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FEB 28 2020

TOWN OF AYER
TOWN CLERK

Anna Copeland

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 2/13/2020

Location: Ayer Town Hall, 1st Floor

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)

APAC taped: Yes

7:02 PM – Open Meeting

- **Confirmation of Agenda**

- A separate Discussion item was moved instead to Announcements (see 'Losing Ground').
- GB moved to confirm the agenda as amended; MP 2nd.
 - Motion approved unanimously.

- **Approval of Meeting Minutes**

- GB moved to accept the minutes for 1/14/2020 as written; MP 2nd.
 - These minutes were taken for the ConCom portion of the Planning Board's regular meeting.
 - Motion approved unanimously.
- GB moved to accept the minutes for 1/23/2020 as written; MP 2nd.
 - Motion approved unanimously.

- **Announcements**

- 2020 Spring Plant Sale
 - CA circulated a flyer announcing the Middlesex Conservation District's 2020 Spring Plant Sale at Kimball Farm (400 Littleton Road/Rt. 110) in Westford on Friday, 4/24 (3-6 p.m.) and Saturday, 4/25 (8 a.m. to noon).
 - Contact www.middlesexconservation.org or call 978-692-9395 for more information.
 - The order deadline is 3/31/2020.
- 2020 Massachusetts Open Space Conference
 - Greenfield Community College, in Greenfield, MA, will be hosting this free conference on Saturday, 4/25, from 9:30 a.m. to 3:30 p.m.
- Mass Audubon's Sixth Edition of "Losing Ground"
 - CA was recently approached at a recent workshop by Heidi Ricci, the Assistant Director for Advocacy at Mass Audubon, and given very good news about Ayer as published in their just released latest edition of "Losing Ground."
 - "Losing Ground" tracks land changes and reductions in open space in Massachusetts.
 - In the 5th edition, Ayer was singled out for the dubious distinction of being number one in the State for the highest rate of development across Massachusetts' 351 cities and towns.
 - On page 27 of the 6th edition, however, a half-page boxed item highlights the Town of Ayer's progress: "From No. 1 sprawl community to a model of smart local planning."
 - The article notes that since 2013, Ayer has taken a number of positive actions:
 - hiring professional planning, conservation, and economic development staff;



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- updating the Town's zoning bylaw to require Open Space Residential Design as the preferred, by-right method for developing subdivisions (see Section 10.1 of Ayer's 2018 Zoning Bylaw);
 - identifying Priority Preservation Areas via a study conducted with the Montachusett Regional Planning Commission;
 - updating its local Open Space & Recreation Plan (approved by the State in 2019);
 - focusing economic development on downtown revitalization efforts;
 - adopting a form-based code bylaw for downtown and commercial corridors to spur smart development.
- CA worked on several of these items.
- Commission members were pleased with this report and noted that it was not able to additionally include ConCom's passage of an updated local wetland bylaw in October, 2019, nor the Town's creation of a Conservation Fund.
- **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, was present, on behalf of the applicant, to provide an update.
 - Mr. Boardman has met with the DPW and the Town Engineer.
 - His letter of 2/6/2020 to the Planning Board outlines revisions to the plans based on comments from the DPW and other Boards.
 - The revisions include changes to curbing, water main layout, and other small changes.
 - In addition, two gravel public access parking spaces by the cul de sac have been removed.
 - The intent now is that the future Homeowners Association own the open space.
 - Public access won't be prohibited, but parking will no longer be provided.
 - While it has not been decided yet, and the Planning Board has not given its final approval yet, Mr. Boardman said it is under consideration that the Town be the holder of the Conservation Restriction (CR) on the designated open space.
 - He added that Mr. Aho understands there will be some costs involved with initiating the CR, including the required Baseline Survey.
 - In the current revised plan, CA noted another positive change related to the open space.
 - A landscape berm has now been added to the narrow strip of land behind lots 1, 2, and 3, to discourage homeowner encroachment into the open space.
 - The Planning Board will be requiring markers placed at the corners of properties abutting the open space.
 - Mr. Boardman said he assumed ConCom will also require conservation markers at certain locations as well.
 - After meeting with the Planning Board on 2/11, Mr. Boardman said it appears the Board has no additional issues and are just confirming things with the DPW.
 - He is confident they are moving forward now with an approval and hopes for a decision at their 2/25 meeting.
 - Meanwhile, he asked that ConCom also begin to move forward with drafting an Order of Conditions (OOC).



