



Town of Ayer Conservation Commission

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

Minutes for 7/12/2017

RECEIVED
TOWN CLERK
TOWN OF AYER

AUG 25 PM 12:18

Marc Copeland

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)

Not Present: (Vacancy CA, Conservation Administrator; Member)

APAC taped: Yes

SPECIAL MEETING

7:20 PM – Open Meeting

- **Confirmation of Agenda**

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

- **Public Hearing (cont'd.): Notice of Intent (NOI) -- Ayer Solar II, 0 Washington Street, Rohit Garg/Ayer Solar II LLC, MassDEP # 100-0403**

- Present were: Cal Goldsmith and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR); Matt Schweisberg, of Wetland Strategies and Solutions, LLC.
- The project seeks permitting to construct an approximately 1300 ft. long driveway from Washington Street to access the land-locked parcel on which the array is to be located.
 - The applicant has also indicated that, at some future time, NOIs may be submitted to construct two single family homes along the driveway as well.
 - The array parcel is not jurisdictional to ConCom, but the driveway construction will involve crossing wetlands (BVW – Bordering Vegetated Wetlands) at the narrowest point and require 4390 sq. ft. of BVW filling along with associated replication.
 - ConCom members performed a site walk with Mr. Schweisberg and Mr. Burchard on 6/13/2017, at 6 p.m.
- BD asked Mr. Schweisberg to address the high points of his written report.
 - ConCom previously asked Mr. Schweisberg to evaluate the NOI with a focus on 4 primary issues:
 - 1) whether the Limited Project provision applies;
 - 2) the adequacy of the wildlife habitat evaluation prepared for the project;
 - 3) the impact of the project being located in an ACEC (Area of Critical Environmental Concern) as pertains to the Wetland Protection Act (WPA);
 - 4) 1) compliance with Massachusetts Storm Water Management Standards.
 - Work within an ACEC cannot be permitted except in the case of a 'Limited Project' which must meet State standards in order to qualify.
- Mr. Schweisberg reviewed relevant documents as listed in his Peer Review and performed site visits on three occasions: 5/27, 6/13 (with ConCom), and 7/2/2017.
- 1) Limited Project status
 - Pages 3-8 of the Peer Review discuss application of the Limited Project provision per **310 CMR 10.58(3)**.



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- Mr. Schweisberg referenced two subparagraphs to this section that, in his view, constituted justification of Limited Project status for the Ayer Solar II access driveway.
 - Subparagraph **10.58(3)(e)** provides Limited Project status for “the construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to the planning board...”
 - Mr. Schweisberg both stated and wrote that this provision is also often used “in conjunction with an access road for an individual residence, residential subdivisions, commercial or industrial facilities/subdivisions to reach upland areas separated from public roadways by narrow or edges of wetland areas.”
 - Subparagraph **10.58(3)(f)** provides Limited Project status for “the construction of a new access roadway...needed to transport equipment to a renewable energy project site, where reasonable alternative means of access to an upland area is unavailable...”
 - Mr. Schweisberg stated and wrote that “the access road could qualify as either type of Limited Project...”
- From that conclusion, Mr. Schweisberg wrote that the Commission, as Issuing Authority, should then consider an additional three factors, as summarized below:
 - a) Availability of Reasonable Alternatives Analysis
 - GPR submitted an Alternatives Analysis (4/27/2017) detailing six alternatives, A-F, with F being the final plan submitted with the NOI.
 - Mr. Schweisberg observed that C-F appeared to be modifications of Alternative B but did not contain hard quantitative numbers distinguishing the different impacts.
 - Mr. Goldsmith later addressed this and said that the transition from B to F was an evolving progression that was geared toward allowing a greater forested buffer between the access road and the four abutters to the north.
 - The specific wetland impact numbers pertain to the wetland crossing.
 - In each of the alternatives B-F, the crossing itself – at the narrowest point of impact to the BVW – remains the same.
 - GPR therefore did not feel it necessary to include hard numbers.
 - Mr. Goldsmith did distribute a revised Alternatives Analysis (7/12/2017) that made note of this.
 - Mr. Schweisberg accepted this reasoning and had no further objections on this score.
 - Alternative A was rejected as it created access from a different direction, but this access would have exceeded the 5000 sq. ft. alteration limit within an ACEC.
 - b) Magnitude of Alternation and Significance of the Site to the Act’s [Wetland Protection Act] Interests
 - Mr. Schweisberg addressed the eight interests of the WPA as related to this project:



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- no nearby public or private water supplies needing protection;
 - no nearby ground water supply needing protection;
 - minor flood control in the form of volume storage (noting agreement with GPR's claim that the FEMA map for this area is inaccurate);
 - no impact on storm damage prevention;
 - only a minor opportunity to prevent pollution;
 - no land containing shellfish to protect;
 - no or only minor/tangential opportunity to provide protection of fisheries;
 - only a minor ability to protect wildlife habitat.
- c) Impacts Minimization and Mitigation Measures
 - Mr. Schweisberg's report noted and found acceptable the design measures for mitigating adverse impacts to BVW, including:
 - use of retaining walls to steepen side-slopes and reduce filling;
 - realignment and installation of two new arch culverts;
 - placement of various stormwater treatment features (infiltration basin, treebox filters, sediment forebays) along upslope of, or beneath, access road;
 - construction of infiltration basins and water quality swales at perimeter of solar array;
 - construction of two wetland replication areas adjacent to BVW area to be filled by access road.
 - 2) Adequacy of Wildlife Habitat Evaluation
 - Oxbow Associates, Inc., of Acton, MA, produced a report for GPR, "Bordering Vegetated Wetland and Bank Habitat Evaluation" (June 23, 2017) which Mr. Schweisberg then evaluated.
 - Mr. Schweisberg agreed with the conclusion of the report and wrote that "the proposed BVW alterations would have a negligible effect upon important wildlife habitat functions, particularly when considered in conjunction with the compensatory wetland replication areas proposed by the Applicant."
 - He also noted that while the project location is within an ACEC, none of it is Mapped Habitat for either endangered or priority species.
 - Previously Unidentified Bank
 - Both the Oxbow Report and Mr. Schweisberg noted that approximately 95 linear feet of Bank, associated with an intermittent stream, would be altered by the proposed access road.
 - This Bank was not identified as a Resource Area in the submitted NOI.
 - However, Mr. Schweisberg said that while the Bank should have been identified in the NOI (and will be in a revised NOI), impact on it would be negligible as it is truly a minor Bank.
 - In response to a later question from resident Ken Diskin, Mr. Burchard reiterated that the inclusion of work affecting the Bank does not alter the 4390 sq. ft. of wetland impact in any case.
 - 3) Can the Access Road be Permitted in an Area of Critical Environmental Concern (ACEC)
 - **310 CMR 10.55(4)(e)** was referenced as the entire site is within the Petapawag ACEC.



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- This states that “any proposed work shall not destroy or otherwise impair any portion of a Bordering Vegetated Wetland that is within an Area of Critical Environmental Concern...”
- Mr. Schweisberg then addressed the section of 310 CMR 10.53(3) that he felt applied:
 - “[n]otwithstanding the provisions of 310 CMR 10.54 through 10.58 and 10.60, the Issuing Authority may issue an Order of Conditions and impose such conditions as will contribute to the interests identified in M.G.L. c.131, section 40 permitting the following limited projects (although no such project may be permitted which will have any adverse effect on specified habitat sites of Rare Species...”
- Mr. Schweisberg said that, having agreed with the Applicant that the Limited Project status applies, it was therefore up to the discretion of the Commission as to whether to issue an Order of Conditions authorizing construction of the access road.
- 4) Compliance with Massachusetts Stormwater Management Standards
 - While noting a minor calculation mistake which was pointed out to GPR and subsequently corrected, Mr. Schweisberg concluded that the Stormwater Report and plans met all necessary requirements and was acceptable.
- Conclusion
 - In his written report, Mr. Schweisberg wrote that “the proposed access road can be permitted as a Limited Project at the discretion of the Commission, provided an Order of Conditions is appropriately conditioned to meet the relevant performance standards listed in the applicable sections of the regulations.”
 - He added the recommendation that, if an OOC were to be issued, “that an independent wetlands or related scientist be retained as a monitor during Project construction to ensure compliance with all requirements of the Order.”
 - The project monitor should pay particular attention to the installation of stormwater management structures.
 - The need for an Operations & Maintenance Plan (O&M Plan) was discussed, noting that the project will need to be monitored over time.
 - ConCom will ask for O&M reports every 5 years.
 - Discussion then focused on who would be responsible, once the project is complete, with maintenance of the driveway and stormwater structures.
 - This was raised in conjunction with the possibility that two private residences may also be constructed along the driveway in the future.
 - Mr. Goldsmith said it was their intention that the solar project be the sole responsible party for this maintenance.
- Other Comments, Questions and Discussion
 - BT asked about an apparent wetland area north of the area, near the Rail Trail.
 - Mr. Goldsmith said GPR’s wetland consultant, Dave Crossman, said this area was walked but Mr. Crossman did not flag it as wetland.
 - Mr. Schweisberg also walked this upper area of the site, even though it was outside of the area of proposed work.
 - He said that a BVW has to be bordering a body of water, such as a stream or pond, and this depression did not.



