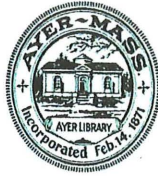


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OCT 23 2020

TOWN OF AYER
TOWN CLERK

Matthew Opeland



Town of Ayer Conservation Commission

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

Minutes for 8/27/2020

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 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 8/13/2020 as amended; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Accounts Payable**
 - Solitude Lake Management: \$2250, for Task 1, pre-treatment survey for 2020 weed treatment.
 - GB moved to approve payment of \$2250; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - EcoTec: \$7039.79, for peer review work, including subcontract reviewers, for Ayer Solar II, through August 25, 2020.
 - GB moved to approve payment of \$7039.79; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - The peer review contract was for \$10,680 so a balance still remains.
- **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
 - Present via Zoom was Kyle Burchard, of GPR, on behalf of the applicant.
 - GPR has received the 8/13 report prepared by the solar peer reviewer, NeoVirtus.
 - Mr. Burchard said GPR is formulating a response.
 - He hopes the entire peer review will be complete and that the application can be advanced at ConCom's next meeting on 9/10.
 - GB moved to continue the Public Hearing to 9/10; MP 2nd.
 - 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 8/27/2020

- **Public Hearing (cont'd.): NOI – Abbreviated Notice of Resource Area Delineation (ANRAD) – Off Wright Road, Fox Meadow Realty Corporation, Dave Moulton, MassDEP # 100-0445**
 - Assessor's Map 17, Parcels 1-3, 7, 8, 11-5
 - Seth Donohoe, of Ducharme & Dillis, Civil Design Group, was present via Zoom on behalf of Fox Meadow Realty.
 - Three peer review proposals were received, from EcoTec Inc., BSC Group, and SWCA Environmental Consultants.
 - The RFP (Request for Proposals) called for the peer reviewer to review the ANRAD NOI and plans; conduct a site visit to evaluate the wetland delineations as well as to evaluate any certified/potential/possible vernal pools on site; write a report with findings and recommendations; and attend the ConCom meeting on 9/10 to present the report and respond to questions.
 - All three proposals met the requirements of the RFP.
 - EcoTec's proposal was the most cost-effective, at \$3400, and agreeable to all members of the Commission.
 - GB moved to approve EcoTec for the RFP contract to evaluate the ANRAD for 100-0445; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - GB moved to continue the Public Hearing for 100-0445 to 9/10/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: Enforcement Order (EO) – 111 Fitchburg Road, Watt Phnom Serie, Inc.**
 - Assessor's Map 1, Parcel 2
 - Venerable Buntenh But, a Buddhist monk from Cambodia, and Bopha Peou participated via Zoom.
 - The old 'David E. Ross' building, which abuts the Nashua River, was recently purchased by Mr. But's organization.
 - The property is to be turned into a Buddhist temple and meditation center, and Venerable But said that he greatly looks forward to working with, and contributing to, the Ayer community.
 - Prior to the real estate closing, CA discovered vegetation and shrubs had been cleared from the river bank and that steps down to the water had also been cut into the bank.
 - She contacted the buyers and issued a friendly EO.
 - Venerable But explained that in the excitement of the purchase, they had gotten carried away with starting to begin cleaning up the property (with prior permission from the seller) and providing safer and easier access to the water.
 - Although they knew there were wetland issues, they did not understand the details, nor the requirements of the Wetlands Protection Act, nor know who to contact until CA contacted them instead.
 - Mr. But said that taking care of the forest was very important to him in Cambodia, but he now understands that it needs to be done differently in the United States.



Town of Ayer Conservation Commission

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

Minutes for 8/27/2020

- The EO included a Cease & Desist and requires a restoration plan to correct the resource area alterations to their original condition.
- The Buddhist organization has now engaged the services of Paul McManus, of EcoTec, to help them prepare a restoration plan for work done in the inner riparian zone without a permit, this plan to be filed by 9/24.
 - Mr. McManus will assess the situation and develop a plan for moving forward.
 - CA will be meeting with Mr. McManus on site next week.
 - MassDEP's Circuit Rider has suggested stairs could be set on top of the bank rather than remaining cut into the bank.
- ConCom will wait to decide on whether or not to ratify the EO until its next meeting on 9/10, after Mr. McManus has completed his assessment.
- **Public Hearing (cont'd.): NOI – Lot 6, Shaker Road, Shaker Nominee Trust, Dan Aho, Trustee, MassDEP # 100-0446**
 - Assessor's Map 38, Parcel 68
 - The Order of Conditions (OOC) has been reviewed by Neil Gorman, of David E Ross Associates, and is ready to sign.
 - GB moved to approve the OOC and authorize CA to sign on ConCom's behalf; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - GB moved to close the Public Hearing for 100-0446; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – K137/K137W Sandy Pond-Ayer Tap ROW, New England Power Company, MassDEP # 100-0448**
 - Assessor's Map 19, Parcels 11 & 12; Map 12, Parcels 2 & 26
 - Alison Millman, of BSC Group, participated via Zoom on behalf of the applicant.
 - MP, as an employee of National Grid, recused himself from commenting or voting.
 - The project involves drilling 4-6 in. soil borings along New England Power's utility easement in order to evaluate substrate conditions prior to the eventual replacement of existing power line structures.
 - The utility easement crosses through resource areas (BVW – bordering vegetated wetlands) and buffer zones on multiple parcels under separate ownership.
 - CA and Ms. Millman have been conferring on preparation of the draft OOC Special Conditions (ConCom's boilerplate).
 - Ms. Millman had a number of changes to several of the Special Conditions, especially those lasting "in perpetuity," and CA wanted to run them by ConCom before proceeding further.
 - Ms. Millman went through the Special Condition for which she was requesting changes:
 - # 3 applies to the passing on of an OOC, with a signed Affidavit, to any successor(s) in interest or control.
 - Since a utility right-of-way (ROW) easement crosses multiple parcels not owned by the power company, Ms. Millman asked for an exemption to this condition.