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- While ConCom cannot make a decision on the application until the submitted plans are in their final form, it can begin working on a draft OOC.
 - GB moved to continue the Public Hearing to 2/27; MP 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): NOI – 13 Groton-Harvard Road, BRR LLC, Randy Furmanick, MassDEP # 100-0440**
 - Assessor's Map 27, Parcel 130
 - Kevin Conover, of David E. Ross Associates, was present on behalf of the applicant.
 - ConCom and CA performed a site walk on 1/25.
 - CA performed an additional site walk with the applicant the following week to clarify some points of confusion that had arisen on 1/25.
 - The project proposes repaving over the existing paved parking area in the back of the building.
 - The parking area will not be extended any further, despite some staked survey markers observed on 1/25.
 - The 16" maple overhanging the parking lot will be removed.
 - The stump will be ground, then covered over, loamed and seeded.
 - The nearby oak stump will also be ground down, loamed and seeded.
 - Mr. Furmanick agreed to plant some new trees elsewhere on the lot – 2 red oaks, a red maple, and some witch hazel.
 - ConCom will require that the plantings are done by mid-June.
 - It was noted that a concrete pad was installed over a stone dust area for a dumpster, and that this should have been reviewed and permitted.
 - Mr. Furmanick is now aware of permitting requirements going forward.
 - Resident Dave Bodurtha noted that the application listed an incorrect map and parcel number, map 19, parcel 27, when the correct one is map 27, parcel 130.
 - Mr. Conover checked his GIS map and confirmed this correction.
 - CA asked that the applicant update this information with MassDEP.
 - GB moved to approve the NOI and begin drafting an OOC, with two conditions (the planting time-line, and change to the map/parcel number); MP 2nd.
 - Motion approved unanimously.
 - GB moved to continue the Public Hearing to 2/27; MP 2nd.
 - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – 1 Wagon Road, Edmund Staples**
 - Assessor's Map 17, Parcel 3
 - Applicant Ted Staples was present, along with his abutting neighbor Suzanne Boudrot, of 7 Sandas Point Road (off Wagon Road).
 - Mr. Staples is seeking permission to take down approximately 22 trees on his property.
 - Eighteen of the trees, white pines, line his driveway, the western rim of which directly abuts wetlands, with a several-foot drop-off within 2 or 3 feet of the edge of the driveway.
 - The driveway continues on past Mr. Staples house to Ms. Boudrot's house at the point.
 - Some of the trees lean over or toward the house, but the primary issue with the trees along the driveway is the difficulty they present to large trucks or fire equipment.



