

RECEIVED  
SEP 03 2020

TOWN OF AYER  
TOWN CLERK

*Scopland*

## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

Location: Remote Meeting via Zoom, accessible to public, due to Pandemic State of Emergency  
Present: Jon Schmalenberger (JS, Chair), Mark Phillips (MP, Vice-Chair), George Bacon (GB, Member), Jennifer Amaya (JA, Member), Jessica Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)  
Not Present: Scott Murray (SM, Associate Member)

### **Broadcast and Recorded by APAC**

#### **7:00 PM – Open Meeting**

- Throughout the meeting, JS periodically asked for input (questions or comments) from members of the public viewing the meeting remotely (via Zoom or live broadcast), and calling in to participate either by Zoom or telephone connection.
- **Confirmation of Agenda**
  - GB moved to confirm the agenda as posted; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 5/28/2020 as written; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Accounts Payable**
  - Ayer Shirley Tracker: \$1200, for publication of full text of new local wetlands bylaw in two successive editions, as required by law, on 5/7 and 5/15/2020, 3 full pages each time @ \$200/page.
    - JG moved to approve payment of this bill, with \$400 coming from ConCom's 'public hearing' budget line, and \$800 coming from the 'other charges and expenses' budget line; GB 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.
  - Regarding whether to turn over payment of bills to Town Manager Robert Pontbriand or to continue to authorize through Commission votes, it was felt that perhaps ConCom should discuss this directly with Mr. Pontbriand at one of its future remote meetings.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Spectacle Pond PFAS Treatment Plant, Ayer Department of Public Works (DPW), MassDEP # 100-0443**
  - Assessor's Map 17, Parcel 7
  - ConCom has still not received the language from Natural Heritage & Endangered Species Program (NHESP) regarding conditions they will want included in an Order of Conditions (OOC).
  - There being no public comments, GB moved to continue the Public Hearing to 6/25/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.



## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

- **Note**
  - JS confirmed that the Certificate of Vote has now been recorded at the Registry of Deeds.
    - CA can now physically sign permits on behalf of the Commission, following ConCom votes, that are themselves recordable at the Registry..
- **Public Hearing (cont'd.): NOI -- 0 Washington Street, "Ayer Solar II LLC," Rohit Garg, MassDEP # 100-0444**
  - Assessor's Maps 13, 12 & 4, Parcels 13-1, 13-2, 12-1, 4-49
  - Participating via Zoom were Cal Goldsmith and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), and Arthur Allen, of EcoTec (third-party peer reviewer).
  - The meeting reviewed the "Preliminary Wetland Peer Review" memorandum emailed to ConCom from EcoTec, dated May 27, 2020.
    - The memorandum includes Mr. Allen's general comments, including in reaction to comments from EcoTec's subcontractors, Graves Engineering (civil engineering peer review #1) and NeoVirtus Engineering (solar PV shading impact engineering review).
      - Graves' and NeoVirtus's comments were preliminary as they both have requests for clarification or additional information in process with GPR.
  - Mr. Allen spoke first, having walked the project site on May 21, where he observed the intermittent stream (where the stream-crossing is proposed) flowing within a 2-3-ft. wide channel.
    - wetland flagging needs to be refreshed and maintained;
    - referenced MassDEP's project information technical comments on the proposed stream crossing structure, stormwater standards, and NHESP comments;
    - responding to the Graves memo questioning the double-barrel design of the proposed culvert for the stream-crossing, Mr. Allen concurred with their multiple concerns (openness, outflow substrate establishment, configuration) and added that the proposed rip-rap level spreader would itself constitute an additional wetland impact;
    - noted the proposed 40-ft. height of tree-topping, to reduce shading on the array at the southeast corner of the project, would likely kill those trees as he observed few if any lateral branches within 40 feet of the ground during his site walk;
    - noted that the detailed wildlife habitat evaluation for Blanding's Turtle within Priority Habitat was in preparation by Oxbow Associates;
    - and confirmed the project is proposed as a "Limited Project" that is within the Petapawag Area of Critical Environmental Concern (ACEC), and that "the project meets Limited Project criteria and is permissible within the ACEC."
  - JG asked if Mr. Allen thought Graves #2 comment was significant, that the submitted plans were not evaluated by an engineer to determine if the project area contains an Outstanding Resource Water (ORW) that would then be considered a Critical Area.
    - Mr. Allen said if an ORW was involved, this could be significant as it would affect stormwater calculations.
    - Mr. Goldsmith and Mr. Burchard both later said this area did not contain ORW.

