



## **Town of Ayer Conservation Commission**

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249 \* 978-772-8208 (fax)  
Minutes for **2/11/2016** – Approved 2/25/2016

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), Brian Colleran (CA, Conservation Administrator),

Not present: Takashi Tada (TT, Member)

APAC taped: Yes

### **7:12 PM – Open Meeting**

- **Confirmation of the Agenda**
  - JG moved to confirm the agenda as posted; GB 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – The Willows, Willow Road Development, LLC, MassDEP # 100-0387**
  - Dr. Desheng Wang, of Creative Land & Water Engineering, LLC, was present on behalf of the applicant.
  - Dr. Wang recapped the revised plan presented at ConCom's 1/28/16 meeting regarding the proposed relocation of a triplex housing units 56-57-58 from uphill down to the west of the triplex housing units 95-96-97.
    - The new triplex would be located within the outer riparian zone to Bennett's Brook, as is a good portion of the 95-96-97 triplex.
    - Per ConCom's request, a new 13,320 sq. ft. mitigation area, complying with the 2:1 ratio requirement of 310 CMR 10.58 (5) (g) and located within riverfront, has been planned.
      - This replaces 1:1 the loss of 4408 sq. ft. of the original mitigation area to the west of unit 95.
      - This mitigation area was originally designed as 2:1 compensation for the building of part of the 95-96-97 triplex in the outer riparian zone.
      - The new 13,320 sq. ft. mitigation area, further to the east, replaces the 4408 taken from the original mitigation area and in addition compensates at 2:1 for the proposed triplex itself.
  - Abutter Duncan Brown asked for details about the planting schedule (how many trees, shrubs per sq. ft.).
    - BD said the planting schedule would be proportionately the same as previously required for the development and Dr. Wang reiterated that native trees would be left intact.
    - Dr. Wang confirmed that the developer would fulfill the obligation to maintain the mitigation area for the first 2 years, prior to applying for a Certificate of Compliance (COC).
      - This will not fall to the Homeowners Association.
  - JG reiterated CA's previous request that a time schedule for completion of the mitigation area be added in to the OOC.
    - Dr. Wang said the best time for clearing the area of invasives is later in the fall, when plant juices retreat into root systems and make the application of chemicals like Round-Up more effective.
  - BD summarized the Special Conditions to be added to the OOC:



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- Each mitigation area will follow the same schedule of plantings by square footage as the original mitigation area;
- A planting schedule will be submitted by the end of September;
- The cutting and clearing of invasives will take place in fall 2016 and be ready for an initial ConCom site visit in November 2016.
- GB moved to approve and issue an OOC for 100-0387; JG 2<sup>nd</sup>.
  - Motion approved unanimously and the signature page was signed.
    - CA will prepare a draft OOC for the applicant to review and the Public Hearing will be closed at ConCom's 2/25 meeting.
- GB moved to continue the Public Hearing to 2/25; BT 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – Ayer 1 Solar, Prometheus Power Group, LLC (Ann Arbor, MI)**
  - Nicholas Pauling, of Goldsmith, Prest & Ringwall, presented the application.
  - Also present were Rohit Garg, of Prometheus Power, and Calvin Moore, of Cowfield Trust.
  - The Ayer Solar Project proposes the construction of two photovoltaic solar panel arrays (the “Northern” – 107 racks, and the “Southern”—157 racks).
    - The location is to the northeast of the end of Rosewood Avenue (Assessors Map 3, parcel 50; Assessors Map 3, parcel 2).
    - The project has already been filed before the Planning Board.
    - It will come to ConCom in 2 applications.
      - The first is this RDA for the construction of the solar arrays.
      - The second application, forthcoming, will be an NOI for construction of an access road to the panel area from the end of Rosewood.
  - Mr. Pauling said the construction of the panel arrays is being submitted to ConCom under an RDA because the impact to nearby wetlands is very limited, with no impact to the resource area itself.
    - They are seeking a Negative Determination of Applicability (DOA) so they can proceed with securing other permits.
  - All of the work described under the RDA is located in the outer 50 ft. of buffer zone (BZ) to the wetlands north of the project site.
    - Approximately 28,000 sq. ft. of disturbance will take place in this outer 50 ft. BZ.
      - Of that, 6000 sq. ft. will involve earthwork in installing the panels, while the rest will be subject to clearing to prevent shadowing on the panels.
    - Minimal grading will be done to adjust the slope around the panels.
    - The location and configuration of the two arrays is designed to keep them outside of the New England Power Company easement immediately south of the array locations.
    - A gravel stone diaphragm north of the Southern Array will convey stormwater runoff to a proposed basin #1 as depicted on the plan.
      - This trench is 18-24 in. wide, 12 in. deep, and will use 1/8 – 1/2 in. crushed stone.
    - A drainage swale in the northwest corner of the project area will also convey runoff to a basin.
  - BD asked about current access to the project site.
    - Mr. Pauling said there is gravel access over the wetlands from the end of Rosewood.



