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AUG 30 2018



TOWN OF AYER
TOWN CLERK

12:50 PM *lf*

Town of Ayer Conservation Commission

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

Minutes for 8/9/2018

Location: Ayer Town Hall, 1st Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Jon Schmalenberger (JS, Member), Jo-Anne Crystoff, (CA, Conservation Administrator)

APAC taped: Yes

7:10 PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm the agenda as posted; BT 2nd.
 - Motion approved unanimously.
- **NOTE:** To accommodate member absences, ConCom's September meeting schedule was changed from September 13 and 27 to September 6 and 27.
 - JG will have this change posted to the Town website and arrange for the change in room reservation as well.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Diesel Direct (Adam Nataupsky), Oil Spill Cleanup, Page Hilltop School, 115 Washington Street, MassDEP # 100-0425**
 - Assessor's Map 13 & Map 20, Parcels 13-11, 13-42, 12-158, 12-159
 - MassDEP Release Tracking Number 2-20459
 - Gregory Morand, the LSP (Licensed Site Professional) from Omni Environmental Group LLC (OEG), was present on behalf of Diesel Direct.
 - Also present in the audience was Brian Snow, the LSP for Calvin Moore's Riley Jayne Farm subdivision.
 - The draft Order of Conditions (OOC) was reviewed in light of comments received late in the day from Mr. Morand, as well as earlier comments from Commissioners.
 - Comments received from consultant Paul McManus, of EcoTech, were already incorporated into the latest draft.
 - As the draft and comments were reviewed, the following changes/additions will be made to the Final OOC:
 - #2 – per GB, the NHESP requirement of a turtle protection plan will be cited here.
 - #11 – the project will need to stage bypass pumps and generators within the resource area, on high-density black mats, but with white spill mats on top of the mats for easy detection.
 - #17-c – The Method of Procedures (MOP) will have to be revised as the cleanup proceeds and actual conditions/needs are made clear.
 - #17-d – to expedite the project, notification of CA for erosion control inspection is reduced from 7 days prior to 3 working days prior.
 - #17-f – construction tape can be used to demarcate the survey-located Limit of Work (LOW) in most places, but the Commission asked that orange construction snow fencing still be used behind the houses at Nashua Street Extension, and at the drain pipe outfall.
 - #20 – once an access path is created, the site will need to be walked to identify where existing invasive species may be a problem/risk for spreading during the cleanup.



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- #22-e – weekly and storm-related monitoring of the erosion controls will be done by the Environmental Monitor, Mr. Morand said.
- #27 – Mr. Morand did not anticipate storing piles of clean material, and contaminated material is to be hauled off site.
 - This Condition will be amended to indicate that any temporary clean soil stockpile that remains over 15 days can be covered with a tarp; CA must be contacted about any pile that will remain over 30 days; and no temporary storage pile is to remain on the site beyond 60 days.
- #28 – given the existing down-gradient channel bypass system planned, this Condition will be amended to say that “there shall be no additional direct discharge,” apart from the approved bypass system, into resource areas beyond that already reviewed and referenced in the cleanup plan.
- Project Specific (yet to be numbered – this will change numbers for currently-numbered Conditions following) –
 - GB added note that any further/additional down-gradient work shall require new review and approval by ConCom with respect to the Restoration Plan (yet to be developed).
 - Wording in the ‘Limited Project’ provision will be clarified to read:
 - ‘In accordance with “limited project” provisions at 310 CMR 10.53(3)(q), remediation beyond that required to reach a condition of “no significant risk” as defined by the Massachusetts Contingency Plan (310 CMR 40.00) shall not be conducted. Additional remediation solely to reach a background level will require an unacceptable disturbance of the wetlands, and is not approved by this Order of Conditions.’
 - Mr. Morand asked for a clear standard to establish what qualified as a “heavy rain event” in order to ascertain when 24/7 monitoring of the pump systems will be required.
 - The primary pump will always be on; the secondary pump is a float-activated automatic pump; the tertiary pump requires someone to manually turn it on.
 - BD said the pumps will have to be checked during the first couple of major storms in order to evaluate the actual capacity of the pumps to handle the stormwater flow.
 - Given the unpredictability of New England weather, there is no easy way to ascertain a fixed standard.
 - The Condition requiring that monitoring of the restoration growth take place in autumn 2019 and 2020 is a two-year State standard and cannot be adjusted per Mr. Morand’s suggestion that two years was “excessive.”
- #34 – This will include reference to pre-approved areas.
- #39-41 – as suggested by Mr. McManus, none of these are applicable to this project and will be stricken.
- Regarding the access agreements with affected property owners that have been the subject of much discussion over the past many weeks, agreements have been reached.
 - Most signatures have been received, and the rest are anticipated to sign soon.
- From the audience, Brian Snow wanted to make sure that comments made by Mr. Moore’s lawyer, Mr. Marsh, had been incorporated into the draft OOC.



