

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

Location: Ayer Town Hall, 2nd Floor

<u>Present</u>: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Takashi Tada (TT, Member), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk), Brian Colleran (CA, Conservation Administrator)

APAC taped: Yes

7:09 PM – Open Meeting

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- Confirmation of Agenda
 - GB moved to confirm the agenda as posted; TT 2^{nd} .
 - Motion approved unanimously.
- Approval of Meeting Minutes
 - TT moved to accept the minutes for 3/9/2017 as written; GB 2^{nd} .
 - Motion approved unanimously.
- Public Hearing (cont'd.): Notice of Intent (NOI) Off Groton School Road, Mark Anderson, MassDEP # 100-0399
 - Assessor's Map 3, Parcel 88, Lot #2
 - Mark Anderson was present on his own behalf.
 - At Mr. Anderson's request, and after discussion, ConCom agreed to a change in the Special Conditions to waive the requirement for an engineered as-built drawing at the completion of the project.
 - Mr. Anderson didn't see the purpose since the NOI only covers the clearing of the front of the lot and the driveway.
 - To request a Certificate of Compliance (COC) later, Mr. Anderson will still have to submit an engineer-signed letter regardless.
 - \circ GB moved to issue the OOC with the above waiver; TT 2nd.
 - Motion approved unanimously.
 - GB moved to close the Public Hearing; TT 2^{nd} .
 - Motion approved unanimously.

• Discussion: Request for Certificate of Compliance, 31 Pingry Way, Mass DEP # 100-0130

- Attorney Philip Eliopoulos, of Eliopoulos & Eliopoulos, represented the applicants, Yusuke Kanamori & Nadia Edoh, who now reside out-of-state.
 - The applicants were the second or third owners of the house, not the original owner.
 - When his clients sold this property in 9/2016, it was discovered that an open OOC was attached to the title.
 - A COC request was filed last fall but CA discovered that initial conditions of the 21-yearold OOC had not been met.
- The OOC was issued in 1996.
 - Correspondence with David E. Ross Associates in 1997 indicated that the house was not built in the planned location and instead encroached into a jurisdictional area.
 - 700 sq. ft. of replication were therefore required, but there is no mention of what form the replication was to take.



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- A request for a COC in 1999 was not acted upon, although the file does not indicate why.
- When CA visited the site in fall 2016, there was no sign of any replication in the specified area.
 It was either never done or had been filled in by a previous owner to the applicants.
- The current COC applicants proceeded with the sale of the house to a new owner last year but agreed to leave \$1000 in escrow to cover costs associated with closing out the OOC.
- BD asked Mr. Eliopoulos to contact the new owner or the new owner's attorney for permission for ConCom to enter the property for a site walk on Saturday, 4/15.
 - Once confirmed, BD asked Mr. Eliopoulos to provide ConCom with the owner's contact information prior to the site walk.
- Discussion: Request for Extension to an Order of Conditions 26 Oak Ridge Drive, Roger Kanniard / R.D. Kanniard Homes, Inc., MassDEP # 100-0368
 - The applicant was not present at the beginning of the discussion at approximately 7:30 p.m.
 - Multiple efforts were made to check with a Board of Selectmen meeting on the first floor, to see if the applicant had gone there by mistake.
 - \circ The original OOC was issued in 2013 but expired on 3/13/2017.
 - The request for an extension came in prior to the expiration date.
 - Numerous neighbors and abutters showed up for this ConCom meeting.
 - Immediate abutter Carol Daley, of 24 Oak Ridge Drive, said she had been unaware of there being an OOC until marker flags appeared on the next-door site on 3/9/2017.
 - CA said it appeared that the original NOI missed this abutter.
 - CA also indicated that consultant Steve Sears, of David E. Ross Associates, representing Roger Kanniard, said the property at 24 Oak Ridge had changed ownership at a later date.
 - BD indicated that the Commission did not wish to proceed with any discussion until the applicant or representative was also present.
 - Denise Simion, of 21 Oak Ridge Drive, asked why it could not be discussed regardless and alluded to resident fears of decisions made during secret meetings.
 - While she did not say this in reference to ConCom specifically, BD made very clear that the Conservation Commission does not, and has never, made permitting decisions in any setting other than public, open meetings.
 - In addition, if an abutter notification was missed, which remains a question, BD said this would have been an honest mistake since applicants now pay to get official abutter lists from the Town Assessor's office.
 - BD said discussion could continue this evening if the applicant showed up prior to 9:15, as posted on the agenda.
 - He assured residents present that if the applicant did not show up, the NOI process would have to be started all over again.
 - This would require new notice to abutters for a new cycle of Public Hearings.
 - Later: at approximately 9:15 p.m., with the applicant not having shown up, BD asked CA to tell the concerned residents that the Commission would now regard the original OOC as having expired and would require a new NOI with associated abutter notification and Public Hearing notice if work was to move forward.
 - CA had prepared a COC form for ConCom to sign indicating that no work had been performed under the now-expired OOC at 26 Oak Ridge.
 - GB moved to issue an invalid OOC using the COC Form 8B mechanism; TT 2^{nd} .



