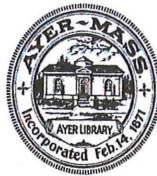


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JAN 13 2020



TOWN OF AYER
TOWN CLERK

2:34pm *lf*

Town of Ayer Conservation Commission

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

Minutes for 12/19/2019

Location: Ayer Town Hall, 1st Floor

Present: Jon Schmalenberger (JS, Chair), Mark Phillips (MP, Vice-Chair), George Bacon (GB, Member), Jessica Gugino (JG, Member/Clerk), Jo-Anne Crystoff, (CA, Conservation Administrator)

Not Present: (Commissioner Vacancy)

APAC taped: Yes

7:05 PM – Open Meeting

- **Confirmation of Agenda**

- GB moved to confirm the agenda as posted; MP 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- GB moved to accept the minutes for 12/5/2019 as written; MP 2nd.
 - Motion approved unanimously.

- **Announcements**

- The Department of Public Works (DPW) is holding two workshops in January to address 'Municipal Vulnerability Preparedness' – from 4-8 p.m. on Thursday, January 9 and Thursday, January 16, at the DPW on 25 Brook Street.
 - CA is planning on attending both sessions.
 - The workshop on January 9 overlaps with the Commission's meeting that night, and CA may therefore be late.

- **Accounts Payable**

- The FY2021 ConCom budget was submitted to the Town Manager's office.
 - It now includes a line item to cover the expense of annual maintenance on the 'beaver deceivers' installed over the past few years, as well as a line to cover the installation of a new beaver deceiver, should the need arise.

- **Public Meeting: Request for Determination of Applicability (RDA) – 114 East Main Street, American Super Conductor Corp.**

- Assessor's Maps 28 & 34, Parcels 119 & 75
- Kevin Bulman, of Professional Services, was present on behalf of American Superconductor.
- American Superconductor has been awarded a U.S. Navy contract to manufacture specialized long cables.
 - The cables need to be manufactured straight, requiring a building area that is a minimum of 450 ft. long, 660 ft. maximum.
- The original plan, triggering the RDA application, was to construct a temporary structure, 660 ft. long, made of Conex boxes, in back of the existing building, running parallel near to the railroad tracks.
 - Some of this would have fallen within the 100 ft. buffer zone to a wetland resource area.



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- It would also have required changing the path of the existing paved access road to the rear loading dock area, redirecting a portion of the access away from the tracks onto a temporary gravel road.
 - However, the Fire Department objected to this change as it would have interfered with procedures for emergency access to the back of the building.
 - In addition, Mr. Bulman said the contract may be for as long as ten years.
 - Therefore, Mr. Bulman said the plan is currently being reworked to consider constructing a permanent building addition instead.
 - Under consideration is that the new building would be long, adding approximately 450 ft. in length to be used for cable construction.
 - Additional footage would be gained via the existing building where the two connect.
 - This plan will also require reworking the loading dock access road, but the configuration would be different than with the temporary Conex building.
 - As a result, the RDA application is withdrawn and American Superconductor will likely be submitting a Notice of Intent (NOI) instead.
 - The next step is therefore to flag the wetlands and establish the location of the floodzone as well.
 - CA will provide Mr. Bulman with several area contacts for professionals to flag the wetlands.
 - Mr. Bulman also took a moment to praise the quality of CA's help during this application process.
 - MP later noted that this was "stating the obvious."
- **Public Meeting: Interviews for vacant seat on Conservation Commission**
 - Three residents have submitted letters of interest in being considered for the current commissioner vacancy and were scheduled for interviews at this meeting.
 - All were asked for background information, and why they were interested in joining the Commission.
 - In particular, they were also asked about their ability to meet the time commitments of a busy Commission –meetings on the second and fourth Thursdays of the month – some of which can be lengthy, occasional additional meetings, and periodic Saturday site walks to evaluate project applications.
 - **Scott Murray** (7:30-7:45 p.m.), of Sandy Way.
 - Dr. Murray, a physician, is interested in addressing the balance between development growth, landowner rights, and protection of a common resource, wetlands.
 - Mr. Murray indicated that he has also just taken up a volunteer leadership position with another community organization.
 - He is therefore unsure of his ability to meet ConCom's time commitments, but would be very interested in becoming an Associate Member initially.
 - **Jennifer Amaya** (7:45-8 p.m.), of Nashua Street.
 - Ms. Amaya, an Associate Director of Financial Aid at Harvard College, has become more aware of the importance of impacts to wetlands after moving into a house in Ayer that is largely in the buffer zone.
 - She is interested in helping the community, becoming more knowledgeable, and working to lessen impacts to wetlands.



