one single staff person can manage.
    - At a previous meeting on 8/12 with Town Manager Robert Pontbriand, JS, JG, CA and Assistant Town Manager Carly Antonellis, the idea of creating a temporary, part-time assistant position was discussed and this will be brought before the Select Board next Tuesday.
      - This would be a stop-gap measure, funded from ConCom's Wetlands permit fees fund, and would run through the current fiscal year to June 30, 2022.
      - At the same time, ConCom will tell the Select Board that it will apply to make the position permanent when it submits its FY2023 budget this fall.
- **Discussion: Waterways Signs project work plan**
  - CA said Kim Becker has signed the contract to design the signs.
    - Since the Nashua River Watershed Association has expressed an interest in using the Ayer signs as a template for other communities, the signs may need to use the logo of the National Park Service, under which the Wild & Scenic program operates.
  - CA has been checking sign locations with Town Engineer Van Schalkwyk and Parks Director Jeff Thomas.
    - MassDOT (Dept. of Transportation) still needs to be contacted for a couple of sign locations on local State roads.



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- **Discussion: Beaver Management**
  - Mike Callahan, of Beaver Solutions, has provided an estimate for two water flow devices ('beaver deceivers') at the inlet to, and outlet from, Shaker Mill Pond.
    - Mr. Van Schalkwyk wants to think about this more before proceeding.
    - Also, while the inlet deceiver would be located on town property, the one for the outlet would be on private property.
- **9:13 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature of Approval: \_\_\_\_\_

8/24/2021

*Jessica G. Gugino*