Town of Ayer Conservation Commission

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

Minutes for 8/27/2020

- #4 requires that this OOC be provided to all current or future new tenants – and the same problem of different ownership as with #3 applies here.
- #11 states that equipment requiring fuel, hydraulic fluid, etc., such as pumps or generators, not be stored or operated with the resource areas without written approval from ConCom.
 - Ms. Millman said the drilling mechanism uses fluid to circulate internally as a cooling mechanism during boring, but there will be no fluid discharge.
- #17 a requires wetland flagging use biodegradable flags/stakes.
 - Ms. Millman asked that the condition just specify that wetland boundaries would be clearly marked and maintained until a Certificate of Compliance (COC) is issued.
- #17 d requires ConCom be notified 7 days in advance to inspect erosion controls.
 - Due to the temporary nature of the work that will move sequentially from place to place along the ROW, Ms. Millman asked that the project be allowed to install controls at the time they are necessary and forego the 7-day requirement notification process.
- #17 f Ms. Millman asked that this condition be altered as the Limits of Work (LOW) will not be surveyed in advance.
- #21 prohibits overnight parking of vehicles in resource areas or buffer zones, but Ms. Millman asked that they be allowed to keep the drilling rig onsite overnight, provided they employ secondary containment measures.
- #22 a and b reference minimum required erosion control barriers and their installation, and Ms. Millman asked that the 7-day in advance inspection and approval by ConCom be eliminated as these controls will be installed as the project moves down the ROW.
- #22 k requires annual oats be used to seed and stabilize exposed soils
 - Since the disturbance for each boring is minor, Ms. Millman asked that they be allowed to stabilize exposed soil with straw mulch instead.
- #30 b and c requires, on completion of the project, a written statement from a registered professional engineer and a signed and stamped as-built topographic plan – for which Ms. Millman requested a waiver given the nature of the work.
- #s 32-42 were all conditions imposed in “perpetuity” and Ms. Millman asked that these be waived given that the power company does not own the parcels.
 - Ms. Millman suggested these conditions be applied only for the duration of the project, until a COC is issued.
 - Also of these, #35 cannot be complied with as it prohibits the storage of fuel-containing equipment in resource areas and buffer zones, and re the above discussion of #21, the project will need to store the drilling rig in some of these areas overnight as the work progresses along the ROW.
- CA thought these were reasonable requests for a public utility maintenance project



Town of Ayer Conservation Commission

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

Minutes for 8/27/2020

- GB was fine with these requests but with respect to #11 and #21, asked that before the *first* overnight storage of any equipment on site, CA be requested to inspect and approve the containment measures to be used at that time and later.
 - JS, JA and JG found the above suggested changes reasonable as well.
 - All were in agreement that ConCom's boilerplate Special Conditions need to be updated and revised, especially with regard to this type of utility maintenance project.
 - Ms. Millman asked to also describe one minor change to the project based on the site walk done a few days earlier with the contractor.
 - At the location of K137 structure 2, a little more mowing than initially proposed within the 25 ft. buffer zone will be needed to access one of the boring locations.
 - CA will contact Ms. Millman to review a revised OOC document next week.
 - GB moved to approve the OOC as discussed and amended; JA 2nd.
 - Motion approved by Roll Call Vote 4-0 (MP recused).
 - GB moved to continue the Public Hearing to 9/10 to sign the revised OOC; JA 2nd.
 - Motion approved by Roll Call Vote 4-0 (MP recused).
- **Public Meeting: Request for Extension of Order of Conditions (OOC) – Pleasant Street Extension, Riley Jayne Farm, Onyx Corporation, MassDEP # 100-0415**
 - Assessor's Map 12, Parcel 106 and Assessor's Map 13, Parcel 9
 - Calvin Moore was present via Zoom on behalf of C. J. Moore.
 - Several years ago, at the beginning of the project, Onyx Corporation did some erroneous tree-clearing, in the wrong locations, during initial site preparation and were issued an EO requiring some replication areas.
 - The OOC issued expires in November.
 - Onyx is now back on site to finish up final paving at the end of Pleasant Street and on Trevor Trail.
 - This is in anticipation of a road acceptance vote at Fall Town Meeting.
 - A replication area has yet to be completed as well.
 - The Extension is being requested, to 11/14/2023, to ensure time to complete work covered by the OOC, including the 2 growing seasons needed to confirm replication areas have taken successfully.
 - CA has asked the Onyx project manager to adjust the two-layer erosion control wattle arrangement so that the layers overlap rather than one laying evenly on top of the other.
 - GB moved to approve the Extension of the OOC for 100-0415 to 11/14/2023; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - **Public Hearing: NOI – 0 Taft Street, Brian Anderson, MassDEP # 100-0tbd**
 - Assessor's Map 19, Parcel 119
 - No one was present to participate remotely on behalf of the applicant.
 - GB moved to continue the Public Hearing to 9/10/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - **Public Input**

