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2017 JUN 15 PM 1:13

Town of Ayer Conservation Commission

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

Minutes for 5/25/2017

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 Collieran (CA, Conservation Administrator)

APAC taped: Yes

7:06 PM – Open Meeting

- **Confirmation of Agenda**

- TT moved to confirm the agenda as posted; BT 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- TT moved to accept the minutes for 5/11/2017 as amended; BT 2nd.
 - Motion approved unanimously.

- **Announcements**

- CA has completed a first-round draft of the ConCom permits database.
 - Approximately 400 OOCs have been issued total, covering around 1300 parcels.
 - Of those, only about 300 have closed OOCs.

- **Accounts Payable**

- Solitude Lake Management: \$1000, Task 1, file permit applications to MassDEP, re 2017 pond weed treatment.
 - BD asked CA to get copies of Solitude's permit filings.
 - GB moved to approve payment of \$1000; TT 2nd.
 - Motion approved unanimously.
- Solitude Lake Management: \$2500, Task 2, 4/18/2017 pretreatment surveys of Sandy, Flannagan, and Pine Meadow ponds, re 2017 weed treatment.
 - CA said Flannagan had its first treatment on 5/15 but has not heard dates for the scheduled treatments of the other two ponds.
 - The Fire Department replaced the boards in Balch Dam on 5/15, after Flannagan received its first treatment.
 - Given questions raised by ConCom, Solitude is not using the new Clipper herbicide.
 - GB moved to approve payment of \$2500; TT 2nd.
 - Motion approved unanimously.
- Brian Collieran: \$80, reimbursement for Wetland Plant Identification course, New England Wildflower Society, to be paid out of ConCom Wetland Fund.
 - GB moved to approve payment of \$80; TT 2nd.
 - Motion approved unanimously.
- Brian Collieran: \$98.98, mileage reimbursement for field work/site visits (at IRS rate \$.535/mile), January – May 2017, to be paid from ConCom regular budget.
 - GB moved to approve payment of \$98.98; TT 2nd.
 - Motion approved unanimously.



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Minutes for 5/25/2017

- **Public Hearing (cont'd.): Notice of Intent (NOI) – Wright Road Cross-Country Water Main Extension, Wright Road to Sandy Pond Road, Ayer DPW, MassDEP # 100-0401**
 - Town Engineer Dan Van Schalkwyk was present.
 - JG recused herself from discussion but remained present for the purpose of taking minutes.
 - The 5/19/2017 NHESP (Natural Heritage & Endangered Species Program) comment letter from Thomas French, Assistant Director, Division of Fish & Wildlife, was reviewed.
 - The DPW's 'Horizontal Directional Drilling / Drill Fluid Management and Contingency Release Plan' was reviewed.
 - Per NHESP's requirement, the DPW has contacted a biologist to prepare a Blanding's Turtle Protection Plan for review and written approval.
 - The plan must include details regarding timing as well as structural measures to avoid impacts to the turtles, especially in areas of disturbance and vehicle traffic at both ends of the pipe route.
 - The NHESP letter also detailed a number of other conditions that must be met – including the Contingency Plan (now submitted) and a Compliance Report to be submitted within 30 days of work.
 - In the case of an inadvertent drill fluid release, NHESP is to be included in notifications.
 - Further action by ConCom must wait until NHESP has approved the turtle plan in writing.
 - Mr. Van Schalkwyk also said he had received verbal assurance from the U.S. Army Corps of Engineers that a 401 Water Quality Certification is not required for this project.
 - BD asked Mr. Schalkwyk to get this in writing.
 - GB moved to continue the Public Hearing to 6/22/2017; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – 26 Oak Ridge Drive, Roger Kanniard / R.D. Kanniard Homes, Inc., MassDEP # TBD**
 - CA said the draft OOC has been reviewed and okayed by the applicant.
 - Because a DEP file number has yet to be assigned, ConCom cannot issue the OOC.
 - GB moved to continue the Public Hearing to 6/8/2017; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Contract signing with Wetland Strategies & Solutions (WSS)**
 - At its 5/11 meeting, ConCom voted to select WSS as the third-party consultant to review the NOI application and environmental impact for Ayer Solar II (MassDEP # 100-0403).
 - CA has reviewed the peer review contract with Matthew Schweisberg, of WSS, and run it past the Town Administrator's and Town Accountant's offices.
 - The contract does not include the additional service, and cost, for wildlife habitat impact evaluation, as discussed on 5/11, since that was not part of WSS's 5/9 project proposal.
 - In addition, the size of the wildlife habitat evaluation – to be done by Goldsmith, Prest & Ringwall on behalf of the NOI applicant – is unknown at this time and that will affect the cost.
 - The contract does include provision 1(g) specifying that "The Client may request additional tasks, for which WSS will review and provide a cost estimate to complete."
 - WSS charges \$85/hour.