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- She has also had experience at Harvard in developing policies and procedures.
 - The time commitments of ConCom would not be a problem for her.
- **Kevin Murphy** (8-8:15 p.m.), of Williams Street/
 - Mr. Murphy is a Board Certified Safety Professional with a strong science background and an interest in contributing through public service.
 - He is an advocate of 'smart' development, taking into consideration the needs of both existing residents as well as newcomers in new constructions.
 - Between his current work schedule and family needs, Mr. Murphy could not guarantee his ability to regularly attend meetings, but was interested in contributing in whatever manner he could.
- **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
 - Per written request of John Boardman, of Places Associates, GB moved to continue the Public Hearing to 1/9/2020; MP 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – Pine Meadow Conservation Area Pond Leveling Device, Town of Ayer, MassDEP # 100-0441**
 - Assessor's Map 14, Parcel 3
 - This application is 'after-the-fact', as the installation took place in October.
 - CA has now received the DEP file number, along with their requirement that a Special Condition be added to the Order of Conditions (OOC) to allow for annual maintenance on the 'beaver deceiver'.
 - CA also received an 11/27/2019 letter from the Natural Heritage & Endangered Species Program (NHESP, tracking no. 19-39045) requiring 4 additional Special Conditions to the OOC in order to avoid “adverse effects to Resource Area Habitats of state-listed wildlife species (310 CMR 10.58(4)(b) & 10.59).”
 - One of these conditions requires the submission of a Compliance Report, including photographic documentation of pre- and post- conditions, detailing the installation itself – which CA will provide shortly.
 - GB moved to issue the OOC for 100-0441; MP 2nd.
 - Motion approved unanimously and the OOC was signed.
 - GB moved to close the Public Hearing for 100-0441; MP 2nd.
 - Motion approved unanimously.
- **Discussion: Affidavits documenting transfer of ownership for open Orders of Conditions**
 - In ConCom's boilerplate Special Conditions for OOCs, Special Condition # 3 requires that a Seller of a property with an open OOC must secure a signed and notarized Affidavit from the Buyer and provide a copy of this to the Commission within ten calendar days of the transfer of ownership.
 - This Affidavit certifies the Buyer has been provided by the Seller with a copy of the OOC, has read the OOC and understood its applicability to the property, and has been made aware of the jurisdiction of the Conservation Commission over work within



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Resource Areas and Buffer Zones per the Wetlands Protection Act (WPA) and its Regulations.

- The Affidavit is also to include a plan of the lot that indicates wetland boundaries, buildings, and any other features.
- This Special Condition is of particular importance to new subdivision developments where properties are built and then quickly sold to new homeowners.
- The Commission has had recurring difficulty with the Pingry Hill subdivision (Ridge View Realty) in terms of the developer/Seller complying with this Condition.
 - (See, for example, the minutes for 8/14/2014, and periodic mentions in 2015 – 2/26, 3/26, 6/11, as well as 11/10/2016.)
 - CA noted this issue is also coming up with some new homeowners on Trevor Trail (see related discussion under CA Updates below) who were not asked to sign Affidavits nor received copies of the OOCs open on their properties.
- The Commission's goal with having the Affidavit requirement is that new homeowners are made aware of the existence of buffer zones and wetlands on or in proximity to their property, and that these protected resource areas are subject to the jurisdiction of ConCom acting under the authority of the State statute, the WPA.
 - More bluntly, it is to connect new buyers with open OOCs for their properties.
 - That way homeowners seeking to do further ground-disturbing work on their property know they must contact ConCom for review and permitting if the WPA and local wetlands bylaw are applicable.
 - It also alleviates the need for ConCom to issue Enforcement Orders that can be alarming to homeowners otherwise unaware of wetland issues.
- While the Affidavit requirement makes sense, it is clear that many developers/Sellers are not paying attention to it.
 - While CA monitors and inspects ongoing work projects during construction, ConCom has no access to information when new houses are up for sale, or sales are completed.
 - In the recent batch of 9 Certificate of Compliance (COC) requests from Pingry Hill (see minutes, 11/21/2019, 12/5/2019), 7 of the 9 COCs were for properties that were sold and now have homeowners.
 - No Affidavits have been received.
- JG suggested ConCom consider writing letters independently to homeowners encouraging them to sign an Affidavit after-the-fact (post their closing), including a copy of their OOCs, and explaining how it is in their interest to have the Seller/developer complete the COC process.
 - The developer then pays the filing fee and handles the process of filing the COC at the Registry of Deeds.
 - This, in turn, removes the OOC's attachment to the property deed – crucial for when/if the homeowner eventually tries to sell the house to a new Buyer.
 - The COC also spells out any perpetual Conditions that may apply to the property in question.
- As a means of encouraging developers/Sellers to comply with the Affidavit requirement:
 - JG suggested ConCom consider a specific fining provision in its upcoming regulations via the new local wetlands bylaw.
 - GB suggested ConCom require a prominent sign on new constructions, e.g. 'This property is subject to an Order of Conditions – MassDEP # 100-0xxx', that must remain in place until a COC has been issued.



