



## **Town of Ayer Conservation Commission**

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

Minutes for 10/22/2020

**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**
  - The order was changed on some items.
  - GB moved to confirm the agenda as amended; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Approval of Meeting Minutes**
  - GB moved to accept the minutes for 10/8/2020 as written; MP 2<sup>nd</sup>.
    - 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**
  - DPW Superintendent Mark Wetzel participated via Zoom.
  - A draft Order of Conditions (OOC) has been agreed upon.
  - There being no public comments, GB moved to approve the Order of Conditions (OOC) for 100-0450 and authorize CA to sign on the Commissioner's behalf; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0450; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - Mr. Wetzel felt the need to express his frustration with ConCom's process for this application.
    - It was noted that ConCom could not issue an OOC until MassDEP had issued the file number, which it only did just prior to the previous meeting -- along with some technical comments that had to be addressed.
    - JS also noted part of the reason for the delay was that the DPW had submitted an incorrect and incomplete application to MassDEP.
- **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 (GPR), and applicant Rohit Garg participated via Zoom.



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- Following the discussion at ConCom's 10/8 meeting, Mr. Garg directed GPR to amend the plans with the following changes:
  - The stream-crossing proposal is now for an open-bottom angled culvert.
    - This replaces the straight culvert previously proposed that would have necessitated re-routing the course of the intermittent stream.
    - While installing a culvert over the existing stream course involves approximately 500 sq. ft. more BVW disturbance (Bordering Vegetated Wetlands), CA noted that the total amount of disturbance was still under 5000 sq. ft, thus avoiding triggering the need for an Army Corps of Engineers review.
  - The tree-topping proposed in the buffer zone to the southeast of the array has now been eliminated.
  - In addition, Mr. Burchard noted that, per recommendations of the outside consultants, seeding underneath the array has been addressed, the use of check dams have been added, and the position of monitoring wells has now been shifted to inside the stormwater basins.
  - Regarding the plantings to go into the tree box filters, Mr. Burchard asked that this be dealt with in the OOC itself.
- Mr. Burchard asked that the OOC issued for the previously-approved Solar II project, before significant changes were proposed, be used as the template for the new OOC.
  - This would include provisions requiring an Environmental Monitor.
- CA has heard from consultants Art Allen, of EcoTec, and Mike Andrade, of Graves Engineering, and both are satisfied that the stream-crossing now adequately meets Mass. Stream Crossing Standards.
- Abutting resident Ken Diskin asked if, during the course of constructing the crossing, there would be a temporary need to cross onto private property for passage.
  - Mr. Burchard said no, that the stream crossing would remain traversable with the use of a steel plate or something similar.
- There being no further questions or comments, GB moved to approve the NOI and begin the process of drafting an OOC; MP 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 5-0.
- Proposed Conservation Restriction (CR)
  - Mr. Burchard then asked to briefly address the CR.
  - NHESP (Natural Heritage & Endangered Species Program) has issued its "No Take" letter (for the endangered Blandings Turtle), and its project permission is premised on the creation of a CR.
  - Mr. Burchard showed a map of the proposed boundaries of an approximately 38.91 acre CR.
    - The CR excludes areas reserved for the array, access road, and a potential single house lot that may or may not be used at some point in the future.
    - While the Division of Fish & Wildlife has declined to accept holding the CR, they have suggested that the boundary lines be "straightened" to



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reduce the number of corners that will need to be set with boundary monuments.

