



Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for **5/11/2017**

Location: Ayer Town Hall, 1st Floor

Present: Bill Daniels (BD, Chair), George Bacon (GB, Vice-Chair), Takashi Tada (TT, Member), Bonnie Tillotson (BT, Member), Jessica Gugino (JG, Member/Clerk)

Not Present: Brian Colleran (CA, Conservation Administrator)

APAC taped: Yes

7:10 PM – Open Meeting

- **Confirmation of Agenda**
 - GB moved to confirm the agenda as posted; TT 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 4/27/2017; JG 2nd.
 - Motion approved 3-0 (TT abstained).
- **Accounts Payable**
 - Brian Colleran: \$12.08, reimbursement for office supply purchase at CVS.
 - GB moved to approve payment of \$12.08; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Request for Certificate of Compliance (COC) – 12 Patriot Way, John Giaimo, MassDEP # 100-0335**
 - Based on ConCom site visit on 5/6/2017 (BD, GB, BT, JG), ConCom members were ready to proceed.
 - Regarding CA's note, ConCom members affirmed that the backyard was demarcated enough to satisfy the condition of the OOC.
 - GB moved to issue a COC for 100-0335; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Request for COC – FMC Corporation, Bishop Road, MassDEP # 100-0123**
 - The OOC for a project to install 6 monitoring wells was issued in 1994.
 - Inspection of this work is not possible now as its effects are underground and not visible.
 - Based on the fact that ConCom has approved subsequent work on this site with no issues, members were comfortable with closing out this old OOC.
 - GB moved to issue a COC for 100-0123; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Request for Partial COC – 16 Mountain Laurel Way, Scheler Katin & Epstein, P.C., MassDEP # 100-0220**
 - CA has not noticed anything out of line in this development at last visit.
 - The current owner is in the process of selling this house.
 - On the assumption that 16 Mountain Laurel is the same as Lot 24A on the plans, BD said he was comfortable accepting a motion to issue a Partial COC for 100-0220.
 - GB so moved; TT 2nd.
 - Motion approved 4-0 (BT abstained).

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- **Public Hearing (cont'd.): Notice of Intent (NOI) – Water Main Extension, Ayer DPW, MassDEP # 100-0401**
 - As no response has been received from NHESP, GB moved to continue the Public Hearing to 5/25/17; JG 2nd.
 - Motion approved 4-0 (TT abstained).
- **Public Hearing (cont'd.): NOI – 26 Oak Ridge Drive, Roger Kanniard / R.D. Kanniard Homes, Inc., MassDEP # TBD**
 - Roger Kanniard was present along with Kevin Conover, of David E. Ross Associates.
 - The NOI is for construction of a single-family house on a partially wooded lot along the east side of Oak Ridge Drive.
 - ConCom members (BD, GB, BT, JG) did a site walk on 5/6/16 with Mr. Conover and Mr. Kanniard.
 - Mr. Kanniard has now met with Superintendent Mark Wetzel.
 - He will be working with the DPW to coordinate work on the driveway and driveway drainage, given the close proximity of a DPW pump station and catch basin on an easement at the corner of this property.
 - Revised plans show gutters on the house, draining to the high side of the driveway where a swale will now run along the side of the driveway to the street.
 - Mr. Wetzel has indicated that DPW will build up the area around the pump station to further protect the area.
 - Mr. Kanniard said that when the driveway has been graded, prior to applying the basecoat, they are to have Mr. Wetzel check before proceeding further.
 - As discussed on site, the plan shows two retaining walls, but a second one may not be necessary, depending on how it grades out and whether the slope can be stabilized with vegetation.
 - Abutter Carol Lacey asked about the status of abutter notification, as discussed at ConCom's 4/27 meeting.
 - CA's update notes to ConCom said he had checked with the Assessor's office and confirmed that the certified Assessor's list provided to the applicant was correct.
 - Distances were re-measured and confirmed.
 - MGL Ch. 131, section 40, requires notification of abutters within 100 ft. of the property line as the legal minimum.
 - BD asked for a motion to have CA prepare a draft and issue an OOC.
 - The OOC should contain a Special Condition noting that work at the end of the driveway is to be coordinated with the DPW Superintendent, to his satisfaction, and in reference to the revised plan.
 - GB so moved; BT 2nd.
 - Motion approved 4-0 (TT abstained).
 - GB moved to continue the Public Hearing to 5/25; BT 2nd.
 - Motion approved unanimously.
- **Discussion: Ayer Solar 1, Prometheus Power**
 - Mike Lotti, of Industria Engineering, was present.
 - The solar array was approved under an RDA, 2/11/2016; the extension of Rosewood Avenue, including culvert replacement, to access the array was approved under OOC 100-0388, issued 6/23/2016.