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- There is no turn-around further down the driveway so such large vehicles would have to back up the narrow and curving driveway.
 - Mr. Staples said several of the trees have suffered damage as vehicles have backed into them.
 - Ms. Boudrot said she supported Mr. Staples' project as she had concerns about the ability of emergency vehicles reaching her house under current conditions.
 - JS said the Commission was not opposed to taking down 'hazard trees' but had concerns that removal of trees along the driveway would degrade the steep slope down to the wetlands, and eventually lead to the undermining of the driveway itself.
 - Ms. Boudrot said she would be happy to replant the area with other trees, eg. red maples.
 - ConCom scheduled a site walk for 2/22, at 9 a.m.
 - The trees are marked with survey tape.
- **Public Hearing: NOI – 270 Woodland Way, David Grubb, MassDEP # 100-TBD**
 - Assessor's Map 36, Parcel 181
 - David and Becky Grubb were present.
 - Mr. Grubb said they moved into the new house construction in 2018.
 - At that time, they had been led to believe the surrounding landscaped property would be in a much different state than it actually is.
 - The backyard is mostly standing water that slowly drains into the next door property downhill – a property that is currently now under construction.
 - He described the existing condition as if the builder had dug a crater, put a house in the middle of it, and created the conditions for a surrounding moat when it is rainy.
 - In addition, they were not made aware of nearby wetlands nor that part of their backyard is in buffer zone.
 - The NOI asks permission to re-grade the backyard to address standing water conditions, and to extend it further into the buffer zone, past conservation markers, to make it more usable.
 - Mr. Grubb also said he wanted to do something about the water in his yard draining into the yard where the new house construction is taking place.
 - He did not want water on his property to create problems for that future homeowner.
 - CA said the wetland strip behind them is uphill with two slopes, one of which drains downward toward the house.
 - Re-grading of the yard would therefore not affect the wetlands.
 - A site walk was scheduled for 10 a.m. on Saturday, 2/22.
 - GB moved to continue the Public Hearing to 2/27; MP 2nd.
 - Motion approved unanimously.
- **Public Hearing: NOI -- 0 Washington Street, "Ayer Solar II LLC," Rohit Garg, MassDEP # 100-TBD**
 - Assessor's Maps 13, 12 & 4, Parcels 13-1, 13-2, 12-1, 4-49
 - Cal Goldsmith and Kyle Burchard, of Goldsmith, Prest & Ringwall (GPR), were present on behalf of the applicant.
 - Background



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- The project proposes a solar array at the western end of the project area, to be reached by a lengthy access drive entering from the east, off Washington Street.
- This is a new NOI for a project previously approved in 2017 under OOC # 100-0403.
 - At that time, an ANRAD (Abbreviated Notice of Resource Area Delineation) had been performed previously to confirm wetland flagging done by Oxbow Associates.
 - ConCom had also required a third-party peer review of the project, performed by Matt Schweisberg, of Wetland Strategies & Solutions LLC.
 - ConCom had additionally required a Habitat Evaluation, since the project area is inside the Petapawag ACEC (Area of Critical Environmental Concern), and this was done by Oxbow Associates.
 - The project was proposed under the “Limited Project” category within an ACEC.
 - An Alternatives Analysis was done at the time, with a half dozen alternative access approaches coming from the west, the only other avenue of approach.
 - None of these were regarded as feasible, either because they involved much more work within the wetlands themselves, or would have needed to cross the Rail Trail – which DCR (Department of Conservation and Recreation) would not permit for a private project.
- Lawsuit and Revision of Plans
 - After a lawsuit filed by abutters on the northern boundary of the project, a Settlement Agreement was reached that was based on changing the location of the access drive in the middle section of the project.
 - The revised plan calls for a section of the drive to be moved further south in the buffer zone, closer to the wetlands, so that more vegetative screening can be left in place for the abutters.
 - It also reduced the size of the solar array and added a new activity, ‘tree-topping’, to reduce shading at the southeast and northwest corners of the solar array.
 - The revised project was submitted to ConCom as a Request to Amend the original OOC, on 1/9/2020.
 - ConCom performed a site walk on 1/18/2020.
 - Because the proposed changes involved a great deal more work in the buffer zone than the previously approved plan, and per MassDEP Department of Wetlands and Waterways Policy 85-4, the Commission did not accept an Amendment to the OOC but required the submission of a new NOI instead, as voted on 1/23/2020.
- Mr. Goldsmith broke the project under the new NOI down into 3 sections:
 - FIRST SECTION
 - This encompasses the first portion of the access drive (roughly the first 250 ft.) as it comes off the steep slope from Washington Street, to where it crosses an intermittent stream;
 - This area will require substantial compacted fill and grading, and will be paved when complete.
 - Mr. Goldsmith said there were no changes to the plans for this section from the 2017 version.
 - Regarding stormwater management for this section, the entrance drive will be pitched into the hillside, not toward the wetlands.



