



Town of Ayer Conservation Commission

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

Minutes for **3/9/2017** – Approved 3/23/2017

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), Brian Colleran (CA, Conservation Administrator)
APAC taped: Yes

7:07 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 1/26/2017 as written; TT 2nd.
 - Motion approved unanimously.
- GB moved to accept the minutes for 2/13/2017 as written; TT 2nd.
 - Motion approved unanimously.
- GB moved to accept the minutes for 2/14/2017 as written; BT 2nd.
 - Motion approved 4-0 (TT abstained).
- GB moved to accept the minutes for 2/23/2017 as written; TT 2nd.
 - 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.
- Mr. Anderson asked whether, after a site walk, an OOC could be ready at ConCom's 2/23/2017 meeting.
 - CA will prepare a boilerplate OOC for his review, to include Special Conditions if there are any, after the site walk.
- A site walk was scheduled for 8:30 a.m. on 3/11/17.
- GB moved to continue the Public Hearing to 3/23; TT 2nd.
 - Motion approved unanimously.

- **Public Hearing (cont'd.): Abbreviated Notice of Resource Area Delineation (ANRAD) – 0 Washington Street, Rohit Garg, Triple AE Group LLC, MassDEP # 100-0398**

- Assessor's Map 13, parcels 1 & 2
- Cal Goldsmith, of Goldsmith, Prest & Ringwall (GPR), was present.
- The final revised plan is in and the Public Hearing ad has been paid for.
 - Flag # 25 has been added; the road name has been corrected; and the plan now shows flags 22 and 22A.
 - The revised plan is # 3217, dated 3/2/2017, job # 151053D.
- The ORAD was deemed accurate per the 3/2/2017 plan.
 - GB moved to issue the ORAD for 100-0398; TT 2nd.
 - Motion approved unanimously and the ORAD signed.
- GB moved to close the Public Hearing; TT 2nd.
 - Motion approved unanimously.



Town of Ayer Conservation Commission

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

Minutes for **3/9/2017** – Approved 3/23/2017

- **Public Hearing: Notice of Intent (NOI) – Water Main Extension, Ayer Department of Public Works (DPW), MassDEP # 100-TBD**
 - DPW Town Engineer Dan Van Schalkwyk was present.
 - Mr. Schalkwyk has spoken with, and received a 3/9/17 email from, Misty-Anne Marold, of the Natural Heritage & Endangered Species Program (NHESP).
 - A number of issues with NHESP have to be addressed before permitting this application can proceed:
 - the project will be installing a new water line underneath a previously undisturbed area identified as endangered species habitat (Blanding's Turtle);
 - the land under which the drilling is proposed was set aside for perpetual protection in conjunction with Kohler Place subdivision (MassDEP # 100-0340);
 - NHESP needs a better understanding of the drilling plan, of hazards associated with horizontal directional drilling, of contingency plans in the event of problems; and of proposed maintenance required for the pipe.
 - the recorded Deed Restriction needs to be amended by the Town to reference the water-line installation;
 - this will require approval from A. J. Bergin (Kohler Place); ConCom, and NHESP;
 - NHESP needs better understanding of where the process stands with Article 97 review, given that the Kohler Place property is currently moving through the approval process for a Conservation Restriction subject to Art. 97;
 - (note: CR includes a right-of-way for the proposed water line extension).
 - Ms. Marold concluded that, pursuant to MESA (Mass. Endangered Species Act), the filing is incomplete pursuant to 321 CMR 10.18.
 - Ms. Marold further recommended that the Applicant withdraw the ENF (Environmental Notification Form) from MEPA review at this time.
 - A consultation meeting with NHESP and DPW, to discuss this permitting further, is scheduled in Westborough on 3/21 at 9 a.m.
 - GB moved to continue the Public Hearing to 3/23; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Request for Certificate of Compliance (COC) – Autumn Ridge Development, Groton Road, MassDEP # 100-0255 and #100-0317**
 - BD and BT met with residents and did a site walk on 2/25.
 - On 3/6, CA visited the site and documented with photos that trees were cleared from the turtle habitat that day, as per ConCom's request during the site visit.
 - In answer to CA's question, BD said there were no ConCom issues with the wetland replication at the project.
 - Based on the turtle habitat being deemed complete, GB moved to approve and issue a COC for 100-0255; TT 2nd.
 - BD corrected the date of issuance on the COC from 2/23/17 to 3/9/17.
 - Motion approved unanimously
 - GB similarly moved to approve and issue a COC for 100-0317; TT 2nd.
 - Motion approved unanimously.

