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FEB 28 2020

TOWN OF AYER  
TOWN CLERK

*Amelia Copeland*

## Town of Ayer Conservation Commission

Town Hall \* One Main Street \* Ayer, MA 01432 \* 978-772-8249  
Minutes for 1/23/2020

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)

APAC taped: Yes

### 7:01 PM – Open Meeting

- **Welcome!**

- The Commission welcomed Jennifer Amaya as its new member, following her appointment by the Board of Selectmen on 1/21/2020.
- (It was noted later that the Board of Selectmen will take up the issue of appointing Associate Members at its next meeting, 2/4.)

- **Confirmation of Agenda**

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

- **Approval of Meeting Minutes**

- GB moved to accept the minutes for 1/9/2020 as written; MP 2<sup>nd</sup>.
  - Motion approved unanimously.

- **Announcements**

- ConCom received notification that National Grid will be performing maintenance on its '343 transmission line', in the vicinity of Groton-Shirley Road.
  - This work is exempt from ConCom review.
- The Massachusetts Association of Conservation Commissions (MACC) is holding its annual spring environmental conference at Holy Cross College, in Worcester, on February 29.

- **Accounts Payable**

- MACC: \$72.13, for the purchase of copies of the Buffer Zone Guidebook for commissioners.
  - GB moved to approve payment of \$72.13; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- Beaver Solutions: \$930, for 2020 annual maintenance contract for 4 installed 'beaver deceivers'.
  - The deceivers, to control flooding from beaver activity, are located at Long Pond Dam, on Nonacoicus Brook near the Fire Station, and two along the stream, on the Town's conservation land, that feeds into Pine Meadow Pond.
    - The contract provides for maintenance on each deceiver at least twice a year, and as needed.
    - Because the contract involves multiple deceivers, the Commission receives a 25% discount.
  - GB moved to approve payment of \$930; MP 2<sup>nd</sup>.
    - Motion approved unanimously.



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- **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 met with the Planning Board on 1/14.
    - The Planning Board voted to approve a Special Permit for duplexes.
    - A traffic study has been completed and will be presented at the Board’s next meeting on 1/28.
    - Mr. Boardman said they were close to resolving all issues with the Planning Board.
    - They are still waiting for a final comment letter from the DPW, and therefore expect some minor edits to the plan as a result.
    - The Planning Board is beginning to write conditions for its Permit, which Mr. Boardman hopes to have tied up at their 2/25 meeting.
    - One outstanding item awaiting a Planning Board decision is the disposition of the Open Space.
      - The applicant has requested that the Planning Board convey ownership of the open space to the Town, with the Conservation Restriction (CR) to be held separately.
      - The fallback plan would be for the eventual Homeowner’s Association to own the open space, again with the CR held separately.
  - JG asked for clarification on the construction entrance to the subdivision.
    - Mr. Boardman said this entrance would be located where the road will be entering from Shaker Road.
    - The exception would be when underground utility work would be taking place in that location.
    - In that case, a temporary access would be gained further uphill from the pond, through Lot 1.
  - GB moved to continue the Public Hearing to 2/13; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Discussion: Consideration of a Request for Amendment to Order of Conditions (OOC) – 0 Washington Street, “Ayer Solar II LLC,” Rohit Garg, MassDEP # 100-0403**
  - Assessor’s Maps 13, 12 & 4, Parcels 13-1, 13-2, 12-1, 4-49
  - Nick Pauling, of Goldsmith, Prest & Ringwall (GPR), was present on behalf of the applicant.
  - JS summarized the site walk ConCom members performed with Cal Goldsmith, of GPR, on 1/18.
    - The primary focus was to look at the location of where the driveway is to be relocated, along with changes to the stormwater management structures due to this realignment.
    - The areas where tree-topping is now proposed, right up to the wetland line in one location, were also looked at.
  - JG also reiterated what Mr. Goldsmith said during the walk regarding two potential house lots along the driveway, although not part of this NOI.
    - Due to the driveway’s realignment, those two potential lots would now have to be north of the driveway, rather than south.
    - Mr. Pauling said the infrastructure for two houses would be put in place for the future, although he does not know if they will be pursued.