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- A minor modification has been requested, for the installation of 5 utility poles in the 100 ft. buffer zone to Bordering Vegetated Wetlands(BVW) – out of a total of 7 poles.
 - The original point for interconnection of the solar array to National Grid’s distribution system has had to be changed because National Grid and Prometheus Power were unable to get permission to cross the Rail Trail, either overhead or underground.
 - The point of interconnection must now be via Rosewood Avenue.
 - As part of the pole installation, approximately 8 trees will need to be trimmed or removed entirely.
 - Mr. Lotti noted that, as part of the original culvert installation project (100-0388), they did not clear the entire area approved under the OOC.
 - The trees being requested for trimming or removal are within the area originally approved for clearing.
 - This modification therefore does not affect the % limit of approved of clearing for the project.
- BD asked, and Mr. Lotti agreed, that the poles be set, the trees then determined to need removing be marked, and that CA be asked to inspect for any potential issues.
- Approval to proceed with this minor modification was granted.
- **Public Hearing: Adoption of Rules for Hiring Outside Consultants**
 - Per MACC, as provided by MGL Ch. 44, section 53G (“Employment of Outside Consultants”), and in accordance with MGL Ch. 40, section 8C and MGL Ch. 131, section 40, conservation commissions may impose reasonable fees for the employment of outside consultants for specific expert services deemed necessary by the commission in implementing its authority and issuing final decisions on applications.
 - Section 53G requires that commissions pass a regulation (rules) relative to the hiring of consultants in order to enable the creation of accounts and dictate how funds are to be handled and disbursed.
 - This Public Hearing was advertised in the Nashoba Valley Voice on 5/5/2017.
 - ConCom reviewed and made minor edits to the draft document provided by CA, “Rules for Hiring Outside Consultants under G.L. Ch. 44, section 53G.”
 - GB moved to adapt the “Rules” document as amended; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont’d.): NOI – Ayer Solar II, 0 Washington Street, Rohit Garg, Ayer Solar II LLC, MassDEP # 100-0403**
 - Assessor’s Map 4/parcel 39, Map 12/parcel 1, and Map 13/parcel 1 & 2.
 - Cal Goldsmith and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), were present on behalf of the applicant.
 - An ORAD (Order of Resource Area Delineation) was issued for parcels 1 & 2 on Assessor’s Map 13 on 3/9/2017 (MassDEP # 100-0398).
 - The NOI proposes construction of a solar array, with access to the array from a lengthy driveway entering the site from Washington Street.
 - On the submitted plan, construction of the lengthy driveway requires 4390 sq. ft. of wetland filling.
 - 310 CMR 10.55 requires that filling of wetlands in an ACEC can only be done as part of a Limited Project, and only for up to 5000 sq. ft. with replication.