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- Even if this depression qualified as an 'Isolated Land Subject to Flooding' (ILSF), it is not protected by the WPA and work could theoretically be done right up to its edge.
 - Mr. Burchard said that the geology of the area means that water flows through this spot, but the soils in it are sandy and do not meet the criteria of hydric soils within a wetlands.
 - Mr. Schweisberg added that in an ILSF, it does not matter whether the soils are hydric or plants are wetland species.
 - Mr. Goldsmith said GPR had recognized this area as potentially significant and made the decision to design the project keeping well away from it regardless.
 - This, he felt, exceeded all requirements.
 - BT stressed that, in her opinion, the entirety of the project area should be considered as a contiguous piece of property tied to the whole of the ACEC.
- BT asked about the lack of Site Plan Review by the Planning Board, given the reference to **10.58(3)(e)** requiring a new driveway to be of a minimum width "acceptable to the planning board."
 - Resident Ken Diskin also raised this point later in the meeting.
 - Mr. Goldsmith said that it was not a requirement that the Planning Board actually rule on this so long as the minimum Planning Board standard was adhered to.
 - The driveway will be 16 ft. in width with shoulder.
 - It was noted that the Zoning Board of Appeals will be hearing an appeal related to the question of a Site Plan Review at its 7/19/2017 meeting.
 - [The appeal is based on the Building Commissioner, who is also the Zoning Enforcement Officer, having informed GPR (in a letter dated 5/5/2017) that a Site Plan Review was not required.
 - In a letter dated 5/22/2017, GPR accordingly withdrew its Site Plan application to the Planning Board, cancelling its scheduled upcoming Hearing.]
 - Mr. Diskin stated that if 10.58(3)(e) requires a driveway to be acceptable to the Planning Board, then the Planning Board should be required to provide acceptance in writing to that effect.
 - Mr. Schweisberg then said there was nothing to prevent the Commission from asking for Planning Board approval or comment, even if there was no requirement.
 - Mr. Goldsmith said GPR would object to that as there was no need, and they designed the driveway to the minimal legal and practical width.
- Mr. Diskin noted the tight numbers (4390 sq. ft. of alteration where no more than 5000 sq. ft. is allowed) and expressed concern that the project needed to be managed closely to prevent the alteration number from becoming larger by mistake.
 - The use of an independent monitor was again mentioned, along with a pre-construction meeting to lay out the 'MOP' (method of procedures) to be used.
 - BD said ConCom would add a condition that the project be laid out and surveyed ahead of the commencement of work.
 - Mr. Goldsmith suggested the Limit of Work (LOW) be "survey located" as additional assurance.
 - BD said ConCom would also require use of an orange construction snow fence to demarcate the LOW, so as to visually dissuade contractors from mistakenly going beyond permitted impact.



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- Questions about utility poles leaving the site were asked.
 - GPR said the above-ground poles would be located on the upland edge of the driveway.
 - Resident abutter Kevin Horgan asked for more detail.
 - Mr. Burchard said the poles would be spaced roughly 150 ft. apart but actual placement would be up to National Grid.
 - National Grid would also be responsible for trimming trees along the driveway in order to protect the wires.
 - BD said ConCom had no jurisdictional authority to require underground wires.
 - Mr. Schweisberg said that the interests of the WPA did not include specifying underground versus aboveground wires.
- Motion
 - Having reviewed the reports, discussed the design and State criteria, identified the need for an independent monitor, an O&M Plan, a MOP, staking, etc., BD asked for a motion to approve and issue an Order of Conditions for 100-0403, with the details of the OOC to be discussed.
 - GB so moved; JG 2nd.
 - Motion approved 3-1 (BT voted no).
 - GB moved to continue the Public Hearing to 7/27, for purpose of reviewing draft OOC and signing; BT 2nd.
 - Motion approved unanimously.
- **Accounts Payable**
 - Mr. Schweisberg submitted an invoice for \$906.59, for part of his work done so far.
 - GB moved to approve payment of \$906.59 to Wetland Strategies and Solutions, monies to come from the special account set up for the outside consultant and into which GPR has already deposited funds; BT 2nd.
 - Motion approved unanimously.
 - A final invoice will be forthcoming from Wetland Strategies.
- **Discussion: Conservation Administrator Job Opening**
 - BD asked for a motion to approve the contract from BSC Group to engage a person from the company 2 days a week to assist the Commission until a new CA is hired.
 - The funds for this will come from the ConCom salary budget for the CA position, supplemented with additional funds as necessary from the Commission's WPA fund.
 - The Commission will maintain this coverage at 2 days/week through August and will then reevaluate the Commission's needs.
 - It is the Commission's hope that the outside help from BSC Group will not be needed for longer than 3 months.
 - JG so moved; GB 2nd.
 - Motion approved unanimously.
- **9:45 PM – Adjourn Meeting**
 - GB moved to adjourn; JG 2nd.
 - Motion approved unanimously.



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Documents Referenced During This Meeting:

"Peer Review of the Ayer Solar II Project Notice of Intent," prepared by Matt Schweisberg, Wetland Strategies and Solutions, LLC, Merrimac, MA, July 6, 2017

"Bordering Vegetated Wetland and Bank Habitat Evaluation," prepared by Oxbow Associates, Inc., June 23, 2017
GPR Revised Alternatives Analysis (7/12/2017)

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission:

7/27/2017

Signature Indicating Approval:

Jessica G. Gugino