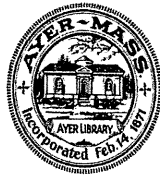


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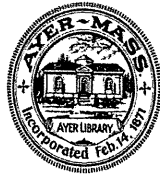
- During the walk, Mr. Goldsmith indicated that the potential area for these houses would now be largely outside of the buffer zone and ConCom jurisdiction.
  - GB moved to require the applicant to submit a new Notice of Intent; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
- **Public Meeting: Request for Determination of Applicability (RDA) – High Street, Ayer DPW Water and Drainage Improvements**
  - Assessor's Map 27, Parcel N/A
  - Town Engineer Dan Van Schalkwyk, P.E., was present on behalf of the DPW's application.
  - The work proposed involves replacing an 1898 water main with a new 8" ductile iron water main.
    - In addition, an existing 12" HDPE (high-density polyethylene) drainage pipe would be replaced with 15" HDPE, while an additional new 12" HDPE would be installed on the other side of the street.
      - This will tie into the culvert for the intermittent stream.
      - (It was noted that this is the same intermittent stream that runs further downhill across the Compassionate Care parcel of land.)
    - An existing hydrant near the culvert will be replaced with a new one.
    - The street will not be ripped up, but a maximum 4' wide trench will be opened up.
      - This trench will be paved over every Friday while the project is in process.
    - Erosion controls will be installed around the catchbasins.
  - The project was just put out to bid, with proposals due 2/20.
    - The project will likely take place this spring into summer.
  - GB asked that erosion controls be added along the curb.
  - GB moved to issue a Negative Determination of Applicability (DOA) with a condition requiring additional erosion controls; MP 2<sup>nd</sup>.
    - Motion approved unanimously.
    - CA will prepare the DOA for signing at ConCom's next meeting.
- **Public Meeting: RDA – 18 Hibiscus Lane, Joe Harte**
  - Assessor's Map 7, Parcel 25
  - Mr. Harte provided photos and described a birch tree that is now leaning, thanks to recent high winds, 60 degrees toward his driveway and shed.
    - It is located 15-20' down an embankment.
    - Due to the hazard this tree presents, he would like to take the tree down to root level.
    - He may replace the tree with another somewhere else, not in the resource area.
  - GB moved to issue a Negative DOA; MP 2<sup>nd</sup>.
    - Motion approved unanimously and the DOA was signed.
- **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
  - Nick Pauling, of GPR, was present on behalf of the applicant.
    - In the audience were Mark Gallagher and Mark Gallagher Jr., of Seal Harbor.
  - As background, this lot was originally part of the Riley Jayne Farm subdivision OOC 100-0389.
    - In 2017, an application was made to separate this lot from 0389 and re-file, with a changed lot plan, under a new NOI.



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- Accordingly, a new OOC was issued for Lot 13A, under MassDEP # 100-0400.
  - A Partial Certificate of Compliance (COC) was also issued to remove the original lot from OOC 100-0389.
- In addition, in March 2017, an Enforcement Order was issued when it was discovered by Mr. Pauling (on a site walk with ConCom) that the initial site contractor, Onyx Corp., had flipped the engineering plans and thereby mistakenly cleared several portions of the buffer zone beyond the approved limits of clearing.
  - Two patches of wrongly-cleared buffer are on Lot 13A.
- ConCom issued a separate OOC under MassDEP # 100-0415, to Onyx Corp. for the Restoration Plan prepared for them by GPR.
  - One of the conditions for Lot 13A, under its OOC (100-0400), bars the issuance of a COC until the two restoration areas planned for this lot are complete under this other OOC.
- Subsequently, purchase of Lot 13A by the applicant for OOC 100-0400 fell through and the lot has remained relatively dormant until its recent purchase by Seal Harbor.
- The OOC for 100-0400 expires on 4/4/2020, hence Seal Harbor's request for an extension.
- As Seal Harbor has bought, developed and sold, or is in the process of developing and selling several Riley Jayne Farm lots, JG took the opportunity to ask Mr. Gallagher if they were now complying with the OOC's Special Condition (whether under subdivision #100-0389 or Lot 13A #100-0400) requiring that the seller (Seal Harbor) secure signed Affidavits from buyers acknowledging receipt of a copy of the open OOC on their property (and providing ConCom a copy of the Affidavit)?
  - Mr. Gallagher said they were only now really aware of this condition and would comply going forward.
- GB moved to approve extending the OOC for 100-0400 for two years; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- (Note: The request was made and following completion of other agenda items, ConCom returned to continue discussion with Mr. Pauling and the Gallaghers regarding another matter of development in Riley Jayne Farm – see below.)
- **Public Hearing: NOI – 13 Groton-Harvard Road, BRR LLC, Randy Furmanick, MassDEP # 100-0440**
  - Assessor's Map 19, Parcel 27
  - Steve Sears, of David E. Ross Associates, was present on behalf of the applicant.
  - Mr. Furmanick (not present) is renovating the old 'Murphy Knives Building'.
    - The NOI proposes repaving and sealing the parking lot in the back, which is within the 100 ft. buffer zone to vegetated wetlands.
    - Mr. Sears said the wetlands had previously been delineated by someone else, but that he had confirmed the delineation and reflagged the area for this application.
    - The plan proposes paving over the existing pavement, and seeks permission to take down a leaning 16" maple at the edge of the parking lot as well as remove a nearby old oak stump.
      - The tree and stump work would be contained within the erosion controls.
  - When the applicant filed an NOI, Denise Childs, of MassDEP, responded that some form of stormwater management would be necessary.
    - CA said she was unsure DEP clearly understood this was a repaving, not a new paving, project.