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- Motion approved unanimously and the form signed.
- Discussion: Ayer 1 Solar, Prometheus Power Group, LLC, Construction error within buffer zone
 - Location: Assessor's Map 3, parcels 2 and 50 northeast of the end of Rosewood Avenue.
 - Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), was present.
 - This project was approved a year ago under an RDA at ConCom's 2/11/2016 meeting.
 - After recent conversation with nearby residents at a Planning Board meeting, GPR was made aware that their engineered survey plan had not factored in the riverfront buffer zone to James Brook.
 - As a result of this mistake, approximately 39,000 sq. ft. of mature forest was cleared within the 200 ft. riverfront buffer zone.
 - Fortunately, even though the trees were stumped, the forest floor remains intact.
 - GPR immediately notified BD of the issue and has since reconfigured the location of the northern solar array to move it away from the riverfront buffer.
 - The curve of the access road has been adjusted to compensate for this change.
 - GPR will be filing an NOI with a proposed restoration plan for the area that shouldn't have been cleared.
 - At ConCom's 3/9 meeting, GPR also brought up that the contractor would now like to clear an additional area of trees in a non-jurisdictional area to eliminate shading on the relocated panels.
 - Because of the construction error, however, GPR wanted to consult with ConCom on this as well.
 - A site walk with Mr. Burchard, BD, GB, and JG took place on Saturday, 3/18, to inspect the area of clearing as well as the proposed additional trees to be removed.
 - A natural basin / depression was observed in the northwest corner, within the wronglycleared area inside the riverfront buffer.
 - If GPR puts in a small-load diversion dike here, this will facilitate water draining into the depression and allow sediments to settle out before reaching wetlands.
 - No issues of concern were seen on the east side of the wrongly-cleared area.
 - Mr. Burchard addressed CA's concern regarding a darkened area observable on GIS photos.
 - This shaded area is caused by debris having collected at the tow of sloped land here; there is no tributary stream to James Brook.
 - Overall, given the pitch of the land away from James Brook (except for the NW corner as noted above), there was felt to be no need for a Cease & Desist to continue.
 - ConCom members were in agreement that the project can now move forward with the changes as described above.
 - Ken Diskin, of 180 Washington Street, raised his concern that the original clearing for the solar array was approved under an RDA that did not require abutter notification.
 - He worried that the neighbors, whose view was disrupted by the area of wrongful clearing, would not be afforded the opportunity to give input to the new plan.
 - To allay Mr. Diskin's concern, BD reiterated that the restoration plan referred to in this meeting was preliminary.
 - To finalize it, an NOI will have to be submitted by GPR.
 - This requires abutter notification and Public Hearing notice.
 - BD asked that GPR commit to filing the NOI by the end of April and Mr. Burchard agreed this was do-able.
 - Regarding the additional trees to be taken down in the non-jurisdictional strip of land:
 - Trees 5 in. or greater in diameter have been painted for removal.

