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OCT 29 2021

TOWN OF AYER
TOWN CLERK



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 9/23/2021

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

7:00PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm the agenda as posted; MP 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 9/9/2021 as written; MP 2nd.
 - Motion approved unanimously.
- **Payables Report**
 - The most recent payables report since the end of July was reviewed.
 - It included the corrugated pipe ordered for the eventual installation of a beaver deceiver at the inlet to Shaker Mill Pond.
- **Public Input**
 - None.
- **Public Hearing: Draft Fertilizer Use Bylaw**
 - A draft of a new bylaw regulating the use of nitrogen and phosphorous containing fertilizers, intended for submission to Fall Town Meeting vote on 10/25/2021, was discussed at length with several members of the public who attended the advertised Hearing.
 - JS began, however, by reviewing the substance of a conference call held earlier in the afternoon between he, CA, JG, Town Manager Robert Pontbriand, Assistant Town Manager Carly Antonellis, and Town Counsel/KP Law Attorney Alex Weisheit.
 - KP Law reviewed the draft bylaw, submitted in mid-August, and responded with an email from Attorney Weisheit on 9/13 stating that the proposed bylaw “could be subject to legal challenge based on preemption by state law.”
 - The conference call was set up prior to the Public Hearing to discuss this.
 - Attorney Weisheit said that KP Law’s stance was that the fertilizer bylaw likely would be rejected by the AG’s office.
 - Any bylaw passed by a town must go to the Attorney General’s (AG) office where it is either approved or rejected based on legality.
 - Mr. Weisheit said the AG’s interpretation of state law here has been broad in regarding the MDAR framework as the exclusive authority.



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- He was asked to provide copies of the AG's rejection decisions in this regard prior to the Public Hearing that evening.
- Following the conference call and as requested, Mr. Weisheit then sent an email containing a copy of the July 1, 2013 AG letter to the Town of Westwood, rejecting their Town Meeting-approved amendment regarding fertilizer use.
- During the conference call, Mr. Pontbriand said that while he thought the fertilizer bylaw was a laudable goal, based on this new information from Town Counsel, he did not support a Town entity putting forth a bylaw on the Warrant that wouldn't pass State muster.
- Mr. Weisheit also said at that time that KP Law would be willing to look at the Town's local wetland bylaw and/or regulations to see if those could be tweaked to provide some control over fertilizer use.
 - In that case, however, any such regulation would be limited to only land/waters within ConCom jurisdiction (i.e. wetlands and buffer zones) rather than town-wide.
- JS and JG then provided an overview of the issue.
 - The State Legislature passed the Acts of 2012 that included "An Act Relative to the Regulation of Plant Nutrients" (with associated regulations, 330 CMR 31.00, enacted subsequently).
 - This Act assigned the Massachusetts Department of Agricultural Resources (MDAR) controlling authority to issue state-wide regulations regarding the application of plant nutrients, including fertilizers, to *both* agricultural land *and* non-agricultural turf/lawn.
 - A specific exception was made in the Act to allow the Cape and the Islands to adopt their own regulations re plant nutrients and fertilizers, provided they were not less restrictive than state regulations.
 - JG read a key section from the AG's 2013 letter which noted that an initial draft of the 2012 legislation had included text allowing "any municipality" to "enact more stringent standards for the application of fertilizer for lawn or non-agricultural turf."
 - But then, the AG letter noted, "importantly, this text was deleted from the next version of the legislation," going on to conclude that the final version of the Acts of 2012 demonstrated the intent of the Legislature "to allow regulation only" by the MDAR.
- It was also brought up during the conference call, by either Mr. Weisheit or Mr. Pontbriand, that while it was not in the Town's interest to promote a Warrant Article sure to be rejected by the AG, there was nothing to preclude a citizens petition to take the draft bylaw text and submit it, with 100 signatures, by noon on Friday, 10/1.
 - There is no legal or financial cost to a bylaw being submitted to, and rejected by, the AG's office, whether it is submitted under the auspices of a town or via a citizen petition.