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- GPR contends that this project, within the Petapawag ACEC (Area of Critical Environmental Concern), qualifies as a "Limited Project" under 310 CMR 10.53(3).
- At its 4/27/17 meeting, ConCom members agreed, due to the complexity of the project taking place within an ACEC, that this warranted a third-party consultant review.
 - Since that meeting, CA secured 4 consultant proposals for consideration.
- Two documents were reviewed and discussed prior to selection of an outside consultant.
- "Alternatives Analysis for Work Within ACEC, Ayer Solar II Project, 4/27/2017"
 - Highlights included:
 - Six alternatives were presented, representing an evolution of the plans leading to the final plan submitted with the NOI.
 - Another possibility, that of creating access to the array from the west, rather than from Washington Street, was not included because it would have involved crossing the Rail Trail.
 - The State DCR (Dept. of Conservation and Recreation) will not give permission for that access, even temporarily.
 - BD asked GPR to provide ConCom with a written copy of that determination for the files.
 - The six alternatives presented each had different problems:
 - Alternative A would have exceeded the 5000 sq. ft. limit of wetland filling;
 - Alternative B would have provided for no wooded buffer between the solar arrays and abutters to the north;
 - Alternative C involved new grading under the arrays, and still left the driveway running along the back of northern abutters' lots;
 - Alternative D involved cutting into the slope and moving work closer to the wetlands;
 - Alternative E and F did not have sufficient buffer zone to lot 427 for the roadway.
 - Mr. Goldsmith noted that the optimal solution would have been to install a weir at the south end of the wetlands but MassDEP absolutely does not allow this so it was not included as an alternative.
- 5/11/2017 letter from Kyle Burchard, GPR, to Judy Schmitz, MassDEP Wetlands Circuit Rider, re DEP # 100-0403
 - This letter was a point-by-point GPR response to the 5/8/17 issuance of a CERO NOI file number and comments from Judy Schmitz to GPR re the NOI filing.
 - DEP questioned the alteration of BVW within an ACEC that is not allowed unless a project qualifies as a 'Limited Project' and asking for alternative means of access to the solar array.
 - It was noted that the NOI, after submission, was amended to claim "Limited Project" status, and that the Alternatives Analysis was also submitted after Ms. Schmitz's 5/8 comments.
 - Other comments from Ms. Schmitz generating GPR responses dealt with: drainage features; wetland restoration labeling error; wetland plantings on slopes; need for additional erosion controls; flood level calculations; stormwater checklists; annual high groundwater information; stormwater drainage rate



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calculations; treebox filters, need for a longterm Maintenance Plan for vegetation maintenance under the array; and recommendation that herbicides not be used for maintenance on this property.

- GPR's 5/11 responses included attachment of a draft Facility Operation & Maintenance Plan as well as the Alternatives Analysis.
- Outside Consultant Selection
 - Following this discussion, ConCom moved on to review and rank the technical proposals submitted by four outside consultants, followed by opening the respective cost proposals.
 - In the scope of services offered:
 - BSC Group, of Worcester, MA – proposed a site visit, document review (including review of Wildlife Habitat Evaluation, to be conducted by the applicant), letter report, ConCom meeting attendance, supplemental package review.
 - Wetland Strategies & Solutions, of Merrimac, MA – proposed initial review of NOI/plans; site visit; in-depth review of project; report; ConCom meeting attendance if requested re report; ConCom Public Hearing attendance if requested re project application.
 - Patrick C. Garner, Wetland Scientist, of Northborough, MA – proposed site walk; review of NOI, stormwater drainage; written report; technical calls with applicant's engineer if requested; ConCom meeting attendance if requested.
 - Geosyntec Consultants, of Brookline, MA – proposed document review of NOI, plans, stormwater calculations, and alternatives analysis; Technical Memorandum report; presentation of findings at a ConCom meeting. It was noted that the scope of services did not include a site visit.
 - The technical proposals were ranked as follows:
 - BSC Group
 - Wetland Strategies & Solutions
 - Patrick C. Garner
 - Geosyntec Consultants (lack of proposed site visit being the determining factor for placement)
 - After ranking, ConCom members opened the cost proposals:
 - BSC Group: \$9100
 - Wetland Strategies & Solutions: \$2090
 - Patrick Garner: \$2200
 - Geosyntec: \$4700
 - Discussion:
 - The BSC Group proposal was the most thorough and detailed presentation but it was noted that the Wetland Strategies proposal offered a similar scope of services at a much lower cost.
 - Mr. Goldsmith said the Wetland Strategies proposal met the Rules criteria of 'reasonable' cost in his view.
 - JG and BT stressed the importance of an evaluation of the project's impact on wildlife habitat as well as an in-depth evaluation of the project's viability as a "Limited Project" within an ACEC.
 - Both were highlighted and stressed in the BSC proposal.