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- The visibility of the sign should encourage potential Buyers to ask for further information.
 - CA suggested, for properties where the OOC requires the erection of conservation signs, that these signs be installed much earlier in the process, even if initially only on temporary posts.
 - This also would make potential Buyers aware of the wetlands issues on or near the property.
 - ConCom may also consider requiring the developer/Seller be present at ConCom meetings for COC requests.
 - In particular, the developer/Seller for the 9 recent Pingry Hill (Ridge View Realty Trust) COC requests should be required to attend the next meeting (tbd) at which ConCom discusses these requests and schedules a site visit.
 - To be discussed further.
- **Discussion: Final Report, 2019 Pond Weed Treatments, Solitude Lake Management**
 - The Final Report was distributed and briefly reviewed and will be discussed in more detail at ConCom's next meeting.
 - JS highlighted Solitude's suggestion of hydroraking as a method of weed control, but the issue with that is the very high cost even for very small areas where this technique could be used.
 - JG said JS/ConCom needs to talk further to Town Manager Pontbriand about the budget mechanism for funding annual weed treatments.
 - The contract for weed treatment needs to be signed and in place by late winter/early spring to get on the treatment schedule.
 - Waiting for a Spring Town Meeting approval vote (in May) makes this impossible.
 - If pond weed treatment funding becomes part of the Omnibus budget as a line item, there needs to be a mechanism to build a Reserve fund and/or roll-over unused funds from previous years.
 - ConCom/the Town cannot sign contracts unless the funding is already in place.
 - In addition, ConCom needs to continue pursuing public access to Flannagan Pond.
- **Discussion: Open Space Residential Development (OSRD) Conservation Restriction (CR) planning**
 - CA provided ConCom with a short presentation on CRs, Real Estate Law, and property ownership rights.
 - M.G.L. Chapter 184, Section 31 discusses the establishment of a CR on a property in order to impose permanent protection for conservation values that yield significant public benefit.
 - This is done under the auspices of the Division of Conservation Services, a branch of the Executive Office of Energy & Environmental Affairs.
 - ConCom has asked to be on the Planning Board's agenda for a joint meeting on 1/14/2020, at 6:15, to discuss this further, most particularly with respect to the current Shaker Mill Pond project before both boards (100-0437 above).
 - Among considerations is that ownership interest generally has to be separate from the holder of the CR/the conservation interest.
 - To be discussed further.
- **Discussion: Local Wetlands Bylaw and Regulations, next steps**
 - MP will prepare a matrix of regulation themes for discussion at ConCom's next meeting.



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- **Conservation Commission Office Updates**

- 1 Trevor Trail, Rob Boisvert

- Mr. Boisvert was present for an informal discussion about plans to install a swimming pool.
 - While doing another site inspection on Trevor Trail, CA was recently made aware that a nearby resident (Mr. Boisvert) had taken down trees within the buffer zone without ConCom review.
 - Around the same time, Mr. Boisvert had contacted the Building Inspector for permitting re the pool.
 - Building Inspector Schultz recommended Mr. Boisvert contact CA as there were wetland issues on his property.
 - Just as CA was preparing to write a letter to Mr. Boisvert, he walked into her office.
 - Mr. Boisvert had no idea half of his property was in the buffer zone.
 - He never received a copy of the Order of Conditions, nor was he asked to sign an Affidavit.
 - A single line in the house closing documents referenced "Exhibit A – OOC for ACC", but no copy of the OOC was actually provided by Seal Harbor Development or their representatives.
 - Reviewing Mr. Boisvert's plans, it looks like the area where he'd like to install the pool would be about 80 ft. from the wetlands.
 - The Order of Conditions for this property encompasses the whole of the subdivision (MassDEP #100-0389), not just this property.
 - Therefore, the question of how to permit this project was raised.
 - Would it be its own Notice of Intent? Or would it be as an Amendment to the existing OOC?
 - CA will check this out further.

- Discussion: Kohler Place Conservation Restriction (CR)

- (MassDEP #s: Lot 1 – 100-0392; Lot 3 – 100-0390; Lot 4 – 100-0391; Subdivision – 100-0340)
 - The revised document has been signed by John and Stephanie Burns.
 - It now needs to be signed by both the Board of Selectmen and ConCom in the presence of a notary.
 - ConCom may try to do this on 1/14 when it attends the Planning Board meeting.

- MassDEP Regulation Changes

- MassDEP is changing some of its regulation requirements, and is currently in a public comment period.
 - CA participated in a webinar to cover the changes that include:
 - Submission of OOCs and DOAs to DEP must be done by certified mail, not regular mail, unless submitted electronically (eDEP).
 - The date of issuance of an OOC is now the date on which ConCom mails a copy of the signed document to DEP.
 - Other changes had to do with abutter notification and wetland plant indicator lists.

- 28 Harvard Road, Global Partners LP (MassDEP # 100-0429)



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- CA will be evaluating this site, now open for business, for the COC request.
- In the meantime, CA has observed that snow at the gas station is being plowed right up against the silt fence by the intermittent stream.
 - CA will evaluate to see if there are other feasible places for snow to be plowed.
- **10:05 PM – Adjourn Meeting**
 - GB moved to adjourn; MP 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

1/9/2020

Signature Indicating Approval: _____

Jessica G. Gugino