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- Six treebox filters and cascading swales will drain into a culvert that crosses under this part of the access drive.
 - The culvert will have two 30" pipes that will discharge at the eastern end toward a wetland replication area.
 - The purpose of the BMPs (Best Management Practices) are to retain stormwater and let it slowly infiltrate back into the ground.
- Mr. Goldsmith stressed that the entrance road is designed to meet stormwater management standards.
 - This includes not allowing a greater rate of stormwater discharge into the wetlands than preconstruction conditions.
- Regarding the intermittent stream crossing (which is to be mitigated by two replication areas), Mr. Goldsmith and Mr. Burchard noted there had been an inaccuracy in the original narrative.
 - Massachusetts stream crossing standards require an "openness ratio" (cross-sectional area/crossing length) of at least 0.82 feet.
 - The narrative listed this ratio as 0.77 when in reality it is 0.19.
 - However, Mr. Goldsmith said that since the stream is not well established, has no unique habitat value, is surrounded by a lot of invasive species, and because of the Limited Project classification, that the project is therefore not required to meet stream-crossing standards.
 - CA asked that the narrative be revised to provide the corrected openness ratio.
 - Complicating matters, the intermittent stream enters the project area through a partially collapsed stone culvert.
 - Where the stream enters the culvert is on private property, but where it exits is on property associated with Ayer Solar II.
 - Abutter Ken Diskin questioned the use of the term 'collapsed' to describe the existing culvert since it is passing flow.
 - Mr. Burchard agreed that it is not collapsed per se, but better described as 'collapsing', and that in a large storm event that will sooner or later take place, it would have problems handling the flow and would overtop.
 - Mr. Diskin asked whether the applicant could repair the culvert.
 - Aside from the private property issue involved, Mr. Goldsmith said he wasn't sure it needed repair as it was functioning to hold back and slow flow as it is now.
- MIDDLE SECTION
 - This section encompasses the second portion of the drive (roughly 300 ft.) to where it reaches the access gate into the solar array;
 - This area is basically flat and will be graveled, not paved.
 - This is also the area where there are the most changes from the originally-approved NOI.
 - Here the driveway is relocated to dip and curve further south, closer to the wetlands.



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- While closer, there is no increased impact to the wetlands themselves, only to the buffer zone.
 - This shift in layout also requires alterations to the stormwater management systems in this area, moving them to the north side of the access drive.
- The area where the drive dips south is also the area where there would have been two potential ANR (Approval Not Required) lots for house construction.
 - With the realignment of the drive, Mr. Goldsmith said there might be room for one house now north of the drive.
 - The plans show a water main and a 2-in. force sewer main on the drive to cover this possibility, but Mr. Goldsmith said Mr. Garg has yet to decide if he will still include these utilities in the access drive.
- **THIRD SECTION**
 - This section is the solar array itself.
 - The array as designed for the 2017 OOC was for a 960 kilowatt (KW) direct current (DC) project.
 - The 1-50 ft. buffer zone area would have been untouched, while the 50-100 ft. buffer zone would have been cleared to stumps, with stumps left in place in the area outside of the fenced in array itself.
 - Following the Settlement Agreement with the abutters, and as initially submitted to ConCom on 1/9/2020, the project was reduced to 850 KW.
 - To compensate for this reduction, the element of tree-topping was added to reduce shading on the northwest and the southeast corners of the array.
 - The northwest corner is not jurisdictional to ConCom, and the goal here is primarily to preserve screening for abutters.
 - The tree-topping in the southeast corner was proposed for the first 50 ft. of buffer zone, right up to the edge of the wetlands.
 - With the new NOI submission, however, project size is now reduced to 715 KW.
 - The tree-topping in the southeast corner, topping to a height of 40 ft., is now proposed only in the 25-50 ft. buffer zone area.
 - Topping is measured from ground level of solar array plateau.
 - The 0-25 ft. buffer zone will now be left intact.
 - The 50-100 ft. buffer zone will be cleared to stumps, as originally proposed and approved in 2017.
 - Mr. Burchard distributed a copy of "Ayer Solar IIB Solar Shading Calculations and Methodology," as prepared by Rohit Garg, that was to have been included in the NOI submission.
- **Outside Consultant Review**
 - As previously discussed on 1/9/2020, ConCom revisited the question of a third-party review of the changes between the 2017 proposal and the 2020 re-design.
 - Mr. Goldsmith said they would support using Wetland Strategies and Solutions again as they were less costly than other proposals and Mr. Schweisberg is already familiar with the project.
 - ConCom members and CA, however, were in support of the idea of "fresh eyes" reviewing the project.