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- Questions and discussion then followed:
 - ConCom made clear that the intent of the local bylaw attempt was primarily as an educational tool as it was not interested in heavy-handed enforcement.
 - Peg Pfeiffer asked if MDAR can be approached.
 - JG said that the MDAR regulations are already in effect state-wide, and it is probably an option to approach MDAR for enforcement if there was a serious incident.
 - But like many state and local bodies, labor power/resources for enforcement have been limited or overstretched in recent years.
 - Laurie Nehring noted that Ayer, with all its water resources, had sensitive land/water issues just like the Cape.
 - She also asked if a better pathway going forward would be for ConCom to do what it can with its local wetland regulations, and then try a citizen petition down the road to extend the reach?
 - CA recommended the Commission encourage a citizen petition for the Fall Town Meeting Warrant, if only as a means of raising awareness over the fertilizer use impact.
 - Susan Tordella-Williams observed that the State House, similarly, generally does not like to put forth bills that are sure to fail.
 - However, she also pointed to the advantages of a social marketing campaign and neighborhood meetings, which Littleton has done regarding its ponds.
 - Ms. Nehring agreed that an alternate path was to do public outreach and education rather than pass a bylaw.
 - Laurie Sabol asked for clarification of the intent of the bylaw draft as she had found it confusing.
 - Was it to change the behavior of people who live on the ponds or everyone in town?
 - JS said it was intended to be town-wide, and CA added that pollutants, such as excess synthetic fertilizer use, eventually find their way into water resources no matter the distance.
 - Ms. Sabol also asked if, say, the Town, via Pirone Park on Grove Pond, would have been subject to the same restrictions, and was told yes.
 - While Ms. Sabol also thought the exemptions cited in the draft (establishment of new lawns, restoration, soil tests, etc.) seemed vague, JG said the language there was lifted from the MDAR regulations.
- All present were in agreement that there were less environmentally damaging ways to have a green lawn than through use/overuse of synthetic fertilizers.
 - The use of clover mixed in is a great way to improve lawn health.
 - JG cited her sister's phrase for an ideal lawn as a "multi-family soil retention team."
- Anne Gagnon, who is a Land agent for the MA Dept. of Fish & Game, agreed the bylaw was probably unlikely to make it past the AG's office, but thought the attempt itself was



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great as a public educational tool, especially as a means of encouraging people to learn more about the differences between the use of organic versus chemical fertilizers.

- She strongly suggested that if a citizen petition could not be pulled together, that ConCom ask that the bylaw remain on the Warrant simply to allow discussion.
 - MP thought this wasn't a bad idea, to leave the bylaw on the Warrant under ConCom's recommendation, but then potentially pull it from vote at Town Meeting, after some discussion.
- While Ms. Gagnon said this would accomplish some of the goal of educating the public, GB noted that, given poor attendance rates, Town Meeting itself isn't always the best place to reach a lot of the public.
 - Considering this, MP said that even if people don't attend Town Meeting, they will have had the opportunity to see the bylaw draft in the mailed Warrant.
- Ms. Nehring then said she supported the idea of having the bylaw included in the Warrant under ConCom's recommendation as a great mechanism to get the word out.
 - She thought it was too late to go the citizen petition route.
 - PACE (People of Ayer Concerned about the Environment), which Ms. Nehring currently heads, is too busy with its own projects to take this on.
 - PACE is launching an outreach campaign about the PFAS problem in Ayer drinking water (Perfluoroalkyl and Polyfluoroalkyl Substances).
- JA expressed her support for the idea of keeping the bylaw on the Warrant, but being willing to withdraw it on the floor of Town Meeting.
- Ms. Nehring asked if Town Meeting would allow discussion to take place prior to the article being pulled?
 - Ms. Gagnon said this can usually be worked out in advance with the Moderator.
- Julie Corenzwit noted there was a lot of overlap with the MDAR regulations.
- Marian Stoddart thanked the Commission for bringing the bylaw attempt forward and asked what could be done to help.
- Town Engineer (and soon to take over as Director) Dan Van Schalkwyk said the DPW was interested in helping with public education, especially regarding the use of phosphorous-containing products.
- JS took a straw poll of commissioners to gauge their interest in asking to keep the bylaw on the Town Warrant, even if only to have a short presentation and discussion at Town Meeting prior to withdrawing it from vote.
 - MP, GB, and JA were in favor, and JG and JS then followed suit in agreement.
- There was also a brief discussion about including written material in, say, the Town's water bills, such as the excellent non-point source pollution brochure developed by 12-year-old Girl Scout Keziah Salter earlier this year.