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Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- BD has re-inspected this area; BT also made a separate visit to observe the area on her own.
- No stumping or clearing will be done in this strip of land; lower growth will be left in place.
 - Branches from removed trees will also be left to facilitate the regrowth of understory and provide extra vegetative protection.
 - This will enable the strip to retain its runoff filtering function.
- CA asked about the erosion controls used for the Rosewood Avenue access road to Ayer 1 Solar.
 - The OOC for the access road (MassDEP # 100-0388) specifies the use of compost socks for erosion controls, however the project is currently using traditional haybales.
 - BD said CA should be making weekly field visits to the site.
 - If haybales are getting the job done adequately, then leave them.
 - If at any point they are not performing their erosion control function, then ConCom can ask for more stringent controls.

• Enforcement Order (EO): Riley Jayne Farm LLC, Pleasant Street, MassDEP # 100-0389

- C. J. Moore (applicant), Calvin Moore, and Sean Fournier, of Onyx Corporation, were present.
- ConCom performed a site walk on 3/11/2017 with Nick Pauling, of GPR, to look at Riley Jayne subdivision lot 13.
 - A separate NOI for lot 13 has been filed (see below 7 Trevor Trail, MassDEP # 100-0400).
 - When this application process is complete, a COC will be requested to remove this lot from the subdivision's general OOC (100-0389).
 - In preparing the new NOI for lot 13, which proposes an expanded limit of clearing from that approved under 100-0389, GPR became aware that the erosion control line for lot 13 had not been laid out according to the GPR plans approved under the OOC for the subdivision.
 - Once the OOC was issued, Onyx Corporation took control of the site from GPR.
- An EO, with a Cease & Desist, was issued for work on the entire subdivision until ConCom could confirm that the erosion controls on the rest of the site had been laid out accurately as per the approved plan.
 - Mr. Fournier said Onyx was responsible for layout of the project and said they had gotten turned around from the GPR plan.
 - As a result of this mistake in erosion control line layout, too many trees were cleared on lot 13 as well as some additional spots in Phase I of the rest of the subdivision.
- Corrections have now been made to the layout of Phase I and GPR has inspected for accuracy.
 - Onyx plans to have GPR check and confirm their layout of Phase II as well.
- BD asked that Onyx have GPR figure out the rough square footage of incorrectly removed trees so that they can calculate the amount of replication that will be needed to address Onyx's mistake.
 - GPR should also be able to advise Onyx of the most suitable location(s) in the project for this mitigation.
 - BD asked that this be put on ConCom's 4/13 agenda and that someone from GPR present the replication plan.
- In answer to GB's question, BD said an amendment to the OOC for 100-0389 will need to be done to account for these changes.



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- TT said ConCom needed to vote to ratify the EO.
 - He also said ConCom should require that the replication be done in a timely manner.
 - Under normal circumstances, ConCom would require replication to be done at the beginning of a project.
 - TT asked that GPR advise on the optimal time for doing this replication and that ConCom require assurances so that completion of the replication does not fall by the wayside.
- BD asked for a motion to ratify the EO for 100-0389, noting that this would commemorate the discussion of the need for replication, and with the expectation that GPR will present a replication plan at ConCom's 4/13 meeting.
 - GB so moved to ratify the EO as discussed above; TT 2^{nd} .
 - Motion approved unanimously.
- GB moved to lift the Cease & Desist; TT 2^{nd} .
 - Mr. Fournier said the immediate work going forward would be to finish putting in filter tubes (erosion controls) as well as to finish installing sewer manholes to access the sewer pipe that is already in.
 - This would complete the work in Phase I.
 - Motion approved unanimously.

