



Town of Ayer Conservation Commission

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

Minutes for 10/8/2020

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)

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.
- **Accounts Payable**
 - Solitude Lake Management: \$2250, for Task 3, Sonar booster to Sandy Pond on 9/23.
 - GB moved to approve payment of \$2250; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - Solitude Lake Management: \$3500, for Task 4, water lily treatments of Flannagan, Sandy, and Pine Meadow ponds on 9/23.
 - GB moved to approve payment of \$3500; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Approval of Meeting Minutes**
 - GB moved to accept the minutes for 9/24/2020 as previously revised; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Groton-Shirley Road, Ayer Department of Public Works (DPW), MassDEP # 100-0450**
 - The DEP file number (100-0450) was issued this week along with several technical comments.
 - DPW Superintendent Mark Wetzel requested that ConCom continue this Hearing while the DPW addresses DEP's comments.
 - GB moved to continue the Public Hearing to 10/22/2020; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Meeting: Violation Notice, 21 Oak Ridge Drive, Denise and Marian Simion**
 - Assessor's Map 27, Parcel 171
 - Dr. Marian Simion participated in the meeting via Zoom.
 - ConCom conducted a site walk on Saturday, 10/3/2020.



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- JS summarized that the Simions moved a large amount of sandy soil from their yard down to the edge of Flannagan Pond in order to create a barrier to prevent children from sledding from the steep backyard slope out onto – or through – the pond’s ice in winter.
 - The berm is approximately 5-6 ft. wide and 2-1/2 ft. high.
 - ConCom members question the stability of the very sandy soil and the risk of that soil eroding into the pond during heavy storm events.
 - GB said there needed to be either a barrier between the berm and the pond or that the berm needed to be pulled away from the edge of the pond, or that it needed to be replaced with something that won’t wash away.
 - MP said the sledding-onto-ice risk is a temporary risk during the winter months.
 - He wondered if the risk could be handled instead by an equally temporary barrier – plastic snow fencing or haybales, for example – rather than the permanent berm.
 - He also suggested the need to make the barrier more aesthetically attractive than the current berm.
 - JG asked about a retaining wall between the pile and the pond, and GB said such a wall would have to be something substantial.
 - JS said the berm should be pulled back from the edge of the pond and reduced in height.
 - CA suggested an alternative that could stabilize the berm by covering it with jute matting and planting vegetation that would sink deep roots and thereby prevent erosion.
- Dr. Simion agreed the pile looks ugly when viewed from across the pond and would like to make it more attractive.
 - While the soil is very sandy, it contains enough organic material that appropriate plants could grow in it.
- Art Allen, of EcoTec – present for a later Hearing – offered the suggestion that “rug juniper” or “American beachgrass” are readily available, have aggressive root systems, and would likely do well in sandy soil.
- After further discussion, and with Dr. Simion’s agreement, JS summarized the plan going forward:
 - The berm is to be pulled back up to 3 ft. from the edge of the pond and its height lowered about a foot.
 - CA will be in touch with Dr. Simion about stabilizing the remaining berm.
 - CA also reminded Dr. Simion that the soil built up around a maple tree next to the berm needs to be removed so that the roots of the maple are not smothered, killing the tree.
- **Public Meeting: Request for Determination of Applicability (RDA) – 19 Oak Ridge Drive, Richard Otty**
 - Assessor’s Map 27, Parcel 9
 - Mr. Otty participated in the meeting via Zoom.
 - ConCom conducted a site walk on Saturday, 10/3/2020.