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Minutes for 5/25/2017

- BD asked CA to amend the contract to include the original cost estimate, as detailed in WSS's 5/9 proposal.
- BD asked for a motion to enter into a contractual agreement with WSS, to be signed and dated 5/25/2017, pursuant to the work (tasks 1a-1f) and cost estimate detailed in WSS's 5/9 proposal, as discussed and voted on by ConCom on 5/11.
 - GB so moved; TT 2nd.
 - Motion approved unanimously.
- ConCom members reviewed WSS's available dates and scheduled a site walk with the consultant at 6:30 p.m. on Wednesday, 5/31, meeting under the power lines on Washington Street.
- **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.
 - The NOI proposes construction of a solar array and access to the array from a lengthy driveway entering the site from Washington Street, to the east.
 - Mr. Goldsmith provided CA with a check to reimburse for cost of Public Hearing Notice.
 - As previously requested, ConCom has been copied on the email chain between GPR and DCR (Mass. Department of Conservation & Recreation) detailing DCR's denial of permission for an access road to cross under or over the Rail Trail, coming in from the other side on the west.
 - Mr. Goldsmith said that GPR filed with the Planning Board for Site Plan Approval, to be scheduled in July.
 - However, GPR received a letter from Charles Schultz, Jr., the Ayer Zoning Enforcement Officer/Building Commissioner, saying that Ayer Solar II did not require Site Plan Review "according to the Ayer Zoning Bylaw."
 - Accordingly, in a 5/22 letter to Jim Fay, Chairman of Ayer Planning Board, GPR withdrew its Site Plan application from consideration by the Planning Board.
 - BT questioned this.
 - Mr. Goldsmith said that the Building Inspector Schultz had talked to Town Counsel to confirm this.
 - He added that he thought the Planning Board review was less rigorous than ConCom's, so it would be an unnecessary duplication.
 - Abutter Ken Diskin, of 180 Washington Street, also questioned the bypassing of Planning Board review.
 - Mr. Diskin asked why the NOI had not claimed the Limited Project status under 310 CMR 10.53(3)(t) for renewable energy projects.
 - Mr. Goldsmith said section t.4 prohibits permanent grading in an ACEC; the solar project requires grading; therefore section t.4 is not applicable.
 - Mr. Diskin also raised the question that the applicant did not own two of the parcels, closest to Washington Street, for access to the parcel on which the array would be located.
 - Mr. Goldsmith said that Mr. Garg has purchased an easement on these two parcels with an option to purchase.
 - BD said this was a common practice and that there was no standard that the applicant must already own access parcels prior to receiving permits.



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Minutes for 5/25/2017

- A site walk having previously been scheduled with the outside consultant on 5/31, GB moved to continue the Public Hearing to 6/8; TT 2nd.
 - Motion approved unanimously.
- **Public Hearing: NOI – James Brook Riverfront Restoration, Ayer Solar I, Rohit Garg / Prometheus Power Group, 0 Rosewood Avenue, MassDEP # TBD**
 - Assessor's Map 3, parcels 2 & 50, northeast of the end of Rosewood Avenue.
 - Cal Goldsmith and Kyle Burchard, of GPR, were present on behalf of the applicant.
 - Ayer Solar I was approved under an RDA on 2/11/2016.
 - A flagging and construction error resulted in the clearing this past winter of nearly an acre of trees inside the 200 ft. buffer zone to James Brook.
 - GPR's original property survey missed the proximity to James Brook and therefore the need for a 200 ft. buffer zone rather than 100 ft.
 - After meeting with ConCom on 3/9/17, GPR agreed to submit an NOI for restoration of this area of clearing.
 - The NOI and engineered restoration plan (Job 151053, April 2017) proposes restoration of 41,000 sq. ft. of riverfront area on a bluff approximately 20-30 ft. above the brook.
 - The area has now been properly delineated and reflagged.
 - The array itself is now completely installed and fenced in, so there is nothing prohibiting restoration plantings from commencing as soon as possible.
 - The restoration area (the area of wrongful clearing) drains away from the brook, for the most part, and the majority of the ground surface remains intact.
 - GPR proposes planting juniper, viburnum, eastern white pine, red oak, and sugar maples to provide a reasonably diverse new understory of shrubbery as well as trees.
 - These will grow alongside existing seedlings in the ground already starting to grow.
 - BD asked about the natural depression on the westernmost end of the area since, after a site walk over the winter, the addition of a berm had been discussed.
 - Mr. Burchard said it seemed unnecessary since the area was already holding water.
 - BD said this area will need to be watched.
 - BD told resident Cathy Smith that the new plantings may wind up providing more screening of the array for residents like her on Douglas Drive.
 - Ms. Smith was also thanked for the excellent chocolate chip cookies she brought in to the meeting!
 - JG asked if the restoration plan's provision 14, that "all plants shall be guaranteed for a minimum of one year from the date of final acceptance of planting" was sufficient.
 - Mr. Goldsmith said this minimum was also the maximum, and that one year was a typical landscaper guarantee.
 - BD said that, given the error in clearing, it would be more responsible to have a two year guarantee.
 - TT later suggested 3 years.
 - BT questioned the lack of diversity of plantings detailed in the restoration plan as well as the plan to limit the plantings under the array to largely just fescue.
 - Monoculture, especially in an ecologically sensitive area like an ACEC, is never a good thing.
 - BD noted that ConCom was no longer in a decision-making place with regard to the plantings under Solar I.