• Public Hearing (cont'd.): NOI – 7 Trevor Trail, Joseph D. Ambrosia, Jr., MassDEP # 100-0400

- Riley Jayne Farm subdivision lot 13, formerly 114 Pleasant Street; Assessor's Map 12 & 13, parcels 9 & 106
- CA said that Mr. Pauling, of GPR, is revising plans for this NOI.
- GB moved to continue the Public Hearing to 4/13; TT 2^{nd} .
 - Motion approved unanimously.
- Public Hearing (cont'd.): Notice of Intent (NOI) Water Main Extension, Ayer Department of Public Works (DPW), MassDEP # 100-TBD
 - o DPW Superintendent Mark Wetzel and DPW Town Engineer Dan Van Schalkwyk were present.
 - With the applicant's agreement, JG recused herself from participation but remained present for taking notes.
 - Mr. Van Schalkwyk met with a representative from the Natural Heritage & Endangered Species Program (NHESP) on 3/21 to discuss the issues raised by Misty-Anne Marold, of NHESP, in a 3/9/2017 email.
 - Ms. Marold was unable to attend the NHESP meeting that day.
 - DPW is putting together a contingency "frac-out" plan for NHESP in case there is an accident involving the Horizontal Directional Drilling (HDD) project.
 - DPW will provide additional details on the HDD process to NHESP next week as well.
 - The Deed Restriction actually does mention the installation of a water line and therefore does not need to be amended.
 - Mr. Schalwyk will reconfirm this with Ms. Marold.
 - The Conservation Restriction, which cites a water main right-of-way, is in draft form and proceeding through the approval process.
 - As requested by NHESP, the DPW has secured approval for a portion of the installation from the owner of Lot 2 in the Kohler Place subdivision.



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- Mr. Wetzel said that no contractor for the HDD has been selected as the project has not yet gone out to bid.
 - The DPW has, however, been using the well-regarded Henniker Directional Drilling LLC. as consultant during the planning process.
- In answer to BT's question, Mr. Wetzel said that the Town could count on at least 100 years of life for the water main piping to be installed.
- No further action can be taken until NHESP signs off on the project.
- GB moved to continue the Public Hearing to 4/13; TT 2^{nd} .
 - Motion approved 4-0 (JG recused).
- Public Hearing (cont'd.): NOI Community Dog Park, 101 Snake Hill Road, Ayer DPW, MassDEP # 100-TBD
 - Assessors Map 36, Lots 214 and 218. aka "Parcel H-1."
 - Includes a small portion (0.7% -- 2600 sq. ft.) of "Parcel H-2."
 - DPW Superintendent Mark Wetzel and Town Engineer Dan Van Schalkwyk were present.
 CA stepped out of the room for this discussion.
 - Mr. Wetzel addressed a few problems that had occurred during this NOI application.
 - He asked that the Conservation Administrator notify the DPW when it is on ConCom's agenda.
 - He questioned CA's raising of an Article 97 issue after ConCom's 2/23 meeting, as well as CA communicating this issue to the Town Administrator.
 - Article 97 was passed as an amendment to the Commonwealth's constitution with the intention of protecting public lands and easements taken for conservation from other inconsistent uses.
 - Mr. Wetzel felt that CA made a bigger deal out of this issue than was warranted.
 - The dog park is to be situated on Parcel H-1, which came to the Town via an agreement between the Planning Board and the Pingry Hill subdivision development.
 - Parcel H-1 was originally intended for soccer fields but the Parks & Recreation department did not find it a suitable site.
 - The DPW has subsequently secured a grant from the Stanton Foundation to construct a dog park in this location.
 - Because of the geometry of the H-1 parcel, and in order to create ADA-compliant access for handicapped persons, approximately 2600 sq. ft. of the project would extend onto abutting "Parcel H-2."
 - In 2012, Parcel H-2 was deeded by Pingry Hill developer Rick Roper to the Town, via the Conservation Commission, to fulfill the conditions of an EPA fine levied against the developer.
 - Parcel H-2 contains wetlands as well as a permanent drainage easement.
 - Mr. Wetzel said the plan drawings show that only 2600 sq. ft. (.7%) is to be used from H-2 and that this is located within the area recorded as a permanent drainage easement for Pingry Hill.
 - Mr. Wetzel said it was his contention that use of a very small portion of H-2 for the dog
 park was nevertheless consistent with a public, recreational use.
 - In addition, the DPW would be doing plantings as part of the project which would serve to enhance the natural area.
 - BD read from the deed for Parcel H-2 (Bk. 58485, page 529):
 - "All occupation, improvement, use and future development of Parcel 'H-2' shall be prohibited, except that Parcel 'H-2' may be used for low-impact outdoor recreation and educational purposes including hiking, observation of animal and plant life and their



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

habitats, and other forms of outdoor recreational and educational uses which have minimal impact on the natural and scenic character of Parcel 'H-2'....'