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- Mr. Otty lives next door to the Simions and also has a back yard that steeply slopes down to Flannagan Pond.
 - A 23 ft. poured concrete retaining wall exists near the base of the house and toward the top of the slope.
 - Mr. Otty proposes to extend this retaining wall by adding approximately 16 ft. retaining walls, constructed from landscape timber, on each side.
 - The new walls would be constructed as a “soldier pile” stack of 8-ft. timbers set into aluminum I-beams.
 - Crushed stone would be used to underlie the area directly beneath the timbers.
 - The I-beams and U-channels would be sunk into the ground and stabilized with concrete, as well as secured to the existing concrete wall.
 - This project would allow Mr. Otty to reduce that erosion that is already taking place from near the house foundation.
 - It would also allow him to level off the ground between the house and the retaining wall(s) to make it more usable by creating a patio.
 - Bricks and grass would be used to create a permeable patio floor.
- GB moved to issue a Negative Determination of Applicability; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- CA reminded Mr. Otty, who hopes to begin this project soon, that he will have to wait until DEP’s appeal period has passed.
 - CA will monitor the project as it takes place.
- **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
 - Kyle Burchard and Cal Goldsmith, of Goldsmith, Prest & Ringwall, as well as applicant Rohit Garg, participated via Zoom.
 - Also present via Zoom was Arthur Allen, of EcoTec, Inc., the third-party peer reviewer, and Michael Andrade, of Graves Engineering, Inc., who performed the civil engineering peer review for EcoTec.
 - The most recent peer review comments received are: EcoTec/Mr. Allen (9/21), Graves Engineering (10/6, 9/23), and NeoVirtus Engineering, Inc. (8/13), which performed the solar production/shading analysis.
 - (Preliminary comments were earlier made by the peer reviewers in May and June, with a response in June from GPR, a working engineering meeting between GPR, peer reviewers, CA and MP during the week of 7/13, then followed by GPR’s revisions, the final peer review comments noted above, and the revised NOI, 9/15.)
 - GPR also issued detailed responses to the peer review comments on 9/25 and 9/14.
 - Mr. Burchard reviewed the revised Narrative for the NOI that incorporates or responds to peer review comments.



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- The issues remaining for resolution:
 - The stream crossing culvert design and its adherence to MA Stream Crossing Standards;
 - Proposed tree-topping in the buffer zone (to the south of the solar array);
 - Plantings to be used in the tree-box filters – trees or shrubs.
 - The Conservation Restriction (CR) -- because of the presence of the endangered Blandings Turtle, the applicant is in the process of coming to a resolution with NHESP (Natural Heritage & Endangered Species Program) that would place the undeveloped land on the subject's properties into a CR and include provision of a turtle nesting area.
 - This report is still forthcoming.
- Time ran out before the tree box filters could be discussed at all.
- Minimal discussion of the tree-topping took place and involved several Commission members clarifying for Mr. Burchard that acceptance of the tree-topping was, in fact, not a done deal, especially given the NeoVirtus report indicated that leaving the trees intact on the south side of the array would result in only a 1.3% reduction in annual solar production.
- The bulk of discussion then focused on the proposed stream-crossing.
- Stream-crossing
 - Mr. Burchard outlined the two arch culvert designs under consideration:
 - The design the applicant and GPR prefer is a **straight culvert design** for an open-bottom aluminum arch culvert supported on concrete strip footings.
 - This design, however, would not preserve the existing stream channel but instead require the re-routing of approximately 15 ft. of the natural stream course and the re-creation of a new stream course and bank for this portion of the intermittent stream.
 - Mr. Burchard said the design would nevertheless preserve the functional connection between the BVW (Bordering Vegetated Wetlands) and the upland, and would wind up providing better habitat than currently exists.
 - The alternate design that would maintain the existing course of the stream would require an **angled culvert**.
 - GPR contends that the angled design would be more costly and complicated, and would involve more disturbance.
 - Mr. Burchard focused on Mr. Allen's comment #3 in his 9/21 review letter that the angled culvert design "does not provide full compliance with the Stream Crossing Standards" and said:
 - The definition of "Land Under Water" is confusing; because the intermittent stream channel is periodically dry, there is no mean annual high water line.
 - Stream Crossing Standards versus Bank Performance Standards are totally separate and different matters.