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- The forthcoming NOI will propose to extend Rosewood Avenue to provide gated access to the arrays.
  - The Rosewood extension will be graveled, not paved.
  - The NOI will also address impacts to wetlands to the south of the project site.
  - Under the NOI, a depression in the southeast corner of the project site will be formalized into a basin, which will require more extensive grading than in the areas covered under the RDA.
- With concern that 28,000 sq. ft. of disturbance within BZ was too much for an RDA, BD asked for more detail regarding the actual work planned.
  - Mr. Pauling said the solar panels will function more like a roof than an impervious surface and will not generate any hydrocarbons for stormwater treatment.
  - For the RDA work, no fill will need to be trucked in; Mr. Pauling said it would be more a matter of moving around and re-spreading disturbed soils.
  - The metal posts supporting the racks will be driven, not dug, in, to depths ranging from 5 – 10 ft. depending on conditions.
    - Mr. Garg said they would be doing a geophysical analysis prior to starting work and if ledge is encountered, adjustments will be made as needed.
    - A screw methodology could be used to anchor posts if necessary.
    - Mr. Pauling also said there's flexibility with the rack design and that they can be spanned a little differently if ledge is encountered.
  - Upon completion of the project, the ground underneath the panels will be seeded with a low-growing seeded grass mix that will require mowing only a few times a year.
  - Clearing for shade control will involve trees being cut but not stumped.
    - The area will be visited every 5 years or so for maintenance clearing.
  - Chain link security fences will be constructed around each of the arrays for public safety (given the panels will be generating electricity).
    - The bottom of the chain will not have a pipe, will have a 2 in. gap, and the links are large enough to allow turtles and amphibians to pass through but not people or large animals.
  - BD said the plan does not show detail as to how the chain fence posts will be installed, nor whether at least some of them will need to be set in concrete – a process that will involve digging.
    - Mr. Garg said concrete bases for these posts would be primarily in the gated access road area.
    - On the north side of the project, BD said the chain link fence is the area of work that extends farthest into the BZ.
    - While the panel installation work is all located inside silt fencing for erosion control, work associated with the security fence installation is all outside of silt fencing.
  - BD asked for more information on the chain link fence, including the distance between posts, the methodology for how posts will be dug and set, what will happen to soil removed if posts are not driven.
    - This information should be sent as a separate attachment for the RDA.
- BD summarized the Special Conditions that will be attached to the DOA:
  - all work covered under the DOA is limited to work in the road and in the panel areas from station 18+00 and north;



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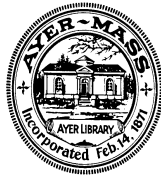
- any roadwork from station 18+00 and south is subject to a permitting review under a future NOI;
  - the chain link fence detail from the fencing company for concrete post installation is to be provided prior to or by the time of silt fence inspection;
  - native seed mix specifications are to be reviewed and approved during silt fence inspection (the mix should have an ecological value, such as a conservation mix).
- GB moved to approve and issue a Negative DOA, with the above Special Conditions; BT 2<sup>nd</sup>.
  - Motion approved unanimously and the DOA signed.
- **Public Meeting (cont'd.): Request for Determination of Applicability (RDA) – MBTA Commuter Rail**
  - CA has still not heard anything further from Holly Palmgren, of the MBTA, or Jessica Miess, of Ramaker & Associates, about the revisions requested by ConCom on 1/14/2016.
    - BD asked CA to contact the applicants and say that if ConCom does not hear back from them, that the Public Meeting will be allowed to expire after the next meeting and they will have to re-file.
  - GB moved to continue the Public Meeting to 2/25/2016; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Request for Certificate of Compliance (COC): Pingry Hill, Crabtree Development, 3 Hemlock Drive (Lot 61) MassDep # 100-0354**
  - GB moved to approve and issue a COC; BT 2<sup>nd</sup>.
    - Motion approved unanimously and the COC signed.
- **Enforcement Order (cont'd.): 78 Sandy Pond Road, Hagel LLC, MassDEP # 100-0386**
  - The planting plan having been reviewed and accepted by ConCom, BD signed a letter releasing the project from the Enforcement Order.
- **Request for Partial COC: Kristin Michaud, 3 Samantha Lane, MassDep # 100-0089**
  - CA performed a site visit and saw no issues.
  - This house is the farthest from the resource area and is part of a group of houses covered under a single OOC.
  - GB moved to issue a Partial COC; BT 2<sup>nd</sup>.
    - Motion approved unanimously and the COC signed.
- **Request for Partial COC: 117 Littleton Road, MassDEP # 100-0186**
  - The COC request was submitted by Flood Law Office (Lowell) on behalf of the owner.
  - CA performed a site visit and saw no issues.
  - The OOC was issued in 1994 for conversion of a septic system/leaching field to Town sewer.
  - The email received from Flood Law Office specifically requested a PCOC; BD asked CA to copy this request into the file for future reference if needed.
  - JG moved to approve and issue a Partial COC; GB 2<sup>nd</sup>.
    - Motion approved unanimously.
- **OOC Extension: Ice House Dam, MassDEP # 100-0321**
  - GB moved to extend the OOC to 4/23/2019; BT 2<sup>nd</sup>.