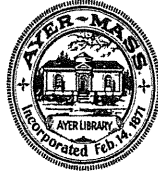


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- Ms. Stoddart, Ms. Nehring, and Ms. Tordella-Williams all spoke in support of having copies of Ms. Salter's brochure available to hand out at Town Meeting, as well as available at PACE's table.
 - Ms. Tordella-Williams said putting articles/photos into Action Unlimited is a great way to spread the word as well, and it's free.
 - Per Ms. Antonellis' request during the conference call earlier, regarding the question of asking the Town to authorize Town Counsel to look into how the local wetlands bylaw and regulations could be revised re fertilizer use, GB moved to ask the Town to authorize Town Counsel's effort in that regard; MP 2nd.
 - Motion approved unanimously.
 - GB moved to close the Public Hearing; MP 2nd.
 - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – West Main Street Right-of-Way Infrastructure Improvements, Ayer Department of Public Works (DPW)**
 - Assessor's Maps 32, 38 & 39
 - Town Engineer Van Schalkwyk remained present.
 - ConCom members performed a site walk on Tuesday, 9/21.
 - Because of a little more work in the Willow Brook area, the issue of whether this should be under an RDA or under a more formal Notice of Intent was briefly discussed, with ConCom members agreeing the RDA submission was sufficient if conditions were attached.
 - The addition of more tree planting was also discussed along the right-of-way.
 - The current plan detailed 4 new trees, but after discussion, Mr. Van Schalkwyk suggested a standard of one tree on average every 25 ft., between survey station 3100 and 3500.
 - Trees to be 2-3" caliper, species to be determined.
 - The addition of more trees fits with the overall plans of Alan Manoian, Director of Economic and Community Development, to enhance the attractiveness of this primary gateway into Ayer from the west.
 - Another condition will be added that a revised plan showing upgrades to the erosion controls be provided to ConCom.
 - GB moved to issue a Negative Determination of Applicability, with conditions as discussed above; MP 2nd.
 - Motion approved unanimously
- **Discussion: Beaver dam at Shaker Mill Pond inlet off Shaker Road.**
 - While Mr. Van Schalkwyk was still present, CA reviewed the very recent clearing of the beaver dam at the Bennet's Brook inlet to the pond.
 - CA had authorized the DPW to clear this dam several weeks ago, ahead of some heavy rain events.



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- This clearing (along with pipe shortages for a flow-control device) then delayed the installation of a beaver deceiver since a dam must be in place for the flow-pipe to be installed.
- In the interim, a substitute pipe (see the corrugated pipe mentioned above under Payables) was ordered for use by Beaver Solutions once the beavers have rebuilt the dam.
- CA stopped by earlier in the week to check on the beavers' progress, in hopes of scheduling Beaver Solutions soon, but found that the beaver dam that was being rebuilt had been cleared yet again.
 - Mr. Van Schalkwyk was clear that this wasn't the DPW, which doesn't have tracked excavator equipment anyway.
 - CA contacted Dan Aho, developer for the adjacent Shaker Mill Pond OSRD subdivision.
 - After checking, he called CA back and was able to ascertain that the project manager for the subdivision had had their track equipment used to take down a small part of the dam for the company just now starting to work on the horizontal directional drilling project to connect utilities to the subdivision (see MassDEP # 100-0454).
 - Instead of a small part, it looks as though the entire dam was taken down at that time.
- The use of signage to deter further illicit beaver dam clearing will be used.
- **Continuances : ANR Lots and "Panther Place" OSRD subdivision, 0 Washington Street, Northeast Site Development, Joseph Levine**
 - Opened under the Wetlands Protection act and Ayer Wetlands Bylaw, the following Public Hearings were continued at the request of the applicant:
 - **Notice of Intent (NOI) (cont'd.) – 0 Washington Street, Lot A, MassDEP # 100-0461**
 - Assessor's Map 13, Parcel 14
 - **Public Hearing (cont'd.): NOI – 0 Washington Street, Lot B, MassDEP # 100-0462**
 - Assessor's Map 13, Parcel 14
 - **Public Hearings (cont'd.), 13 NOIs – 0 Washington Street, "Panther Place" OSRD subdivision**
 - Assessor's Map 13, Parcels 12, 13 & 14:
 - Lot 1, DEP # 100-0463
 - Lot 2, DEP # 100-0464
 - Lot 3, DEP # 100-0465
 - Lot 4, DEP # 100-0466
 - Lot 5, DEP # 100-0467
 - Lot 13, DEP # 100-0468
 - Lot 14, DEP # 100-0469
 - Lot 15, DEP # 100-0470
 - Lot 16, DEP # 100-0471