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- One in particular, required the replacement of Contractor with Applicant in Condition #12, and Owner with Applicant in Condition # 30 and 30-1.
 - These changes were noted and confirmed.
- With the understanding that the edits discussed tonight would be incorporated into the Final OOC, BD asked for a motion to issue the OOC, including amended Special Conditions as noted tonight.
 - GB so moved; BT 2nd.
 - Motion approved unanimously and the signature sheet was signed.
- ConCom will delay closing the Public Hearing until its next meeting, just in case any issues arise with the new final draft OOC before that time.
 - GB therefore moved to continue the Public Hearing to 8/23; BT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI –28 Harvard Road, Global Partners LP, MassDEP # 100-0429**
 - Assessor's Map 35, Parcels 52, 53 & 54
 - Jesse Johnson, of Bohler Engineering (Southborough, MA), was present on behalf of the applicant.
 - The NOI proposes the construction of a gas station & a 4,830 sq. ft. "Alltown" convenience store within the 100-foot buffer zone to wetlands and bank to an intermittent stream.
 - A site walk was done by the Commission (GB, JG, JS, CA), with Mr. Johnson, on Saturday, 8/4.
 - No major issues surfaced at the site walk.
 - Per questions from BT:
 - A number of trees on the Harvard side of the lot, in the 50-ft. buffer, will not be coming down.
 - While existing asphalt in that area will be removed and the area restored with new fill and plantings, the trees will remain.
 - This is in the area for which the project received a Negative Determination of Applicability (DOA) for the portion crossing into the jurisdiction of Harvard's Conservation Commission.
 - The plan indicates an area outside of the new asphalt area that is to be revegetated with grass.
 - Grass will need to be mowed.
 - BT suggested revegetating to a more natural state, not grass, that would require less maintenance and fertilizer.
 - Something like a meadow mix might be suitable.
 - Mr. Johnson said he would raise this with Global and thought they would be open to this.
 - The DPW submitted a number of comments that were then discussed:
 - One comment questioned the adequacy of the sight-lines from the planned clearing along Harvard Road.
 - One substantial tree, adjacent to the headwall and about 5-7 ft. off the side of the road, was suggested for removal by DPW.
 - BD said if public safety/sight-lines were involved, there was no option but to remove the tree.
 - This will have to be confirmed.



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- CA said if the tree does have to come down, then the Commission would ask for a suitable replacement tree outside of the sight-lines area, to which Mr. Johnson agreed.
 - The DPW also noted that runoff is eroding the shoulder of the road and asked if the headwall to the culvert there could be fixed.
 - Mr. Johnson said that Global was unlikely to agree to replacing Town infrastructure, but would probably agree to helping to fortify the existing headwall.
 - He will come back to ConCom with a revised plan that includes this detail.
 - CA asked Mr. Johnson to talk to a landscape architect about the feasibility of putting woody plants/trees at the slope of the swale in the back.
 - A row of robust woody plants here (as well as on the wetland at the front corner) would buttress the slope of the swale and provide a vegetation source to soak up particulates in the air generated from exhaust fumes at the gas station.
 - This would benefit potential air quality issues in an area that abuts an Environmental Justice neighborhood behind the site.
 - The line of woody growth would also help slow down and absorb the stormwater runoff from the hill that will drain into the swale.
 - CA has spoken to Town Engineer Dan Van Schalkwyk about this and he has agreed with her on this.
 - Mr. Johnson will have revised plans ready for ConCom's next applications-meeting, and hoped for a vote to issue an OOC at that time.
 - GB moved to continue the Public Hearing to 9/6; BT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – 0 Sedgeway, Paul Bresnahan, MassDEP # 100-0427**
 - Assessor's Map 15, Parcel 28
 - John Boardman, of Places Associates, Inc., was present on behalf of the applicants, Paul and Louise Bresnahan, also present in the audience.
 - The NOI proposes the demolition and removal of an existing cottage, followed by the construction of a new single-family 2-story house with attached garage, paved driveway and utilities.
 - A site walk was performed by the Commission (GB, JG, JS, CA), with Mr. Boardman and the Bresnahans, on Saturday, 8/4.
 - During the site walk, Mr. Boardman pointed out an area where erosion from Sedgeway has run off to the side.
 - 3-4-inches of sand and gravel sediment has accumulated off the road and into the edge of a wetland.
 - Some of this is on Bresnahan property, and some extends beyond onto another owner's property.
 - Mr. Boardman distributed copies of a revised plan to address the erosion issue.
 - Sedgeway has no formal drainage system and the DPW has indicated there is nothing they can do at this point to improve drainage on a private way.
 - Further up the road, where neighbors are currently parking vehicles across the road on Bresnahan land, Mr. Boardman said they are proposing to construct a stone-lined (6" or less) overflow sediment basin.