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- The issue of whether the review should cover the whole of the project, given this is a new NOI, or just the changes between the approved 2017 project and the 2020 re-designed project was discussed.
 - JG was comfortable with the review concentrating on the changes made to the original plans, and with a closer look at the stream-crossing, given the corrected information on the openness ratio.
 - She also noted that, unlike in 2017, the project now requires NHESP (Natural Heritage & Endangered Species Program) review and permitting since mapping updates now mean that portions of the project are in areas designated as Priority Habitat and Estimated Habitat.
 - (The NOI now has an NHESP tracking number: #19-38891.)
 - GB was comfortable with a review covering the *areas* where the plans have changed, not just the changes.
 - MP suggested that ConCom's scope for an RFP (Request for Proposals) seek prices and proposals for the review of the project as a whole as well as for just looking at the areas where changes have been made.
 - CA strongly encouraged a review of the project as a whole.
- CA will prepare draft scopes for ConCom to look at on 2/27.
 - Mr. Goldsmith asked if GPR could also see the draft scopes, with the understanding that ConCom made the final decision.
 - He also said they want to avoid costly expenses on behalf of their client that would yield no substantive changes to a new OOC.
 - Mr. Burchard added the original OOC for 100-0403 was very thorough.
- GB moved to continue the Public Hearing to 2/27, where ConCom will decide on the scope of the RFP; MP 2nd.
 - Motion approved unanimously.
- **Public Meeting: RDA – High Street, Ayer DPW Water and Drainage Improvements**
 - For the sole purpose of signing the Determination of Applicability, as voted on 1/23/2020.
 - ConCom signed the DOA.
- **Discussion: Request for Extension of Order of Conditions (OOC) – 7 Trevor Trail (Lot 13A), Seal Harbor, LLC, MassDEP # 100-0400**
 - Assessor's Map 12, Parcel 159
 - For the sole purpose of signing the OOC Extension, as voted on 1/23/2020.
 - ConCom signed the Extension.
- **Discussion (cont'd.): Affidavits for Orders of Conditions**
 - JG circulated a draft of a letter the Commission could send to residents requesting their cooperation in signing an after-the-fact Affidavit when their developers have submitted a Request for a Certificate of Compliance to the Commission for their property.
 - Edits will be made.
- **Conservation Commission Office Updates**
 - Riley Jayne Farm, MassDEP # 100-0389