Town of Ayer Conservation Commission

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

Minutes for 5/25/2017

- Regarding the restoration area, BT asked that the juniper (*Juniperis chinensis* 'Hetzi') be replaced with eastern red cedar (*Juniperus Virginiana*).
 - Hetzi juniper is not native to this area and can get moldy disease.
 - Eastern red cedar, in contrast, is native, is drought-resistant, and provides berries for birds.
- To add to diversity, BT suggested that American holly, black cherry, service berry, New Jersey tea, and witch hazel, all be considered.
 - High bush blueberry was also mentioned, along with the suggestion of a wildflower mix along the fencing.
- A site walk was scheduled with Mr. Burchard for Friday evening, 5/26, at 6 p.m., meeting at the end of Rosewood.
 - The site walk will look at the current sproutings in order to assist ConCom in evaluating the need for greater diversity.
- TT noted that cleared areas also must be monitored for opportunistic invasive species.
 - In addition to a 3 year guarantee for the success of the new native plantings, TT said this period of time should also be used for monitoring for invasives.
 - He also suggested that GPR consider protection from beavers for the larger tree plantings.
- GB moved to continue the Public Hearing to 6/8; TT 2nd.
 - Motion approved unanimously.
- **Discussion: Request for Partial Certificate of Compliance (PCOC) – 22 Robbins Road, MassDEP # 100-0074**
- **Discussion: Request for Certificate of Compliance (COC) – 22 Robbins Road, MassDEP # 100-0135**
 - Assessor's Map 37, parcel 21 (Lot 45)
 - The RDA application was submitted by Attorney Thalheimer on behalf of the owner.
 - A PCOC for the OOC, 100-0074, attached to this property would cover the bridge/roadwork that enters the Bennett's Brook area development.
 - This PCOC has been issued over the years to other lots in this development to which the same OOC has been attached.
 - GB moved to issue a PCOC for lot 45, 22 Robbins Road, for 100-0074; TT 2nd.
 - Motion approved unanimously and the PCOC signed.
 - The other OOC attached to the deed is 100-0135 and this is for the construction on the house and property work for just this lot.
 - This OOC requires a letter from an engineer that also includes detail as to whether the 100-year floodplain standard/guarantee was met.
 - CA will pass on ConCom's requirement of a letter from the engineer and floodplain guarantee before it can move forward on the COC request.
 - The original engineer was David E. Ross Associates.
- **Public Meeting: Request for Determination of Applicability (RDA) – 144 Sandy Pond Road, Phyllis Castor**
 - The RDA is for the installation of two poles for solar panels.
 - Originally no one was present for the RDA but BD made a call to Nathan McCarthy, of Solar on Earth, in Ayer, the representative cited on the application.
 - Mr. McCarthy was able to join the meeting shortly thereafter, apologizing that they were under the impression they did not have to be at the meeting.