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- This will address some of the erosion/runoff problems from the street and contribute to the health of the pond.
 - Maintenance of this basin would be done by the homeowner, although Mr. Boardman said they had the hope that the DPW might take over maintenance at some future time.
- In addition, during the project, Mr. Boardman said they are proposing to clean up the existing build-up of runoff sediment at the edge of the Bresnahan property and into a wetland area at the beginning of the neighboring Richardson property.
 - This would involve removing the sediment, scarifying the existing topsoil, then seeding with a conservation mix and mulching with straw.
 - Mr. Boardman said this would be a matter of a couple hours of work using an excavator to remove the sediment.
 - He resisted the suggestion to install a row of haybales in this area.
 - If a row was installed at the property line, this would make it impossible to clear out the accumulated sediment beyond that point.
 - He also anticipated that this work would be closely observed, either by himself or CA.
 - BD said that as long as the sediment basin further up was installed beforehand, then this should be fine.
- GB moved to proceed with drafting and issuing an OOC for 100-0427; BT 2nd.
 - Motion approved unanimously.
- GB moved to continue the Public Hearing to 9/6; BT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – 186 Littleton Road, Brent Routhier, MassDEP # 100-0428**
 - A site walk was performed by the Commission (GB, JG, JS, CA), with Kyle Burchard, of Goldsmith, Prest & Ringwall, on Saturday, 8/4.
 - Since then, for reasons unknown to the Commission, the NOI proposing construction of a 40 ft. x 60 ft. detached garage was withdrawn by the applicant.
 - The Public Hearing was opened for the sole purpose of closing the Public Hearing for 100-0428 due to the applicant's having withdrawn the NOI.
 - GB so moved; BT 2nd.
 - Motion approved unanimously.
- **Discussion: Enforcement Order (EO) – 77 Woodland Way (Lot 68), Ridge View Realty Trust, MassDEP # 100-0408**
 - Assessor's Map 36, Parcel 110.
 - Steve Mullaney, of S. J. Mullaney Engineering, and Duke Pointer, of Ridge View Realty Trust, were present.
 - To summarize, the Building Commissioner, Charlie Schultz, was asked to issue an Occupancy Permit for 91 Woodland Way (Lot 69), for immediate occupancy that night after the sale closing.
 - On inspection, Mr. Schultz learned that the foundation drain for the house on Lot 69 ran off this lot to discharge onto the adjacent lot, where an easement had just been recorded.
 - While Lot 69 is not jurisdictional to ConCom, the adjacent Lot 68 has an open OOC on it (100-0408).



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- ConCom had not been previously notified about this drainage change, nor the proposed drainage easement, nor its recording at the Registry, all for new work taking place on a lot under its jurisdiction.
 - This led to the issuance of the EO.
- Mr. Mullaney said the Trust (Ridge View) was told by its subcontractor (Arthur Pyburn & Sons) of the need to position the house on nonjurisdictional Lot 69 differently, including switching sides for the driveway.
 - This, in turn, changed drainage plans.
- BD said it was unfortunate that more water was now being put onto a lot which has an open OOC on it, and that ConCom was the last to find this out.
- At BD's request, Mr. Pointer said riprap stone would be put down where the drainage pipe daylighted to slow down the velocity of exiting water.
- CA spoke to DEP Circuit Rider Judy Schmitz about this as well.
 - On the plus side, adding extra clean water to an area close to wetlands is likely to cause the wetlands themselves to expand, which is a good thing from DEP's perspective.
- CA also said that DEP suggested an NOI-after-the-fact to address the work done.
 - Mr. Mullaney asked why this could not be a more simple Request for Determination of Applicability (RDA).
 - BD asked CA to contact Ms. Schmitz based on this conversation, with Mr. Mullaney copied on the email so that he could then reply directly to Ms. Schmitz on this question.
- Finally, with a drain having been placed on a jurisdictional property outside of ConCom's process, BD asked for a motion to ratify the EO.
 - Mr. Mullaney asked that the EO be clarified so that Richard Roper's name was removed as the violator.
 - Mr. Roper is one of 4 members of the Ridge View Realty Trust, although only his name, along with Ridge View, appears on the original NOI/OOC for 100-0408.
 - Mr. Mullaney also asked that the name of the violator be listed as Pyburn & Sons, since they were the ones to perform the work relocating the drain pipe.
 - While Pyburn may have done the actual work, BD ascertained that it was nevertheless under the knowledge, if not guidance, of Ridge View.
 - Therefore the name of the violator on the EO should be changed from Richard Roper to Ridge View Realty Trust AND Arthur Pyburn & Sons together.
 - GB so moved to ratify the now-amended EO; BT 2nd.
 - Motion approved unanimously and the EO was signed.
- **Public Hearing: NOI – 273 Woodland Way, Ridge View Realty Trust, MassDEP # TBD**
 - Assessor's Map 36, Parcel 185
 - Mr. Mullaney and Mr. Pointer remained present on behalf of Ridge View Realty Trust.
 - BD, who will be resigning from the Commission at the end of tonight's meeting, recused himself from new business.
 - Vice-Chair GB took over for this Hearing.
 - This site was last walked by ConCom on 11/4/2017, after which the Commission issued a Negative DOA for an RDA for work in the buffer zone more than 50 ft. from wetlands.
 - The purpose of now applying for an NOI was to secure approval for the option of building one of eleven different house styles on this lot.