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- Motion approved unanimously and the Extension signed.
- **Discussion: Geosyntec Draft Report for Comprehensive Survey of Ayer's Ponds**
  - BD is in receipt of a draft response prepared by JG and a revision of that response prepared by CA.
    - BD will review both and send his revised version to Bob Hartzel of Geosyntec, on 2/14/2016.
  - Regarding the outstanding final invoice from Geosyntec, BD asked CA to confirm with Town Accountant Lisa Gabree that this invoice does not also need to be signed by CPC if CPC funds are no longer being expended.
    - Only a portion of the \$83,000+ bill was to be paid using CPC funds.
- **Approval of Meeting Minutes**
  - GB moved to approve the minutes for 12/10/2015 as written; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - GB moved to approve the minutes for 1/14/2016 as written; BT 2<sup>nd</sup>.
    - Motion approved unanimously.
  - Because of TT's absence, the minutes for 1/28/2016 could not be voted on due to the lack of a quorum of members present at that meeting.
- **CA Updates**
  - Response to Environmental Assessment for US Army Fort Devens
    - A copy of a 2/11/16 email from Laurie Nehring, of PACE, to Deborah Peters, QEPI Project Manager, commenting on a proposed Area of Development at Fort Devens was reviewed.
    - Several of Ms. Nehring's comments referred to a map which ConCom did not have a copy of.
  - ConCom ticketing
    - CA received an opinion from Town Counsel John Goldrosen, of Kopelman & Paige, regarding the ability of ConCom to issue non-criminal tickets for wetland violations.
    - According to Mr. Goldrosen:
      - Article LIII (passed by Town Meeting in 2013) authorizes ConCom to use both criminal enforcement and non-criminal disposition for violations of the Wetlands Bylaw.
      - At the same time, such ticketing could be subject to challenge because the Town's Wetlands Bylaw does not itself directly address this.
      - Therefore Mr. Goldrosen recommended ConCom seek an Amendment to the Town's Wetlands Bylaw to specify this enforcement authority.
    - BD said that while Article LIII allows up to \$300/day fines, ConCom should instead mimic MassDEP's fee schedule, which is \$100/day.
    - CA also noted that Article LIII stated that the Commission itself was the "enforcing agent," not the Commission *or its Agent*.
      - This will need to be clarified and revised as well.
  - Sandy Pond 3 Conservation Restriction (CR) (MassDEP # 100-0220)
    - CA contacted Dave Murray, of Sandy Pond Estates, for an update.



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- ConCom met with Mr. Murray on 11/12/2015 to review the CR process that was started in 2004 but has since stalled.
  - The CR was supposed to have been completed in 2008.
- Mr. Murray's lawyer has brought up a new wrinkle in the process, calling into question the effect of a CR on any violations that may or may not have taken place between 2008-2016.
  - An example might be abutting properties whose owners have, over the years, allowed their lawns to encroach into the CR.
- Based on their familiarity with the development, neither BD nor GB thought that any properties would be affected by the CR going into effect.
  - BD said that if there were any case where a property owner has extended lawn into the area set aside for the CR, then they have extended it onto property that they just don't own in the first place.
- CA has calls in to Town Administrator Pontbriand and the State for more information on how to handle this issue.
- CA's jurisdictional properties map of Ayer
  - After discussion, it was decided that CA would have one large poster-sized map printed and will then have it mounted in a simple black frame, no matte, with glass.
  - JG moved to approve an expenditure of up to \$250 for this purpose; GB 2<sup>nd</sup>.
    - Motion approved unanimously.
- Kohler Place
  - CA will send a letter to the new owner reminding him that the project was approved based on the inclusion of a portion of the land being put under a Conservation Restriction (CR).
    - CA will suggest the process be started so that it can be complete by the time that Occupancy Permits are sought.
    - CA will copy Building Inspector Gabe Vellante on this.
- DPW
  - DPW Superintendent Mark Wetzel will likely be appearing at an upcoming ConCom meeting to discuss plans for building a dog park off Snake Hill Road, on land turned over to the Town by Crabtree Development (Pingry Hill).
  - At that time, ConCom can also discuss DPW's capacity to perform water testing in line with Geosyntec recommendations.
    - BT recently received some quotes from Eastern Analytical, Inc., of Concord, regarding cost estimates for pond water sampling of Ammonia Nitrogen, Total Phosphorous and Chlorophyll-a.
    - In a perfect world, the time to start a water testing program would be in May.
- **10:00 PM – Adjourn Meeting**
  - JG moved to adjourn; GB 2<sup>nd</sup>.
    - Motion approved unanimously.