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- Lot 17, DEP # 100-0472
 - Lot 19, DEP # 100-0473
 - Lot 20, DEP # 100-0474
 - Lot 21, DEP # 100-0475
- Accordingly, GB moved to continue all of the above Public Hearings to 10/14/2021; MP 2nd.
 - Motion approved unanimously.
- Scheduled Discussion of the subdivision's permitting process and timetable for ConCom managing the 13 OSRD NOIs was similarly postponed, given neither applicant nor representatives were present.
 - In addition, as food for thought for ConCom's next meeting on this, CA said Attorney Alex Parra, for the applicant, was floating the idea of ConCom issuing a simplified general OOC for each of the 13 lots, while specific details for each lot would be accounted for in the plans instead of the OOC.
- **Public Meeting: Request for Partial Certificate of Compliance (PCOC): -- Off Shaker Road, "Shaker Mill Pond" OSRD subdivision, Dan Aho and Joel Aho, Trustees of Ayer Harvard Nominee Trust, MassDEP # 100-0437**
 - Assessor's Map 36, Parcel 18 & Map 43, Parcel 3
 - When this subdivision began its multiple permitting processes (Planning Board, ConCom) several years ago, Dan Aho had had to purchase an existing house and lot on Shaker Road, to the right of the subdivision entrance, in order to facilitate a minor landswap that would make the subdivision work.
 - As a result, a tiny nub of land, a 15' x 50' rectangular strip, was included under the OOC for the subdivision that shouldn't have been.
 - Mr. Aho requested a partial COC to release this strip from the OOC.
 - No work on the subdivision will affect this strip.
 - GB moved to issue a PCOC for 100-0437, as described above; MP 2nd.
 - Motion approved unanimously and the COC was signed.
- **Emergency Certification: 8 Standish Avenue, Colleen and Ron Krieser**
 - Assessor's Map 15, Parcel 48
 - Around 5:30 a.m. on the morning of Monday, 9/13, a powerful lightning bolt struck a tall white pine on the edge of the bank to Sandy Pond, less than 30 ft. in front of the Krieser house.
 - The bolt was so powerful that it not only damaged the tree but caused the house to fill with electrical smoke from damaged wiring – along with some nearby houses also suffering limited electrical damage.
 - Flagg Tree Services was engaged later that morning and ascertained that the tree could come down at any time and therefore needed to be taken down safely ASAP.
 - To access the tree, Flagg would also unfortunately need to take down two nearby healthy trees.

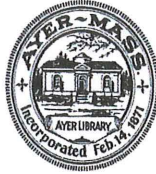


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- After a call from Assistant Town Manager Carly Antonellis, and after consultation also with GB, JG gave emergency authorization for this work to commence (CA being on vacation).
 - GB moved to approve and sign the Emergency Certification after-the-fact; MP 2nd.
 - Motion approved unanimously and the form was signed.
- **Discussion: Administrative Approval process**
 - JA and CA have been going over the draft following ConCom's previous discussion and edits on 9/9.
 - Additional changes were made, including changing it to a 2-sided document that homeowners will fill out on one side, providing a drawing as well, and CA will fill out on the other side.
 - The document will be made available on ConCom's website, in a printable pdf form.
 - Per GB's previous suggestion, once ready, ConCom will hold a Public Hearing on this in order to put it into its local wetland regulations.
- **Discussion: Draft ad for temporary part-time assistant for Conservation Administrator**
 - MP's revised drafts were reviewed and edited.
 - MP will incorporate the additional edits and then forward to Town Manager Pontbriand for the next step.
- **Discussion: Remote Participation or In-Person Meetings through April 1, 2022**
 - This discussion was rendered irrelevant as the Select Board voted at its 9/21 meeting that, in light of the continuing COVID pandemic, it would mandate that all boards begin meeting remotely starting the following Monday (9/27), via Zoom and broadcast, through to April of next year.
 - ConCom's next meeting, on 10/14, will therefore be held via Zoom.
- **Conservation Commission Office and Member Updates**
 - Office workload
 - Due to the many, many projects needing oversight, CA said she has been having trouble keeping up with inspections and enforcement.
 - Of note, the Enforcement Order on the Buddhist Temple off Fitchburg Road needs to be pursued.
 - Alltown is installing solar panels on its canopy, but has been storing materials in the buffer zone.
 - Ayer Solar II has already had a breach of its erosion controls in its first week of work.
 - Regarding the Solar II breach, CA contacted Rohit Garg on this following notification from the Environmental Monitor for the project.
 - A temporary fix has been employed but a more robust engineered solution will be needed.



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- Sign project
 - After reviewing an initial sign design, CA asked MP and GB to provide some additional guidance to the designer.
- Canoe/kayak access to Sandy Pond
 - CA referred back to a discussion earlier in the summer with Parks Director Jeff Thomas, about perhaps considering a spot to the right of the volleyball court for creating boating access.
 - CA said that since there is parking right there, and it is ADA accessible, it might be that this location is a project that the State could fund through its boating access program.
 - She will contact Doug Cameron, Director of the Office of Fishing and Boating Access, about this.
- **9:01 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: _____

10/14/2021 *Jessica G. Gugino*