- Given that ConCom has indicated its willingness to consider holding the CR, Mr. Goldsmith asked if commissioners were agreeable to the CR boundaries being straightened, as suggested, even though this would reduce the acreage of the CR slightly.
- MP asked if the proposed acreage included the area southeast of the array, where previously tree-topping had been proposed.
  - Mr. Burchard said that was a good point and that the CR boundaries would be revised to include this area. While ConCom members were agreeable to the idea of straightening out the boundaries, MP asked to see the revised and straightened out CR map before a final decision.
- CA and GB will meet Mr. Burchard next week to walk the proposed CR area.
- In addition, CA has been in talks with Calvin Moore, who owns part of the property, and Mr. Garg to negotiate public access to the CR, were the Town to accept holding it.
  - Both are agreeable to there being public access for casual walking and passive recreational use, as has been taking place, with a few provisions:
    - no new trails to be created;
    - no camping;
    - no outdoor fires permitted;
    - no use of motorized vehicles except by the property owner for maintenance purposes.
  - Access to the CR would be available via parcel frontage on Pleasant Street, the Rail Trail, or via Washington Street for those capable of climbing down the steep slope there.
- The access road from Washington Street is not part of the CR and would not be open for public use.
  - Mr. Garg said they are considering installing a security gate at the entrance to prevent unauthorized vehicle use of the access road.
- Regarding the informal trail that currently exists on the north side of the parcel, running from Washington Street along the first part of the access road pathway, past the abutting neighborhood (Madigan Lane) and on to the Rail Trail, GB asked if there had been consideration of a trail easement, as well as markers to delineate this existing trail.
  - This existing trail is not part of the area included in the proposed CR.
  - Mr. Goldsmith said that generally, for a solar array project like this, it is not a good idea to go out of the way to encourage additional pedestrian traffic.
    - It is fine to leave the existing trail, without an easement, for current usage, but would be a different story to create a formal easement and thereby 'invite' increased public use.



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- He suggested the existing trail could be extended in the northern corner of the parcel to allow it to re-connect through to the Rail Trail via a sewer easement.
  - A formal vote for ConCom to accept holding the CR will be deferred until the straightened and revised CR map has been received.
  - There being no further comments or discussion, GB moved to continue the Public Hearing to 11/5/2020; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing (cont'd.): Notice of Intent (NOI) -- 0 & 31 Central Avenue, Central Realty Trust, MassDEP # 100-0451**
  - Assessor's Map 27, Parcel 33 and Assessor's Map 26, Parcel 352
- **Enforcement Orders Update: 0 Central Avenue, John Hillier**
  - Assessor's Map 26, Parcel 352
  - Mr. Hillier was unable to participate, but his attorney, David McCay, and engineer Kyle Burchard, of GPR, participated via Zoom on his behalf.
  - Mr. Burchard reviewed the revised plan which shows a map of the tree-planting plan as well as the location of the existing graveled parking area.
    - CA said this area is now being used to park only 3 cars at present.
      - Mr. Hillier was informed that parking more than 4 cars there would, according to Ayer's Zoning Bylaw, require Planning Board review.
    - Mr. Burchard said Mr. Hillier is also asking that an OOC include permission in perpetuity for maintenance of the armored channel that the intermittent stream travels through in crossing this property (on its way to School House Pond).
      - Mr. Hillier is required by deed to maintain this channel to prevent flooding of the nearby railroad tracks.
      - Mr. Hillier is anxious to get into this channel to hand dig out the sediments that have built up, and to uncover the armored channel and better define the channel's limits.
      - Mr. Burchard is suggesting posts be left in clearly demarcating the path of the stream as well.
  - Mr. McCay said Mr. Hillier has no plans to add any material to the existing gravel parking area.
  - Resident Ruth Maxant Schultz asked to address the Commission.
    - To access the existing parking area, Mr. Hillier currently crosses a narrow strip, between Central Avenue and his parcel, that is owned by Ms. Schultz.
      - Ms. Schultz said she and Mr. Hillier have not come to an agreement and that he no longer has permission to cross her property.
      - She suggested he apply for another NOI to access this existing parking area through his own property next to the Compassionate Care facility.
    - As Mr. McCay noted, this is not a ConCom issue, he has not discussed this himself with Mr. Hillier, and this dispute should be addressed elsewhere.