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- As pertains to this discussion, as well as the three following discussions re Requests for Amendments to OOCs, Mr. Mullaney explained the significant changes to the housing market that have occurred.
 - While the market for starter homes, and then larger second homes, has gone down, the market for 'baby-boomers' with newly 'emptied nests' has gone up.
 - This market seeks to downsize into single-level living that they can age well in.
 - The new housing demand is therefore for single-level living in houses with, therefore, larger 1-floor footprints than a 2-story+ would require.
 - This is the reason for the 11 different house styles that the applicant is seeking approval for under this NOI.
 - This gives Ridge View Realty the flexibility to offer multiple house style options to potential home buyers, as well as to cope in a timely manner if the buyer suddenly changes to a different style prior to construction.
- Mr. Pointer said that submitting for approval of eleven potential house styles in one application was his idea as a means of "simplifying" and "streamlining" the process.
 - He said they were trying to find a means of being "sensitive" to the needs of both buyers and the Town.
- Here the discussion branched out to include the subsequent discussions listed on the agenda, asking for amendments to already-existing OOCs to allow for this same flexibility to use eleven house styles.
 - Mr. Pointer called it an "innovative" approach.
 - CA said this was an unusual request and thought DEP should be consulted.
 - Mr. Mullaney said an alternative was to present a composite footprint within which all eleven house styles would fit.
 - GB said that a final plan, committing to one particular house style, would have to be submitted at the time of applying for a Building Permit.
- In the meantime, while CA consulted with DEP, ConCom scheduled a site walk concurrently to review LOW, grade changes, etc.
 - A site walk was scheduled for 8 a.m. on Saturday, August 18, meeting at 273 Woodland Way.
- Mr. Mullaney noted that the recent batch of submittals from Ridge View included 2 NOIs and 9 Requests to Amend OOCs or to Amend Amended OOCs.
 - At that time, Mr. Mullaney responded to a query from CA by placing these applications into 3 groups based on priority.
 - He did not understand that ConCom's new policy (see minutes for 3/22/2018) limited applications to one meeting per month where possible, and to 5 applications at that meeting.
 - Thus, under ConCom's new procedural policy, the 11 total applications would not be heard in a single meeting.
 - In any case, Mr. Mullaney noted the second NOI, which he had placed into a different priority group, and asked if ConCom could walk that site at the same time.
 - GB agreed that ConCom would walk 252 Woodland Way on the 18th as well.
- BT moved to continue the Public Hearing for 273 Woodland Way to 9/6/2018; JS 2nd.
 - Motion approved unanimously.

- **Discussion: Request for Amendment to Order of Conditions, Ridge View Realty Trust**



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130 Woodland Way (Lot 134A), DEP # 100-0275