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- GB agreed the BSC proposal was more in depth but said the Wetland Strategies proposal was adequate for the needs of the Commission.
 - Factoring in the cost differential, BD, GB, and TT voted to select Wetland Strategies & Solutions; JG and BT voted to select BSC Group.
 - ConCom will have CA notify **Wetland Strategies & Solutions** of their selection and ask for the additional cost to be factored in for performing a Wildlife Habitat Evaluation re probable impact.
 - BD asked GPR to conduct the Wildlife Habitat Evaluation for that review.
 - Wetland Strategies will be advised of the importance of the Limited Project evaluation.
 - Wetland Strategies will be asked to schedule its site walk on a Saturday when the Commission can attend as well.
 - They will also be advised, per Mr. Goldsmith, that GPR is willing to talk with them and answer any questions throughout the consultation process.
 - CA will be advised to provide GPR with written notification of the selection of Wetland Strategies, per the newly adopted Rules.
 - Regarding payment of the consultant fees to a Town account prior to services, CA will be asked to check with Town Administrator Pontbriand's office as to whether the Board of Selectmen need to sign off on this consultant agreement or any other steps needed to satisfy Town procedures.
- As to an issue discussed at ConCom's 4/27 meeting, Mr. Goldsmith said GPR had consulted with an attorney who confirmed their understanding of land ownership lines along the abandoned paper road.
 - Resident/abutter Ken Diskin, of 180 Washington Street, disagreed with that interpretation and asked for the identity of the attorney.
 - Mr. Goldsmith said GPR was not required to provide that name and did not do so.
- [Later in the meeting, just prior to adjournment, Mr. Diskin asked if ConCom could have the applicant stake the project's northern property line, in the middle of the disputed path.
 - BD said the property line issue was not within ConCom's jurisdiction and was therefore a separate issue.]
- Having reviewed the Alternatives Analysis, the DEP/GPR comment/response letter of 5/11; selected an outside consultant; directed GPR to conduct a Wildlife Evaluation and the cost for review to be added to the consultant's scope of service, BD asked for a motion to continue the Public Hearing to 5/25.
 - GB so moved; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Request for COC: 31 Pingry Way, MassDEP # 100-0130**
 - With no response from Attorney Eliopoulos thus far, this item will be removed from the agenda until the attorney indicates that the requested work has been done, after which a COC may be issued upon inspection.
- **Discussion: Order of Conditions Database – MrMapper online platform**
 - CA's proposal was previously discussed in greater depth at ConCom's 4/13/17 meeting.
 - Cost for initial upload of the database: \$835; annually an additional \$500/year.
 - ConCom members agreed this was not an expenditure the Commission wished to pursue.