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- The primary purpose of this Public Hearing is to resolve the Enforcement Orders and to focus on the existing parking area and the proposed tree plantings.
  - Anything further that involved new work on Mr. Hillier's parcel would require a new NOI.
- JS brought up scheduling a site walk, which ConCom typically does with NOIs.
  - Mr. McCay will contact Mr. Hillier for permission to enter his property.
  - A site walk was tentatively scheduled for Saturday, 10/24, at 9 a.m., or the following Saturday, 10/31, pending Mr. Hillier's approval via Mr. McCay.
- GB moved to continue the Public Hearing to 11/5/2020; MP 2<sup>nd</sup>.
  - Motion approved unanimously by Roll Call Vote 5-0.
- **Public Hearing: NOI – 0 Taft Street, Brian Anderson, MassDEP # 100-0452**
  - Assessor's Map 19, Parcel 119
  - Brandon Ducharme, of David E. Ross Associates, participated via Zoom on behalf of the applicant.
    - A revised plan has been submitted, and a draft OOC reviewed.
  - GB moved to issue the OOC, with CA authorized to sign on ConCom's behalf; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
  - GB moved to close the Public Hearing for 100-0452; MP 2<sup>nd</sup>.
    - Motion approved unanimously by Roll Call Vote 5-0.
- **Discussion: National Grid Violation, end of Rosewood Avenue**
  - Alison Milliman, of BSC Group, participated via Zoom.
  - The area has been cleaned up from the previous violation.
  - CA prepared a revised OOC for MassDEP # 100-0448, reflecting the administrative changes previously requested by National Grid so that they could record the OOC at the Registry.
    - GB moved to approve the administrative changes to the OOC; JA 2<sup>nd</sup>.
      - Motion approved 4-0 by Roll Call Vote (with MP having recused himself).
- **Discussion: Request for Certificate of Compliance – 138 Littleton Road, Lot 0-2, Ridge View Realty Trust, Pingry Hill Subdivision, MassDEP # 100-0423**
  - Dr. Desheng Wang, of Creative Land & Water Engineering, participated via Zoom on behalf of the applicant.
  - While everything else on the site looks fine, it was noted that the OOC requires a 2-year monitoring time period to ensure that replication areas on this parcel have successfully taken.
    - No further action was taken at this time, therefore, as a second growing season must pass.
  - Dr. Wang also noted that they will be applying for 5 OOC Extensions at ConCom's next meeting.



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- **Upcoming Applications**

- NOI, 1 Bishop Road
  - An updated plan has been received.
- RDA, MBTA
  - This is scheduled for ConCom's 11/19 meeting.
- Pingry Hill
  - In addition to the OOC Extensions to be requested, ConCom is ready to proceed with 5 additional COC requests once signed Affidavits from new owners have been received.
    - Duke Pointer, of Ridge View, is now working on them himself.
  - In addition, CA noted that missing OOC file number signs on several active sites are being replaced.
- ANRAD, 0 Washington Street
  - This is scheduled for ConCom's 11/5 meeting, along with review of the applicant's latest draft of the Conservation Analysis.
- NOI, Snake Hill Road ROW water/sewer connection to Shaker Mill Pond OSRD
  - The opening of the Public Hearing is scheduled for 11/5.
- ANRAD, Stratton Hill, MassDEP # 100-0445
  - Revisions to the wetland delineation are progressing and this will be scheduled to appear again at one of ConCom's next 2 meetings.

- **Office Updates**

- Stormwater Working Group
  - CA has been asked by the Town Engineer, Dan Van Schalkwyck, to consider joining the DPW's Working Group whose focus will be to update Stormwater Bylaws and Regulations.
    - This is required for the EPA's NPDES ((National Pollutant Discharge Elimination System) permit to the Town.
    - The Working Group would meet monthly, with a goal of having the Bylaws and Regulations ready for vote at Spring Town Meeting.

- **Resident Comment**

- Resident Ken Diskin asked to speak to express his concern over a recent action taken by the Town of Harvard with regard to Lot 6, Shaker Road.
  - An OOC for MassDEP # 100-0446 was issued by Ayer ConCom on 8/27/2020 for construction of a duplex on a parcel that is mostly in Ayer but partly crosses over into Harvard.
  - Per the request of abutting Harvard resident Daniel Tracey, who is contesting the location of the town line, Harvard issued a Cease & Desist for work on the contested portion of the property.
    - Only a portion of the stormwater drainage for the parcel is located on the contested portion that is affected by the C&D.



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- Nevertheless, Mr. Diskin was concerned that Harvard was possibly reaching across town lines to interfere with an OOC issued by Ayer, for a project also approved by Ayer Planning Board.
    - It was pointed out that this is a matter that can only be resolved at the level of Select Boards and Town Counsels.
  - Meanwhile, construction on the duplex itself continues since its location on the parcel is on uncontested Ayer land.
- **9:05 PM – Adjourn Meeting**
    - GB moved to adjourn; MP 2<sup>nd</sup>.
      - Motion approved unanimously by Roll Call Vote 5-0.

**Minutes Recorded and Submitted by Jessica G. Gugino, Clerk**

**Date / Signature Indicating Approval:**

11/5/2020 