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- Presumptions listed under the Wetland Protection Act (WPA) indicate this is not a stream of 'significance' and therefore performance standards do not apply.
 - This is especially true because the stream flattens out and dissipates about 20 ft. further downstream.
- GPR therefore asserts the nonsignificance of the bank in terms of WPA presumptions.
 - On this basis, the preferred straight design does not attempt to fully comply with Stream Crossing Standards.
- Mr. Allen said that Mr. Burchard was misconstruing the purpose of Stream Crossing Standards (310 CMR 10.5.4.4).
 - Performance Standards are based not only on habitat characteristics but also on physical characteristics.
 - The revised NOI Narrative does not address these physical characteristics.
 - Physical characteristics of a stream are as important as habitat characteristics.
 - In addition, bank and stream crossing standards are not separate.
 - There is a presumption of compliance regarding the bank if stream crossing standards have been met.
 - He also said that, based on prior MassDEP adjudications, even intermittent streams have a mean annual high water line for Land Under Water.
 - Nevertheless, Mr. Allen added that GPR would essentially meet the Stream Crossing Standards by relocating the stream.
 - He then asked Mr. Andrade, of Graves Engineering, to comment on the feasibility of the angled culvert design since GPR was arguing it was more complicated and less feasible than the straight culvert they were proposing.
 - Mr. Andrade said it might be cheaper to do the straight design but both designs were equally constructable in his view.
- MP said he felt the design should not stray from the Standards, and his preference at this point was the angled design that did not require re-routing an existing stream course.
- Mr. Goldsmith weighed in that the area of the stream crossing will undoubtedly get disturbed during construction and have to be reconstructed anyway.
 - He also said the proposed reconstructed stream, via the straight culvert, would function better than the existing channel.
- Mr. Allen said streams often get disturbed during construction and have to be rebuilt, yes, but that is not the point of the Stream Crossing Standards.
- JS said a number of Commissioners feel natural streams have value and see part of the Commission's job as protecting them.
 - In his view, as with MP, the angled design is the way to go.



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- Resident Ken Diskin, an abutter to the project, said this was one of the most complicated projects before ConCom, but in practical terms, thought the straight culvert configuration was the way to go.
 - With little time remaining for this Hearing, discussion briefly touched on the issue of the 38-acre Conservation Restriction.
 - While property ownership would remain with the solar array owner, the CR would need to be held by a separate entity which would then be responsible for annual monitoring/maintenance of the CR.
 - ConCom will be asked if it will accept holding the CR.
 - JG asked if this means the Town would then be asked to also shoulder the annual expenses associated with CR monitoring?
 - Mr. Garg, via telephone, said that he is still in preliminary discussions regarding the CR.
 - Time on the agenda having run over, GB moved to continue the Public Hearing for 100-0444 to 10/22; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): NOI – Abbreviated Notice of Resource Area Delineation (ANRAD) – Off Wright Road, “Stratton Hill,” Fox Meadow Realty Corporation, Dave Moulton, MassDEP # 100-0445**
 - Assessor’s Map 17, Parcels 1-3, 7, 8, 11-5
 - As requested in advance by the applicant’s representative, Seth Donohoe, GB moved to continue the Public Hearing for 100-0445 to 10/22; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – 0 Taft Street, Brian Anderson, MassDEP # 100-TBD**
 - Assessor’s Map 19, Parcel 119
 - As requested in advance by the applicant’s representative, Brandon Ducharme, GB moved to continue the Public Hearing to 10/22; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: National Grid Water Pumping Violation, end of Rosewood Avenue, and OOC 100-0448 (approved 9/10/2020)**
 - Assessor’s Map 3, Parcel 90
 - Alison Milliman, of BSC Group, participated via Zoom.
 - CA and JS met on site with Ms. Milliman and Kelly Doherty, of National Grid, on Monday, 9/28/2020.
 - Regarding the water pumping, permission to do so was given by Calvin Moore on behalf of his nephew C. J. Moore who owns the property.
 - Meanwhile, the pump and pipes have been removed, but access planks remain that neither New England Power nor the drilling company say are theirs.
 - On a separate matter, New England Power Company says they will not record the OOC as written and are requesting three administrative changes to the wording.