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Minutes for 5/25/2017

- BD said that either the applicant or representative needs to be present at least at the first Hearing or Meeting for any application.
- The plan was reviewed with Mr. McCarthy.
 - CA performed a site visit earlier in the day; the topography is very level and there are therefore no substantial erosion concerns.
 - All of the work is in buffer zone, within 50 ft. of wetlands.
 - Two 14 ft. poles will be installed, with 7 ft. above ground and 7 below.
 - Not mentioned on the application was that there would also be a 24-in. deep trench carrying the electrical connection running from the poles to the house.
 - In addition, a large tree in the yard that is not aging well will also be taken down for safety concerns.
 - BD said this could be taken down and the stump ground.
 - No soil material is to be left on-site that isn't used to re-fill the trench or spread in a garden.
 - The trench area is to be re-seeded when done.
- GB questioned the RDA application having checked off, under Determinations, box 'b' (in addition to box 'a').
 - "b. whether the boundaries of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated."
 - The RDA plan bases its distances from the wetlands on aerial photos; ConCom therefore cannot confirm accuracy if this box remains checked.
 - TT said the application should just have box 'c' checked, "whether the work depicted on plan(s) referenced below is subject to the Wetlands Protection Act."
- It was also noted that the applicant, Ms. Castor, had not signed the RDA.
- In addition, the aerial-calculated distances on page 2, under 'Area Description' and then under 'Work Description', need to be reconciled so that they are in agreement.
 - The Area Description says the poles will be 25 ft. from the wetlands; the Work Description says they will be 39 ft. and 45 ft. from the wetlands.
- BD asked that the RDA application be redone to include:
 - the applicant's signature;
 - correction of boxes checked off on p. 1, from 'a' and 'b' to just 'c', as discussed above;
 - reconciliation of Area and Work Description distances on page 2;
 - the trenching work to be added to the RDA;
 - removal of the tree to be added to the RDA.
- It was agreed that a conditional determination of applicability could be issued on the provision that the RDA is amended and corrected as described above.
 - BD asked for a motion to issue a Negative Determination of Applicability, with TT amending this request to specify that the Negative DOA be issued under determination # 3, that the work is within buffer zone but will not alter the area.
 - TT so moved; GB 2nd.
 - Motion approved unanimously and the DOA signed.
- **Conservation Administrator Updates/5/23 Written Update**
 - Field Inspections Report and Log Book Review
 - CA has not been doing log book entries as he questions whether this would be a duplication of the information and photographs entered into the office iPad.



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- Nevertheless, ConCom members asked for a written log book, either a notebook or pad, that contains: date, weather for the day, and each field site visited – including time of visit, names of those met on site, and findings/observations.
 - TT said that in his role as Groton Conservation Administrator, he keeps a yellow notebook log each day that also includes phone calls and emails received/replied to, and other actions.
 - TT will provide CA with a sample site inspection form as well.
- Meeting Handouts
 - ConCom members agreed that being able to pick up meeting packets on the Tuesday before meetings was a beneficial new procedure.
 - It allows members to read through applications, etc., prior to the meeting.
 - Similarly, having CA prepare a written update of ongoing issues for the Tuesday packet allows commissioners to be fully aware of issues of concern.
- Old Towne Village
 - This was visited by ConCom members on 5/6 after CA's report of direct discharge into wetlands based on a site visit after an apartment complex resident's report.
 - After research, CA said the parking lot area, and issues associated with it, apparently preceded the permitting for the apartment buildings.
 - No plans for the parking area can be found.
 - BD asked CA to talk to Circuit Rider Judy Schmitz for advice on how to proceed with a situation such as this.
- The Willows
 - CA's written update noted that construction work was coming to a close but mitigation areas have not been completed.
 - BD asked CA to contact Desheng Wang for a schedule of completion.
 - If one isn't available, CA to ask Dr. Wang to come in to a ConCom meeting to discuss.
- Ice House Partners
 - CA has visited the site of their dam and given suggestions for dealing with some erosion issues at the dam.
 - To be determined is whether some of that work would need to be permitted.
- Arsenic Levels in Grove Pond Water Chestnut
 - BD asked CA to contact Solitude Lake Management for a written proposal of the cost of pulling and testing arsenic levels in invasive water chestnut.
- Office Equipment
 - CA was given the okay to contact Cindy Knox, of IT, for price quotes on the cost of a stand-up desk for use in the office.
- **10:28 PM – Adjourn Meeting**
 - GB moved to adjourn; TT 2nd.
 - Motion approved unanimously.



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Documents Referenced During This Meeting:

NHESP comment letter, 5/19/2017, Thomas French, Assistant Director, Division of Fish & Wildlife.
Horizontal Directional Drilling / Drill Fluid Management and Contingency Release Plan, Ayer DPW.
Agreement to Provide Environmental Consulting Services, Wetland Strategies & Solutions LLC.
NOI and Restoration Plan, James Brook Riverfront Restoration, GPR, April 2017, Job 151053.
5/22 email/letter to Jim Fay, Chairman of Ayer Planning Board, from Calvin Goldsmith, GPR.
Request for Partial Certificate of Compliance (PCOC) – 22 Robbins Road, MassDEP # 100-0074.
Request for Certificate of Compliance (COC) – 22 Robbins Road, MassDEP # 100-0135.
Request for Determination of Applicability (RDA) – 144 Sandy Pond Road, Phyllis Castor.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

6/8/17

Signature Indicating Approval: _____

William Daniels, Chair

*Jessica G. Gugino
Clerk*