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- MP asked whether the maple could have its branches trimmed to reduce its hazard potential instead of being taken down.
  - Mr. Sears said he would ask the applicant.
- A site walk was scheduled for 9 a.m. on Saturday, 1/25.
- GB moved to continue the Public Hearing to 2/13; MP 2<sup>nd</sup>.
  - Motion approved unanimously.
- **Public Meeting (cont'd): RDA – 1 Trevor Trail, Robert Boisvert**
- Assessor's Map 12, Parcel 161
  - ConCom having voted to issue a Negative Determination of Applicability on 1/9, the DOA was signed.
- **Public Meeting (cont'd.): RDA – 71 Nashua Street, Ryan Clinton**
- Assessor's Map 13, Parcel 42
  - ConCom having voted to issue a Negative Determination of Applicability on 1/9, the DOA was signed.
- **Public Meeting (cont'd.): RDA – 69 Nashua Street, Richard and Mary Zolla**
- Assessor's Map 13, Parcel 43
  - ConCom having voted to issue a Negative Determination of Applicability on 1/9, the DOA was signed.
- **Unscheduled Discussion: Riley Jayne Farm, Mark Gallagher, MassDEP # 100-0389**
  - Mr. Pauling and the Gallaghers (Seal Harbor) remained to address a separate issue from 7 Trevor Trail (above).
  - CA circulated copies of two pages from the original engineering plans for the subdivision – sheet C 8.2 – Erosion & Sediment Control Notes & Construction Details (April 2016) and a portion of a second sheet describing the Wetland Replication Area Specifications.
  - Entering Riley Jayne Farm subdivision, the Pleasant Street Extension crosses over a culvert.
    - A common driveway to Lots 1 and 2, 'Riley Jayne Lane', exits Pleasant Street to the left and crosses wetlands.
    - Per the original OOC, a 748 sq. ft. wetland replication is required, and is to be located further up this common driveway, on Lot 2.
  - Mr. Pauling said he had erred at the time in writing the construction notes under "2.03 Replication Area Preparation" with the following detail A:
    - "The replication areas are to be constructed *prior to* the commencement of any site work."
  - Mr. Gallagher, who has bought these lots for development, is requesting a more "logical" construction sequence.
    - Seal Harbor needs to get to the replication area, and the best way to do that is to clear trees, disturb the wetland crossing area at the beginning of the driveway, prepare the wetland crossing and put in the culvert, stockpile the hydric soils from that area, continue to rough in the driveway up to the two house lots, and then begin to construct the replication area.
    - The hydric soils from the wetland crossing area can then be moved to the replication area once it is roughed in.