- BD noted that the H-2 square footage in question is already cleared because of the easement.
 - ConCom members unanimously agreed that the very small area of H-2 to be used for the dog park was a low-impact outdoor recreational use that was not an inconsistent use, and that this use would have very little impact on the area.
 - BD concluded that the Article 97 issued raised separately by CA had been adequately addressed by the Commission and found not to be an issue.
- Mr. Wetzel is still waiting to hear from David E. Ross Associates about wetland flagging the site of the dog park for a ConCom inspection.
 - A site walk with Mr, Wetzel was scheduled for 9 a.m. on Saturday, 4/1, assuming confirmation that the flagging has been completed.
 - BD asked Mr. Wetzel to email ConCom/CA when the flagging has been done.
- GB moved to continue the Public Hearing to 4/13; TT 2^{nd} .
 - Motion approved unanimously.

• Discussion: Reissue of COC – 50 Snake Hill Road, Lot X-1, MassDEP # 100-0269

- \circ The original is missing from the ConCom files; it was originally signed on 12/10/2015.
- GB moved to re-sign and re-issue the COC for 100-0269; TT 2^{nd} .
 - Motion approved unanimously and the re-issue signed.

• Unscheduled Discussion: Ken Diskin, 180 Washington Street

- Mr. Diskin spoke to his concern about ConCom's issuance of the ORAD (Order of Resource Area Delineation) for MassDEP # 100-0398 (0 Washington Street, Rohit Garg, Triple AE Group LLC).
 - The Public Hearing for this ORAD was also closed on 3/9/2017.
- Mr. Diskin noted that over the course of the ANRAD (Abbreviated Notice of Resource Area Delineation), ConCom required two revisions to the plan originally submitted with the application.
 - Unlike the original plan and the first revision, Mr. Diskin said the revised plan #3217, dated 3/2/2017 and accepted with the issuance of the ORAD, no longer indicated the "paper road" (Old Harbor Road) running through the site.
 - It had been previously noted that issues of ownership of the paper road by abutters will have to be resolved if a project goes forward.
 - Mr. Diskin was concerned that the absence of the paper road on revised plan #3217 would set a precedent that will adversely affect abutter rights in future NOI applications to develop this parcel.
 - Specifically, Mr. Diskin worried that plan #3217 would now define 'the site'.
- BD and TT emphasized that the issued ORAD only applied to confirmation of the wetland flagging done on the parcel.
 - It would not affect property claims over the potentially-disputed paper road as the ORAD is very limited in scope.
- Discussion: Upcoming Ponds Management Work, MassDEP # 100-0293
 - Last summer CA gave BT a pile of file material related to treatment of the ponds.
 - This pile inadvertently contained the extension permit for the original OOC.



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- It was confirmed that the OOC for pond work was extended both by previous ConCom vote (3/22/2012) as well as additional extensions added by two State Permit Extension acts.
 - As a result, the OOC is valid until 2/9/2019.
- CA said the extension may never have been recorded.
 - The difficulty of attaching such a recording to a property/deed was raised, given there is no deed that applies to Ayer's several ponds.
 - BD asked CA to contact Circuit Rider Judy Schmitz for advice.
- CA has been in communication with Solitude Lake Management as well as Jeff Thomas, of the Parks & Recreation department.
 - Details regarding treatment dates, signage to notify residents and out-of-town beach permit holders, boat launch access points to each pond, are in process of being resolved.
- The Board of Selectmen was scheduled to sign the contract with Solitude during its meeting on this same night, 3/23.