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- **Discussion: Testing Arsenic Levels in Grove Pond Water Chestnuts**
 - Because of the known contamination of Grove Pond, BD said the issue is not just one of understanding the level of arsenic in the water chestnuts there, but also of understanding the complete sequence of steps that would be necessary to deal with it.
 - While the 2016 Geosyntec report on the ponds recommended that this water chestnut infestation at the east end of Grove Pond be removed, the report did not address the issue of how to handle such removal when dealing with polluted waters.
 - BD said responsible removal of would require a Licensed Site Professional.
 - CA previously received a quote from Solitude that they would collect and test 6 plants for \$600.
 - CA will be asked to contact Solitude for an understanding not only of the cost of testing, but of the steps that Solitude would recommend in this situation for the safe and proper removal of what is likely hazardous waste material.
- **Discussion: Signing of COCs**
 - At its 4/27 meeting, ConCom voted to issue COCs for 4 Eagles Nest Lane (DEP # 100-0325) and 6 Eagles Nest Lane (DEP # 100-0323), Canney Brothers Construction.
 - The paperwork was now ready for signature and ConCom members signed accordingly.
- **Discussion: CA Course Request**
 - CA has asked ConCom to pay for 13 courses that will give CA certifications with the New England Wildflower Society.
 - The cost of the courses, total, would amount to \$1566, not counting work hours.
 - In addition, 47.5 hours of all the course meetings overlap with CA's normal work day.
 - The courses are spread out between now and September.
 - JG noted that 3 of the courses involved evening meetings that would take place on ConCom Thursday meeting nights (7/13, 8/10, and 9/14).
 - Thursday meetings are only point of interface between CA and Commission as a whole.
 - BT and BD disagreed with paying for courses during normal worktime.
 - After review of the courses, ConCom members identified two that it could support as beneficial to the CA position and therefore the Town:
 - Basic Wetland Identification; Wetland Plant Identifications.
 - ConCom is willing to pay for both of these courses as well as the approximately 10 work hours overlapping the course meeting times.
 - A 4/14/17 email from Kevin Johnston, Benefits & Payroll Manager, indicated that approved classes during regular work hours are to be submitted in payroll under Pay Code 307 Training.
 - Other courses during work hours can be taken as PTO (Personal Time Off) if CA so chooses.
 - ConCom members do not approve CA missing the three evening meetings cited above.
- **Discussion: Goals and Objectives of the Commission and Conservation Administrator**
 - Owing to the lateness of the hour, the bulk of this discussion will be postponed to ConCom's 5/25 meeting.
 - Changes to be made in the meantime, with the goal of enabling ConCom meetings to proceed more smoothly and efficiently:



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- With Town Hall open until 7 p.m. on Tuesdays, ConCom will ask CA to have complete meeting packets ready for Commissioners to pick up in Town Hall on the Tuesday before meetings.
 - BD asked that material in these packets be annotated (e.g. with sticky notes) to identify to which meeting, hearing, or discussion each document/s pertains.
- Also in those meeting packets, CA will be asked to include a written 'CA Updates' document, similar to the one prepared for tonight, for review prior to the meetings.
 - Additional updates of new developments falling between the preparation of the Tuesday packets and the Thursday meeting will be given orally.
- Regarding CA's Log Book, information included needs to be expanded.
 - For example, field visit notes should specify each individual site visited, and include location, date and time there, names of personnel met on site (if applicable), and observations.
 - These notes should be typed if they cannot be legibly written to a level that would be acceptable, for example, if called for evidence in a court proceeding.
- **Member Updates**
 - TT is anticipating a new job position shortly, resulting in his likely resignation from the Commission.
 - He is looking for replacement possibilities.
 - He will be sorely missed!
- **10:58 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.
- **Documents Referenced During This Meeting:**
 - 3/5/17 letter from Mike Lotti, Industria Engineering, re Solar I
 - Draft: "Rules for Hiring Outside Consultants under G.L. Ch. 44, section 53G"
 - "Alternatives Analysis for Work Within ACEC, Ayer Solar II Project, 4/27/2017"
 - 5/8/2017 CERO NOI file number and comments from Judy Schmitz to GPR, Ayer Solar II
 - 5/11/2017 letter from Kyle Burchard, GPR, to Judy Schmitz, MassDEP Wetlands Circuit Rider, re DEP # 100-0403, Ayer Solar II
 - Outside consultant technical and cost proposals – Ayer Solar II: BSC Group; Wetland Strategies & Solutions; Patrick Garner; Geosyntec
 - Update from the Conservation Administrator, 5/11/2017, including course grid

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

5/25/2017

Signature Indicating Approval: _____

Jessica G. Gugino, Clerk