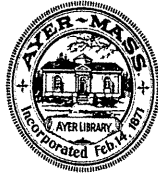


## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

- GB asked if the project required an ENF (Environmental Notification Form) filing under MEPA (Massachusetts Environmental Policy Act).
  - Mr. Goldsmith said no, this would only apply if State permits were involved.
  - Mr. Allen said he would check, because if a permit was required for turtle protection, this would constitute a State permit and an ENF would apply.
    - Mr. Goldsmith said they were not anticipating this would be the case.
- Mr. Goldsmith said he and Mr. Burchard had put together a reply to the preliminary memorandum.
  - Regarding the stream-crossing, Mr. Goldsmith noted that they had been clear from the start that the project was not going to meet the openness ratio required by Massachusetts Stream Crossing Standards.
    - He said that further downstream from where the stream crossing is proposed, the channel is barely discernible as the flow dissipates on its way to the wetlands.
- Mr. Burchard read from his 6/11 response to peer review comments memo, which was not received by ConCom in time to be enclosed with the meeting packet (less than an hour-and-a-half before the meeting started).
  - noted that the wetland flags will be refreshed and maintained prior to and during construction;
  - that the level spreader at the double culvert is included in the total wetland impact area;
  - that the proposed tree topping will result in trees dying but that this would promote new growth of a previously dormant understory, so the area would remain buffer zone habitat even if changed.
  - re MassGIS, the area does not have ORW nor discharge into a Critical Area;
  - groundwater recharge calculations, forebay sizing, drainage swales will be reviewed and revised if needed;
  - monitoring wells and drawdown devices will be added to the plans;
  - for the proposed tree-topping area, GPR will provide average tree heights as well as information on the types of trees and what their mature height would be;
  - like Mr. Goldsmith, Mr. Burchard said the stream channel does not provide any migratory corridor for wildlife, and the channel itself ceases to be distinct approximately 20 ft. further downstream.
    - GPR therefore questions the applicability of Stream Crossing Standards at this location.
- To address the stream crossing standards and other issues, Mr. Burchard and Mr. Goldsmith asked to be allowed to talk directly via Zoom with the peer review engineers, with CA or any Commission members included, to facilitate more efficient discussion and resolution of issues.
  - JS opened the discussion on allowing GPR to hold direct discussions with EcoTec and their engineers outside of the public hearing, if supervised by ConCom.

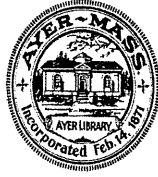


## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

- CA said she was able to participate in Zoom calls but was not herself an engineer.
  - She also noted there was a lot of public interest in this project so having public visibility, as in during a televised public hearing, would be a good thing.
- GPR said this would be a working dialogue between the reviewing engineers and GPR, and would not be posted as a public meeting.
  - Their goal is to streamline the process as their client has deadlines to meet regarding state solar requirements.
- GB said he did not think ConCom sitting through a long engineering meeting was necessary.
  - It was also noted that the Town severely limits the length of Zoom meetings already.
- MP, an engineer, said he'd be interested in participating if such a conversation could take place after 4:30 or 5, given his own job.
- JA and JG said they were okay with GPR holding a separate discussion with EcoTec provided that CA and/or MP were included.
- JS said he was inclined to allow the separate discussion provided ConCom had eyes and ears present.
- Mr. Allen said he expected that the Graves and NeoVirtus engineers would be available for an evening meeting.
  - He asked that they be given copies of GPR's 6/11 response letter and any additional supplemental information prior to scheduling that working engineering session.
- Mr. Burchard said he expected the session to focus primarily on the stream crossing.
  - CA reminded everyone that when MassDEP issued the file number (100-0444) on 3/31/2020, they had added the comment that the proposed crossing did not meet the openness requirement of the Massachusetts Stream Crossing Standards, and asked for a crossing design that did meet those standards or reduced the width of the crossing.
    - By this comment, CA infers that DEP is expecting the project to comply with those Standards.
  - MP asked CA to reach out to MassDEP to get more information as to their concerns, or even if they would want to participate in the engineering discussion.
- Resident Bonnie Tillotson, calling in by phone, asked GPR if their client had considered selling the parcel to the Town for conservation.
  - Given the economic impact of the pandemic, and the resulting plunge in the price of oil (which affects charges for solar power as well), the cost benefit of a solar project at this time might not be 'win-win'.
  - Mr. Goldsmith asked Ms. Tillotson to send him her email address so that he could put her in touch with the owner.
- There being no further comments or discussion, GB moved to continue the Public Hearing to 6/25/2020; MP 2<sup>nd</sup>.



## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

- Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Off Shaker Road – “Shaker Mill Pond,” Open Space Residential Development, Aho Development Corp., MassDEP # 100-0437**
  - Assessor’s Map 36, Parcel 18, and Map 43, Parcel 3
  - John Boardman, of Places Associates, participated via Zoom.
  - CA said the Order of Conditions was complete and ready to go.
    - She has already given Mr. Boardman the information for properly contacting MassDEP to ascertain the potential of DEP appealing the project during the appeal period.
  - There being no further comments or discussion, GB moved to approve and issue the OOC for 100-0437, to be signed by CA on behalf of the Commission; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0437; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – 270 Woodland Way, David Grubb, MassDEP # 100-0442**
  - Assessor’s Map 36, Parcel 181
  - David Grubb participated remotely.
  - GB suggested the OOC remove conditions 30B and 30C requiring an engineer’s letter and topographical survey as prerequisites to securing a Certificate of Compliance (COC) to close out the project.
    - This project doesn’t warrant that level of follow-up.
    - CA will amend the OOC to delete those two special conditions, and has informed Mr. Grubb about the procedures to follow to contact MassDEP regarding their appeal process.
  - There being no further discussion or comments, GB moved to approve and issue the OOC as amended, to be signed by CA on behalf of the Commission; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0442; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Enforcement Order Updates (EOs):**
  - Enforcement Order: 0 Central Avenue, John Hillier
  - Enforcement Order: 0 Central Avenue, Ruth Maxant Schultz
    - Assessor’s Map 26, Parcel 281
    - Ruth Maxant Schultz participated via Zoom; Mr. Hillier indicated in an email to CA that he would not be participating.
    - The asphalt apron on Ruth Maxant Schultz’s property has been removed by Mr. Hillier, as ordered by ConCom.
      - CA received a receipt from the asphalt recycling plant, documenting the material was properly disposed of.



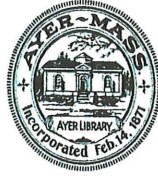
## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

- Nearby material was raked up to meet the existing cut so there are no sharp edges.
- JS asked Ms. Schultz if she was satisfied.
  - Ms. Schultz said she was glad the asphalt was gone, and that while she had other issues with Mr. Hillier to deal with, they were not relevant to ConCom.
- JS asked CA to send a letter to Ms. Schultz and Mr. Hillier acknowledging that this particular set of EOs, related to the unpermitted placement of asphalt within the buffer zone to an intermediate stream, has been satisfactorily resolved in the view of the Commission.
- MP asked to make sure that Mr. Hillier is reminded that while the March 4, 2020 EO is now cleared, the Feb. 2019 and March 20, 2020 EOs issued to Mr. Hillier are not cleared and must still be resolved.
  - Mr. Hillier was given a deadline of June 15 to submit an NOI and engineered plan for other unpermitted work he began, and then continued, on this lot, and which is still under a Cease & Desist from Feb. 2019.
- Enforcement Order: 156 Washington Street, Michael Mazzola, MassDEP # 100-0394
  - Assessor's Map 13, Parcel 36 (previously discussed 4/23/2020)
  - CA has a draft NOI from Mr. Mazzola.
- **Discussion: Ranking of applications during pandemic State of Emergency**
  - CA has reviewed the applications with reference to ConCom's ranking criteria and concluded:
    - Good shape to move forward on:
      - Request for Determination of Applicability (RDA), 71 Nashua Street
      - NOI, 1 Bishop Road
      - Request for Partial COC (PCOC), 25 Longview Circle, Unit 2, The Willows subdivision, MassDEP #100-0288
      - Conservation Analysis, 76 Groton-School Road (site walk initially scheduled for 3/12, cancelled due to shutdown)
    - Requires greater thought given potential for public interest:
      - Notice of Intent (NOI), Lot 6, Shaker Road
      - Abbreviated Notice of Resource Area Delineation (ANRAD), Stratton Hill subdivision, off Wright Road
        - The ANRAD is a likely candidate for third-party peer review.
        - GB wondered if the peer review for the ANRAD could be tied into a peer review for the NOI.
          - CA said the NOI has not been received, and she assumed that confirmation of the wetland line would shape the project and therefore the NOI.
        - Geoff Tillotson, calling in as Chair of the Planning Board, said this will be a large subdivision.





## **Town of Ayer Conservation Commission**

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

Minutes for 6/11/2020

- Since it will also come before Planning, and it would be best to get ahead of it.
- **Public Meeting: Request for Certificate of Compliance (COC): 130 Woodland Way, Pingry Hill Subdivision, Ridge View Realty Trust, MassDEP # 100-0275**
  - Assessor's Map 36, Parcel 176
  - CA is comfortable with proceeding with the Request.
    - CA said ConCom has a signed Affidavit indicating that the first homeowner has passed on the OOC to the second homeowner.
    - Dr. Desheng Wang, the environmental monitor for Pingry Hill, oversaw bringing the property back into compliance with the approved plans (i.e., placement of boulders and shrubs, removal of dirt placed beyond the Limit of Work, as-built and photos).
  - GB moved to issue a COC for 100-0275; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: Sheds on Pine Meadow Conservation Land**
  - Location: Town property directly behind the private residence at 102 Oak Ridge Drive
  - Given the lateness of the hour and the 90-minute limit placed on ConCom's Zoom meeting, this discussion was put off until the next meeting on 6/25.
- **Conservation Office and Member Updates**
  - Town Manager Robert Pontbriand has signed the SOLitude contract for weed treatment on the ponds.
    - Now just waiting for SOLitude to return their signed contract and schedule the treatments.
- **8:30 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: 6/25/2020

Signature Indicating Approval: Jessica G. Gugino