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- The way the OOC is written, in the State's portion (WPA Form 5, not ConCom's Special Conditions), there is problematic language regarding ownership of land where the work is to take place.
 - Typically OOCs are recorded against the property where work is being done but National Grid does not own all of the land, and instead holds easements on a number of parcels of private property.
- However, Ms. Milliman has researched this more thoroughly and it now appears that the WPA jurisdictional parcels (19-11, 19-12, 12-26, 13-2, and 12-2) affected by this OOC are all owned by New England Power in any case.
- CA will work with Ms. Milliman to sort out the proposed administrative changes and CA will prepare a new OOC for ConCom to approve.
- **Discussion: Request for Certificate of Compliance (COC), 150 Hemlock Drive, Pingry Hill subdivision, Ridge View Realty Trust, MassDEP # 100-0282**
 - Assessor's Map 36, Parcel 121
 - Dr. Desheng Wang, of Creative Land & Water Engineering, participated via Zoom.
 - Dr. Wang is the erosion control specialist for Pingry Hill.
 - CA performed a site walk earlier in the day for this property.
 - She has the as-built as well as the signed Affidavit indicating the homeowner has been notified that there is an OOC attached to the property and been given a copy of the OOC.
 - GB moved to approve the issuance of a COC for 100-0282; MP 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.
 - CA brought up that this COC request was part of a batch of nine submitted last fall, but without the accompanying Affidavits required by the OOC's Special Conditions.
 - Dr. Wang said that Duke Pointer is still working on the missing Affidavits for the other COC requests.
 - CA will be walking the subdivision site, where work is still in process, with Dr. Wang in the near future to review winterization plans.
 - Dr. Wang said that all stormwater management has been completed, and that most ground areas have been stabilized with grass germinating.
- **Discussion: Lack of posting for weed treatment by Solitude Lake Management**
 - Sandy and Flannagan ponds were treated on 9/23 but ConCom learned from some resident complaints that the signs notifying of upcoming treatments were not posted as required by the contract.
 - JG contacted Dominic Meringolo, of Solitude, who wrote back apologizing for the mistake.
- **Upcoming Applications**
 - NOI, 1 Bishop Road
 - This application will be put off until November, awaiting the applicant's preparing a more detailed plan per DEP's technical comments.



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- RDA, MBTA
 - Put off until November.
- ANRAD, 0 Washington Street
 - A new ANRAD has been received for a proposed subdivision in an area across from the high school.
 - Oxbow Associates also submitted a draft Conservation Analysis and CA has informed them of the details that still need to be addressed.
 - CA has walked the site with the developer, the Town Planner, and Oxbow.
- Shaker Mill Pond
 - Another NOI will be coming in from developer Dan Aho for the installation of water and sewer lines, via directional drilling underneath Bennett's Brook, for the Shaker Mill Pond subdivision (100-0437).
- **Office and Member Updates**
 - Violation
 - CA has received another resident complaint about water being pumped from wetlands, this time on Groton-Shirley Road.
 - The water is being pumped for hydroseeding by Prescott Landscaping, an out-of-town company, and the resident provided photos showing hydroseeding material that was left on the street.
 - CA will issue an Enforcement Order requiring Prescott Landscaping clean up the mess so that the material does not make it into the nearby wetlands.
 - North County Land Trust (NCLT)
 - Although NCLT is currently in the middle of two big land protection projects, they have written to say they are will very interested in working with Ayer in the future.
 - Ayer is hoping to contract with them to assist in annual CR monitoring.
 - NCLT hopes to contact the Town about this some time after the new year.
 - Tree Management Working Group
 - GB asked if any other commissioners were interested in participating in the DPW's working group.
 - GB is interested and will tell DPW Superintendent Wetzel that he will participate on behalf of ConCom.
- **9:07 PM – Adjourn Meeting**
 - MP moved to adjourn; GB 2nd.
 - Motion approved unanimously by Roll Call Vote 5-0.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date / Signature Indicating Approval:

10/22/2020 