- **Public Hearing: NOI – 7 Trevor Trail, Joseph D'Ambrosio, Jr., MassDEP # 100-TBD**



Town of Ayer Conservation Commission

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

Minutes for **3/9/2017** – Approved 3/23/2017

- Assessor's Map 12 & 13, lots 106 & 9; Riley Jayne Farm subdivision, lot 13.
- Cal Goldsmith, of GPR, was present on behalf of the applicant.
- As previously discussed on 2/14/17, under an RDA meeting, the Applicant is filing a new NOI for this lot.
 - The Applicant will also be requesting a Partial COC for this lot, under the OOC for Riley Jayne Farm (100-0389).
 - This will remove the lot from the subdivision's OOC in order to handle the house construction, which proposes an expanded Limit of Work, independently.
 - This solution option was suggested by MassDEP Circuit Rider Judy Schmitz.
- A site walk was scheduled for Saturday, 3/11, at 8 a.m., meeting with Nick Pauling, of GPR.
- BD asked that GPR update the plan to indicate where soil piles will be located for this lot during construction, and to also mark out where a dewatering basin would go.
- BD also noted that when the roadway gets started, the erosion controls will need to be in place and inspected.
- GB moved to continue the Public Hearing to 3/23; TT 2nd.
 - Motion approved unanimously.
- **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
 - Cal Goldsmith, of GPR, was present.
 - This project was approved a year ago under an RDA at ConCom's 2/11/2016 meeting.
 - Mr. Goldsmith said that the riverfront area to James Brook had not fully been accounted for in GPR's design of the plan.
 - GPR was made aware of this by abutters from Douglas Drive at a recent Planning Board meeting.
 - Mr. Goldsmith said it is now clear that close to an acre (39,000 sq. ft.) was cleared that should not have been cleared.
 - This took place along the north edge of the northern array, where James Brook loops down, resulting in clearing wrongly taking place within 200 ft. buffer zone to riverfront.
 - Mr. Goldsmith said it was fortunate that the land had only been cleared and that no grading work had been done.
 - The forest floor is therefore still intact.
 - In addition, the natural topography here slopes away from the brook, not toward it.
 - GPR did the original property survey and missed this detail, for which Mr. Goldsmith was very apologetic.
 - The brook itself is not on the Applicant's property.
 - The net result of this mistake is that trees were cleared to the edge of the property without realizing that this clearing was taking place within riverfront buffer zone.
 - Mr. Goldsmith acknowledged that GPR is wholly responsible for the plans that they provide to contractors.
 - To correct this significant error, GPR is preparing a restoration planting plan, to include juniper, white pine, red oak, and sugar maples.
 - This would match the mature hardwood and pine forest present before the clearing.
 - GPR is also redesigning the plan to relocate a portion of the solar array and associated clearing outside of the riverfront zone.
 - In addition, the access road has been adjusted as well to accommodate this redesign.