150 Woodland Way (Lot 135B), DEP # 100-0279

186 Woodland Way (Lot 137B), DEP # 100-0280

- BD returned to the meeting to re-take up the position as Chair.
- Mr. Mullaney and Mr. Pointer remained present for this discussion.
- As before, Mr. Mullaney displayed the chart showing the 11 different house styles for which they want to amend the OOCs to have the flexibility to build whichever one the buyer chooses.
 - Again, the Commission agreed with CA that the unusualness of this request to pre-approve multiple house styles should be run by DEP before proceeding.
 - BD asked Mr. Mullaney and Mr. Pointer if they had ever presented anything like this to another Conservation Commission.
 - The answer was no.
- BD asked if the extent of changes under some of the house styles might trigger a new NOI instead of an Amendment.
 - CA asked if any of the house style options required retaining walls.
 - Mr. Mullaney said a few did.
 - CA said DEP recently had a situation where, under a Superceding OOC, the builder wanted to make some significant changes including the addition of a new retaining wall structure.
 - DEP was asked whether they could just go ahead, or whether they needed to file for an Amendment to the SOOC, or whether they needed to file a new NOI.
 - DEP's decision was that the builder had to submit a new NOI application.
- Since the Commission's new policy is to hold a discussion to decide whether (based on Wetland Policy 85-4) it would even accept a Request to Amend an OOC, versus requiring a new NOI, Commission members were in agreement that this decision should await contacting DEP about the developer's "innovation."
 - However, since this decision would apply to all 9 of the Amendment Requests submitted, the Commission agreed to render this decision for all 9 at its 8/23 business meeting.
 - Then, if approved, the Amendments could be formally considered at the following applications meeting on 9/6 without any loss in time to the applicant.
- However, only 3 of the Amendment requests were on tonight's agenda, and so accordingly:
 - BT moved to continue discussion of 100-0275 to 8/23; JS 2nd.
 - Motion approved unanimously.
 - BT moved to continue discussion of 100-0279 to 8/23; JS 2nd.
 - Motion approved unanimously.
 - BT moved to continue discussion of 100-0280 to 8/23; JS 2nd.
 - Motion approved unanimously.
- If there is time, all 9 of these application sites, in addition to the 2 NOI applications, will be visited by the Commission on 8/18.
 - GB was firm that the Commission would continue its policy of performing site walks to all NOI sites.
- Changes in Commission meeting procedures
 - BD explained changes in procedure to Mr. Mullaney and Mr. Pointer.
 - BD stressed that the Commission is made up of volunteer members with day jobs.
 - With meetings too often extending to 11 p.m. or later, the Commission needed to do something to better control its agendas and meeting lengths.



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- The Commission not only has to review various applications (NOIs, RDA, etc.), but also has other Town business that it must manage (pond management, bylaw update, Conservation Fund, etc.).
 - Hence the decision to dedicate one monthly meeting to applications, the other to Town business.
 - BD noted that the Commission is not technically required to hold two meetings a month, and it would be a shame if the second meeting had to be cancelled to present less confusion to applicants.
 - Mr. Pointer said they were just trying to simplify things for everyone, so there was no need to micro-manage every detail.
 - BD said that, literally, the job of a conservation commission is precisely to micromanage.
 - Mr. Pointer said that there did need to be an element of trust.
 - BD reminded Mr. Pointer than just minutes earlier, the Commission had ratified another Enforcement Order against Ridge View Realty Trust.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 7/26/2018 as written; BT 2nd.
 - Motion approved 4-0 (JS abstained, not having been present).
- **Accounts Payable**
 - Solitude Lake Management: \$10,612.00, interim water testing and booster treatment
 - GB moved to approve payment of \$10,612.00; BT 2nd.
 - Motion approved unanimously.
 - The Sun: \$549.70, legal ads for 6 Public Hearings
 - Page Hilltop Oil Spill (DEP #100-0425)
 - MassDOT Carleton Circle (DEP # 100-0426)
 - 231 Snake Hill Road (DEP # 100-0412)
 - 186 Littleton Road (DEP # 100-0428)
 - 28 Harvard Road (DEP # 100-0429)
 - 0 Sedgeway (DEP # 100-0427)
 - GB moved to approve payment of \$549.70; BT 2nd.
 - Motion approved unanimously.
 - W. B. Mason: \$12.68, office supplies
 - GB moved to approve payment of \$12.68; BT 2nd.
 - Motion approved unanimously.
- **Conservation Commission Office Updates**
 - Nonacoicus Brook
 - The mysterious milky color to water in the brook has cleared up.
 - Rosewood Avenue Extension (DEP # 100-0388)
 - Mike Lotti, of Industria Engineering, finally got back to CA.
 - He will be taking care of the replication area this planting season.
- **Member Updates**



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- **Bill Daniels Resignation**
 - After 15 years of serving on the Commission, BD turned in his formal resignation as he makes plans to move out of the area.
 - The Commission will miss him and wishes him well.
 - GB, as Vice-Chair, will open the next ConCom meeting after which the Commission will reorganize.
- **10:20 PM – Adjourn Meeting**
 - GB moved to adjourn; BT 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

8/23/2018

Signature Indicating Approval: _____

Jessica G. Gugino