• Announcements

- <u>People's Climate March</u>
 - ConCom received a notice from Groton high school student Jacob Llodra, who is
 organizing a roundtrip bus for area residents to attend the People's Climate March in
 Washington, D. C. on Saturday, 4/29.
 - The overnight bus will leave from Tyngsboro on that Friday night (4/28); seats need to be reserved by 4/1.
 - Mr. Llodra asked for ConCom's support which BD and the Commission gave.
 - CA was asked to have the announcement posted to the Town's website and facebook page.
- o Massachusetts Society of Municipal Conservation Professionals Inc.
 - The MSMCP is having its annual meeting on Wednesday, 5/3, in Westborough.
 - Wetland enforcement, along with other topics (i.e. status of bee populations, new trail policy), will be subjects of the meeting.
 - CA said he could use additional training on enforcement practices.
 - BD asked for a motion to approve expending \$25 to cover the nonmember fee for CA to attend this meeting.
 - GB so moved; $TT 2^{nd}$.
 - Motion approved unanimously.

• Discussion: Office Policies and Procedures

- Open OOCs
 - A sample of the letter CA sends out to notify residents of open OOCs, etc., on their parcels was reviewed.
 - The suggestion was made to soften the tone of the letter by including an explanation of why ConCom was sending out such a letter.
 - This should include the notation that it is to residents' advantage to remove existing liens on their property that they might not be aware of especially in the event that they ever plan to sell.
 - CA said one problem with cleaning up the ConCom files was that some OOCs were never properly recorded at the Registry of Deeds in the first place.



Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249 Minutes for **3/23/2017** – Approved 4/13/2017

- BD said that, for the moment, ConCom should focus on the open OOCs that have been recorded.
- o Office Hours
 - CA is still working to resolve childcare drop-off and pick-up schedules with his wife.
 - In addition, while BD suggested a particular schedule for those Thursdays when there is an evening meeting (10 a.m. – 6 p.m. and 7 p.m. – 10 p.m.), CA said he would prefer a schedule that works straight through.

• Conservation Administrator Updates

- o 319 Grants
 - CA asked for Commission approval for him to meet with Bob Hartzel, of Geosyntec.
 - Mr. Hartzel has agreed to assist CA in dropping portions of the Ponds Report into a format that Town Engineer Dan Van Schalkwyk can use in applying for 319 Nonpoint Source Competitive Grants.
 - Geosyntec will not charge for this assistance.
 - 6/2/2017 is the deadline for applying for 2018 grants.
 - The DPW is working to implement the Best Management Practices (BMPs) for watershed protection that were identified in the Geosyntec ponds report finalized in 2016.
 - BD gave CA the go-ahead to meet with Mr. Hartzel for this purpose.
- <u>CA Coursework</u>
 - CA presented ConCom with a 6-month calendar showing courses he would like to take to complete "Field Botany" and "Advanced Field Botany" certificates from the New England Wildflower Society.
 - The Natick Conservation Commission has been paying for these courses up until now.
 - CA is not sure he'll be able to remain a member of that ConCom, and is asking Ayer ConCom to pay for these courses out of its Wetland Fund.
 - \circ The cost of all of the courses combined is \$1583.
 - BD deferred further discussion until he has had a chance to look into this in more detail.
- o Local Bylaw comments
 - BD previously asked CA to have the Town set up a place on its website where residents can send their comments on the Bylaw revision.
 - BD said it would be part of CA's job to periodically review the site for such comments.

• Member Updates

- GB recently learned that the State passed new plant nutrient regulations two years ago.
 - These regulations, overseen by the Department of Agriculture, would apply to the use of phosphorous in fertilizers.
 - GB said the Commission might want to refer to these regulations in our Orders of Conditions.
 - He will email the material (330 CMR 31) to everyone.

• 10:33 PM – Adjourn Meeting

- GB moved to adjourn; TT 2^{nd} .
 - Motion approved unanimously.