Town of Ayer Conservation Commission

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

Minutes for **3/9/2017** – Approved 3/23/2017

- On behalf of the contractor, Mr. Goldsmith also asked for permission to cut an additional swath of trees (8 or 10 of the tallest) in an area that would affect sun exposure to the relocated solar panels.
 - This area is not jurisdictional to ConCom, but given the construction error under discussion, GPR would like to clear this with ConCom anyway.
- A site visit was planned for Saturday, 3/18, at 9 a.m.
 - BD asked that the site be rough-flagged so that ConCom can evaluate the construction error, and also that the additional trees that the contractor now wants to clear be flagged.
 - Mr. Goldsmith said that Kyle Burchard would walk the site with ConCom, meeting at the end of Rosewood.
- GB and TT identified that one problem to be resolved is how best to handle this on paper.
- BT said she was disappointed the riverfront issue did not get picked up before hand, given that the area is also within ACEC (Area of Critical Environmental Concern).
 - She asked that GPR also reach out to NHESP for advice on any additional remedies.
- Resident Laurie Nehring expressed dismay over the environmental impact and the impact on abutting neighbors.
 - She asked how a professional engineering firm, as well as ConCom, could miss the proximity of James Brook.
- BD said that going forward, ConCom should require Applicants to address the closest rivers/streams to the work proposed in their applications.
 - BD also expressed responsibility for ConCom having missed this.
- Resident Ken Diskin said he was disappointed, noting that he thought ConCom's focus had been more on the NOI for the access road.
- BD said that at the time of the RDA, to the best of ConCom's knowledge, the riverfront did not affect the project, but no one is debating that there was a significant error made.
 - The RDA Meeting was several months apart from the NOI Hearing for the access road.
- In response to a question from Ms. Nehring, property owners are allowed to clear cut to their property line, unless the area is located in buffer zone, and that this allowance is under the purview of the Planning Board.
 - The mistake made here by GPR and ConCom was that they did not realize that clearing to the property line for this project entailed work inside of a buffer zone.
- BD said he would like to hear from Circuit Rider Judy Schmitz for suggestions also on how to handle this situation.
 - ConCom is aware GPR's restoration plan will have to be submitted under a new NOI.
- **Discussion (cont'd.): Public Comment On Draft Local Wetland Bylaw Revision**
 - BD said that ConCom received great feedback from residents and the DPW at its last meeting (2/23/17).
 - Because of this feedback, BD felt that ConCom will not be ready to present the revised Bylaw to Spring Town Meeting, and will therefore spend another few months addressing issues in more detail.
 - Meanwhile, ConCom will continue to take further public comments.
 - BD asked for Town to set up website mailbox for additional Bylaw comments.
 - ConCom will work on addressing issues from comments already received, and will then plan another series of public comment meetings when it is ready to again move forward.
 - JG asked the residents present if they supported the idea of ConCom revising its Bylaw in the first place.



Town of Ayer Conservation Commission

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

Minutes for **3/9/2017** – Approved 3/23/2017

- One resident said yes, especially where clarifications can be made to the existing Wetland Protection Act (WPA).
- At the same time, this resident said that some of the proposed changes looked too onerous.
 - In particular, he noted concerns regarding the clause from the MACC template clause that currently reads:
 - “Other than stated in this bylaw and the regulations of the Ayer Conservation Commission, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131, §40) and regulations (310 CMR 10.00) shall not apply under this bylaw.”
- BT noted that one reason for revising the Town’s Bylaw is that local bylaws, according to the courts, need to be more stringent than the WPA in order to be enforceable.
- Another resident asked for clarification as to what ConCom wants to protect against.
 - TT said two of his main concerns were:
 - addressing the situation where ConCom has previously had several applications with work proposed less than 8 ft. from wetlands.
 - A better bylaw would allow ConCom to establish a reasonable no-build or no-disturbance limit, or require a natural vegetation zone, to protect wetlands.
 - addressing better protection for potential vernal pools.
- Several residents said they would like to see a Bylaw that clarified what could and could not be done by homeowners without consulting ConCom.
 - This included addressing activities like vista pruning, lawn work, plantings, erecting sheds, clearing invasive species, and tree cutting.
 - The balance between protecting wetlands and protecting the rights of homeowners was acknowledged to be tricky.
- Resident Kathleen O’Connor asked for better clarification providing grandfathered protection to homeowners with problems (i.e. construction rubble) on their property that pre-existed their ownership – in order also to protect them from future enforcement actions by a differently-staffed Conservation Commission.
- Resident Harry Zane asked for better clarification on fines.
 - He noted that there might be more incentive for some homeowners to do work without ConCom permitting because resulting fines would be less than paying for engineering services like flagging that would have been required.
- **Executive Session (9:00 PM)**
 - Executive Session pursuant to MGL, Chapter 30A, Section 21A, Exemption #1 (Complaints or charges brought against a public employee) Conservation Agent
 - TT was no longer present for this portion of the meeting.
 - GB moved to go into Executive Session; BT 2nd.
 - CA indicated he had no preference between Executive Session and Open Session.
 - A roll call vote was taken: JG Aye. GB Aye. BT Aye. BD Aye.
 - Motion approved unanimously.
- **11:03 PM – Adjourn Meeting from Executive Session**
 - GB moved to close Executive Session and close Meeting; BT 2nd
 - A roll call vote was taken: JG Aye. GB Aye. BT Aye. BD Aye.
 - Motion approved unanimously.