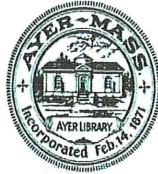


Town of Ayer Conservation Commission

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

Minutes for 8/27/2020

- Before moving on any further, JS asked if any members of the public viewing the meeting had any comments.
- David Bodurtha asked to speak regarding the 0 Central Avenue Enforcement Order on John Hillier, as discussed at the last few meetings.
 - He asked that ConCom move forward with ratifying the tickets it has issued to Mr. Hillier on the grounds that Mr. Hillier is continuing to park at least up to 7 cars on the parcel even though he previously said he would not be parking cars in the buffer zone.
 - ConCom addressed this comment later in the meeting.
 - JG said she was not comfortable with moving forward with discussion of ticket ratification without Mr. Hillier or his attorney present.
 - JG also said she did not recall Mr. Hillier saying he would not continue parking on his parcel.
 - Mr. Bodurtha said Mr. Hillier said this twice on 8/13.
 - JG said she thinks this has to do with Mr. Hillier not yet acknowledging that where he is continuing to park cars is, in fact, in jurisdictional buffer zone.
 - She asked that Mr. Bodurtha be patient with the Commission as it continues to work to resolve these issues.
- **Action Items**
 - CA reviewed applications waiting in the pipeline:
 - NOI, 1 Bishop Road
 - CA will call to see what is holding up this submission.
 - RDA, MBTA, for vegetation management
 - CA will ask the MBTA for a map of the project at a different scale that makes the proposed work, including where in proximity to wetland areas, more visible.
 - She expects this will be scheduled at one of the next couple of meetings.
 - NOI, DPW
 - This NOI has been received, for Groton-Shirley Road improvements (sewer, water, stormwater management) and will be on the 9/10 agenda.
 - RDA, Groton-Shirley Road
 - CA has not yet received an RDA for a swimming pool installation.
 - COC requests, Pingry Hill
 - CA spoke recently to erosion control specialist Desheng Wang.
 - The subdivision is close to completion, and CA suggested she and ConCom need to resolve some outstanding COC requests for which there were some issues.
 - ConCom will consider scheduling a site walk to do this.
 - CA said one of the outstanding issues for COCs has been the lack of the developer/seller providing ConCom with signed Affidavits indicating that OOCs have been passed on to new owners as properties were/are sold.



Town of Ayer Conservation Commission

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

Minutes for 8/27/2020

- CA was pleased, in talking to a recent Pingry Hill buyer, to find that the Affidavit was executed in that case and the new owner had a copy of their OOC
- **Conservation Commission Office and Member Updates**
 - OOO Special Conditions Boilerplate
 - As previously mentioned, CA reiterated that the current boilerplate is cumbersome and repetitive and needs an overhaul.
 - It has been added to over the years and accumulated conditions like a rolling snowball.
 - CA will plan to block out a day or two sometime soon in order to redraft them in something that is both reasonable and readable to applicants, and functional and enforceable to ConCom.
 - MP said a lot of the conditions in the boilerplate are probably things that could now be put into Bylaw Regulations instead, so that OOC Special Conditions would become more project specific rather than general.
 - CA will keep that in mind when she works on the boilerplate, looking for which current special conditions rise to the level of suitability for a regulation.
 - JS said he would like to be part of CA's review process to work on the boilerplate.
 - 21 Oak Ridge Drive
 - CA is meeting with the resident there to look at the berm of exposed soil they appear to have put up by the bank to Flannagan Pond.
 - MACC Electronic Handbook
 - ConCom members now have online access.
 - Regulations
 - In spite of having full agendas and limited Zoom time, ConCom needs to move forward with drafting Regulations.
 - At least half of the first meeting in October will be reserved for this task.
 - Members should review the draft material MP circulated prior to the onset of the pandemic, centuries ago.
- **8:21 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date and Signature Indicating Approval

 9/10/2020