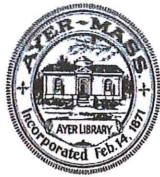
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- Then once restoration planting season begins (after March 15), the replication area can be planted and seeded.
  - Seal Harbor would like to start this work within the next week, if they can, while an excavator is available on site to clear trees.
    - This would mean that the house foundations might be in before the replication area is planted.
  - GB said that GPR and Seal Harbor need to submit a Request for a Field Change, including a definite time table that includes a date for when the replication area's construction must be complete.
    - CA can then approve this change in construction sequence.
    - A field change does not require a Commission vote but ConCom does need a written proposal for its files.
  - MP suggested May 1<sup>st</sup> would be a reasonable date to expect that the replication planting was complete.
    - JG suggested adding a caveat that this date might need to be adjusted if weather conditions (e.g a very late and/or very wet spring) were unusual and delayed optimal planting.
  - JS took the opportunity to tell Mr. Gallagher that he's heard that Seal Harbor builds some quality homes.
    - Mr. Gallagher appreciated the comment.
  - JS then said he's also been hearing from some homeowners that they've experienced delays in Seal Harbor completing the finish grades and landscaping on their lots.
    - He expressed his concern that this be addressed so that lots are not only developed but that their development is completed as planned.
- **Discussion: Affidavits for Orders of Conditions**
  - This was a continuation of the discussion of the Pingry Hill COC requests that lack signed Affidavits from new homeowners.
  - An email from Duke Pointer, of Ridge View Realty Trust, on 1/22, indicated that he had yet to hear from their attorney (Eliopoulos & Eliopoulos) about the Affidavits, and added that Desheng Wang (of Creative Land & Water Engineering) should be able to address anything else.
  - JG will draft a letter for ConCom to send homeowners explaining why they should sign the Affidavits, even if well after their closings.
    - This will also be a way to inform them that they have an open OOC on their property.
  - While discussing this, CA received a just-sent email (1/23) from Mr. Pointer asking that ConCom schedule its site walk to review the 9 COC requests submitted in the fall.
    - ConCom members were adamant that a site walk will not be scheduled until the application requests for COCs are complete – i.e. the signed Affidavits have been provided, per Special Condition # 3 in the OOCs.
- **Discussion: Solitude Lake Management, 2020 pond treatment**
  - Someone from Solitude will appear at ConCom's 2/27 meeting to discuss 2020 treatment plans in more depth.
  - By that time, JS, JG, and CA will have met with Town Manager Robert Pontbriand to discuss funding this year's treatment.
- **Discussion: Local Wetlands Bylaw and Regulations, Next Steps**





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- From the grid of regulation items distributed by MP at the last meeting, MP suggested ConCom break this down into 3 or 4 chunks, and develop sections of regulations over the course of the next year.
  - ConCom will have to hold a Public Hearing for each chunk, prior to voting to approve.
  - ConCom members were asked to have reviewed MP's grid and provided him with responses by ConCom's 2/27 meeting.
- **Discussion: Debris on Sandy Pond bank and failed docks on Flannagan Pond**
  - While there is little ConCom can do to address this, CA suggested coming up with a list of projects that might be suitable for boy/girl scouts to do.
    - ConCom could then try some website or Town Facebook posts to see if there was homeowner interest in getting some help in cleaning up their portion of the ponds.
  - Scott Murray, in the audience, said there were other youth groups that might also be interested in helping, provided such work was safe as well as permitted by individual homeowners.
    - An additional issue to address, however, is where to dispose of such debris.
- **Conservation Commission Office Updates**
  - CA has found that the OOC for a house that is still under construction, where Groton-Harvard Road meets Washington Street, expired last year.
  - CA has been unable to find the file on this project, which was done under a previous CA.
  - GB said the applicant will have to re-file a new NOI.
- **Member Updates**
  - GB brought up the issue of the two sheds on Pine Meadow Conservation Land, behind the house at 113 Oak Ridge Drive.
    - He said ConCom will probably have to hire someone to remove these sheds.
    - The issue of how this would be funded, and whether the DPW could help, was raised.
    - This will be discussed next week with Town Manager Pontbriand.
- **9:30 PM – Adjourn Meeting**
  - GB moved to adjourn; MP 2<sup>nd</sup>.
    - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: \_\_\_\_\_

2/13/2020

Signature Indicating Approval: \_\_\_\_\_

*Jessica G. Gugino*