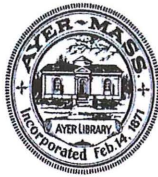


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- As discussed with Nick Pauling, of GPR, and the Gallaghers (Mark Sr. and Mark Jr.), of Seal Harbor, on 1/23, CA has been working with Mr. Pauling to develop a detailed schedule for changes to the construction sequence for the common driveway to Lots 1 and 2, 'Riley Jayne Lane'.
 - This field change is described in CA's memo of 2/12/2020.
- Earlier in the afternoon (of 2/13), CA inspected the site and the installed erosion controls around the wetland crossing.
 - She also approved the temporary storage of hydric soils from the crossing to a location on Lot 13.
- The Gallaghers plan on constructing the permanent wetland crossing as well as installing the sleeves for utilities to pass through at the same time.
- 0 Central Avenue
 - Ruth M. Schultz came to see CA recently.
 - She owns a narrow strip of land along Central Avenue.
 - This includes the strip between the street and the land owned and used by Compassionate Care.
 - She noticed that someone, whether Compassionate Care or perhaps the DPW, has recently paved over an 8 ft. wide strip, on her property, to access the parking area on the adjacent lot.
 - The parking area is under an Enforcement Order to John Hillier, issued in February 2019, as he cleared the area which includes an intermittent stream without review and permitting by ConCom.
 - Ms. Schultz told CA that she has not given Mr. Hillier an easement to cross her land, while Mr. Hillier has told CA the he has an 'agreement' with Ms. Schultz.
 - In any case, someone paved this area within 100 ft. of an intermittent stream.
 - CA will contact MassDEP for advice on whether to issue an Enforcement Order and to whom.
 - Meanwhile, there was some discussion that ConCom needs to again contact Mr. Hillier about moving forward with a plan for his use of that lot.
- Update on Appeal, Wright Road, Lot 5A, Anthony McGuane, MassDEP # 100-0438
 - A 1/30/2020 email from Denise Child, of MassDEP, to Mr. McGuane and Niel Gorman, of David E. Ross Associates, has asked for additional information as she considers whether the project can be permitted by MassDEP, given ConCom's denial.
 - A 2/10 letter from Mr. Gorman to DEP details changes proposed accordingly to the retaining wall area.
- West Main Street Bridge Replacement Project (crossing Nonacoicus Brook), Ayer Department of Public Works (DPW), MassDEP # 100-0424
 - CA heard from Worldtech Engineering about changes they are making to this project, permitted in 2018.
 - Changes include dealing with footings and sheet piles.
 - CA will check with DPW Superintendent Mark Wetzal and Town Engineer Dan Van Schalkwyk about their thoughts on these changes.
 - GB said ConCom will need to see a formal Amendment to the OOC at some point.
- National Grid maintenance
 - National Grid's replacement of fencing around a substation has been delayed.



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- They found they will need to also replace and cover ground wires outside the fence, which is work within the buffer zone.
 - CA will ask for detail, to see if this qualifies for safety-related maintenance work.
- Pine Meadow Conservation Land sheds, behind 102 Oak Ridge Drive
 - The sheds have now been cleared out of materials by the owner of 102 Oak Ridge.
 - Town Manager Robert Pontbriand will be asking the DPW for advice and perhaps assistance in their removal.
 - Resident Dave Bodurtha asked if the sheds had been discussed at the Board of Selectmen.
 - He also asked whether it was the case that the Commission couldn't use them for a conservation program or wouldn't use them.
 - GB said they couldn't be used for public programs – there is no ADA access, no plumbing, no electricity.
 - Parks & Recreation has expressed, to JG, no interest.
 - The lack of ADA access and restroom facilities means that school programs can't be held there either.
 - The sheds are also too close to the property lines of private residents.
 - The neighbor next door to 102 Oak Ridge expressed the wish to ConCom, during a site walk last fall, that if the Town couldn't use the sheds, he'd prefer they be taken down as he worried about their misuse by strangers and associated hazards nearby his home.
- Warrant for Spring Town Meeting
 - CA said the Warrant will be opening soon and ConCom will need to have our article for weed treatment included.
 - GB moved to approve requesting \$30,000 in new pond weed treatment funds at Spring Town Meeting; MP 2nd.
 - Motion approved unanimously.
 - JG will pass the details of this vote on to Town Manager Pontbriand.
- Annual Report
 - This year the Annual Report will, for the first time, be combined with the Town's 'Budget Book'.
 - The format for entries has been slightly changed, and the due date is 3/2.
 - GB will draft ConCom's summary report; JG will provide the stats.
- **Member Updates**
 - GB said the Historical Commission recently received an Estate gift, a copy of "Birds of Groton and Ayer," which he presented to CA for storage in ConCom's office.
- **10:25 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: 2/27/2020

Signature Indicating Approval: 