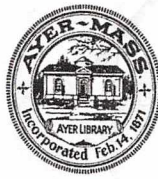


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SEP 24 2018



TOWN OF AYER
TOWN CLERK

2:30 pm *lf*

Town of Ayer Conservation Commission

Town Hall * One Main Street * Ayer, MA 01432 * 978-772-8249
Minutes for 8/23/2018

Location: Ayer Town Hall, 1st Floor

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

Not Present: Member Vacancy

APAC taped: Yes

7:02 PM – Open Meeting

- **Confirmation of Agenda**
 - An interview with an applicant for the ConCom vacancy, Mark Phillips, was added.
 - JG moved to confirm the agenda as amended; JS 2nd.
 - Motion approved unanimously.
- **Approval of Meeting Minutes**
 - BT moved to accept the minutes for 8/9/2018 as written; JS 2nd.
 - Motion approved unanimously.
- **Public Hearing (cont'd.): Notice of Intent (NOI) – Diesel Direct (Adam Nataupsky), Oil Spill Cleanup, Page Hilltop School, 115 Washington Street, MassDEP # 100-0425**
 - MassDEP Release Tracking Number 2-20459
 - The final Order of Conditions (OOC) was sent via certified mail earlier this day (8/23).
 - BT moved to close the Public Hearing for 100-0425; JS 2nd.
 - Motion approved unanimously.
- **Discussion: Enforcement Order (EO) – 217 West Main Street, Calco LLC (Calvin Moore), MassDEP # 100-0420**
- **Assessor's Map 32, Parcel 51**
 - Calvin Moore was present.
 - The EO was issued for the clearing of trees in an area between the right-of-way and grading, where those trees were not to be cleared per the approved plan.
 - Mr. Moore explained that he made a judgment call while the equipment for the permitted tree-clearing was already on site.
 - He described the unpermitted trees that were cleared as bent over, scraggly, in poor shape, and with root systems unlikely to survive the surrounding construction.
 - BT said if there was a problem with that stand of trees, Mr. Moore should have said something ahead of time.
 - GB said Mr. Moore needs to exercise tighter control over his projects, noting a number of other projects of Mr. Moore's where permitted lines have been crossed and EOs have had to be issued.
 - Mr. Moore agreed to mitigate the violation with new tree planting.
 - CA said the EO requires that Mr. Moore provide ConCom with a planting plan and time-table.
 - BT moved to ratify the EO; JS 2nd.
 - Motion approved unanimously and the EO was signed.
 - CA also drew the Commission's attention to the area at the base of a previously-unobserved outfall pipe, by what is now being constructed as the east stormwater basin for 100-0420.
 - The pipe was unobserved until dense vegetation/poison ivy was cleared for the basin
 - It captures stormwater runoff from West Main Street.



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- The silt fence/erosion control around the basin area also had a substantial gap in it at the base, allowing sand/sediment apparently propelled by the pipe's stormwater outflow to push beyond the controls further into the buffer zone/flood plain.
 - Mr. Moore said this was a case of a drain pipe that the Town owns channeling stormwater, and associated erosion of sediment, onto his property.
 - Per his discussions with the DPW, the DPW will be encapsulating the existing pipe to institute measures that should capture a hole in the pipe as well as decrease erosion along the side of the area where Mr. Moore's new stormwater retention tank is to be installed.
 - CA was satisfied that the issue was being attended to and the Commission decided no further action needed to be taken at this time.
- **Discussion (cont'd.): Enforcement Order – 77 Woodland Way (Lot 68), Ridge View Realty Trust, MassDEP # 100-0408**
 - Assessor's Map 36, Parcel 110
 - Steve Mullaney, of S. J. Mullaney Engineering Inc., was present.
 - Also present in the audience was Paul Routhier, a Trustee of Ridge View Realty Trust, and Tim Opgennorth, of Greenscape Property & Building LLC.
 - A site walk was performed on Saturday, August 18 (GB, CA, JG, JS), where it was observed that the rip-rap requested by ConCom on 8/9 had been installed by the applicant.
 - As previously discussed on 8/9, CA and Mr. Mullaney pursued the question of whether an NOI After-the-Fact or a Request for Determination of Applicability (RDA) After-the-Fact was the appropriate vehicle to address the unpermitted placement of drain pipes from a non-jurisdictional adjacent lot (Lot 69) onto Lot 68, which is jurisdictional and has the open OOC on it.
 - MassDEP Circuit Rider Judy Schmitz had advised that it was up to the applicant as to how to file.
 - As an alternative to an NOI or RDA, Mr. Mullaney said they were now proposing the submittal of an Amendment to the OOC for #100-0408 that would include the installation of the two drainpipes from Lot 69.
 - GB noted that ConCom has more control over the site work through an OOC Amendment than it would through the RDA process.
 - In addition, no new information is gained through a new NOI than can be garnered through the Amendment process.
 - JG alluded to an email chain including an email from Duke Pointer (Ridge View Realty) on 8/21, following the 8/18 site walk, complaining ConCom was delaying lifting the Restrictive Order.
 - She noted that ConCom cannot deliberate on site walks and that that this was the first opportunity for the Commission to so act.
 - Per the Chair's request:
 - BT moved to accept the applicant moving forward to address the EO via the Amendment to the OOC process; JS 2nd.
 - Motion approved unanimously.
 - BT moved to lift the Cease & Desist on Lot 68 (100-0408), with the understanding that the Request to Amend the OOC would be submitted within 3 business days; JS 2nd.
 - Motion approved unanimously.



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- **Discussion: Consideration of Commission Discretionary Acceptance of Requests to Amend Orders of Conditions, Ridge View Realty Trust, Richard Roper (Trustee of Record)**
 - Steve Mullaney, of S. J. Mullaney Engineering Inc., was present.
 - Also present in the audience was Paul Routhier, a Trustee of Ridge View Realty Trust, and Tim Opgennorth, of Greenscape Property & Building LLC.
 - Prior to considering the acceptance of 9 Amendment requests, JG asked for a moment to address issues raised in an 8/21-8/22 email chain between Duke Pointer (Ridge View Realty Trust), Mr. Mullaney, Mr. Opgennorth, and Desheng Wang, of Creative Land & Water Engineering LLC.
 - ConCom members cannot discuss reactions to such matters outside of Open Session.
 - In the interests of transparency, the email chain was passed on to CA and ConCom by Town Manager Robert Pontbriand.
 - Mr. Pontbriand was copied on the chain, thereby rendering them public record.
 - The chain contained derogatory remarks about the Commission and its Agent.
 - Among JG's points:
 - People can write what they want in private emails, but copying the Town Manager indicated a backchannel attempt to professionally undercut CA and, by extension, the Commission.
 - If there are complaints about the Commission, or its policies and procedures, it would be helpful if these were addressed, in writing, directly to the Commission for consideration.
 - The legalistic language in the agenda for this discussion item was written very specifically by JG because of the very legalistic emails from Mr. Mullaney to CA that have quoted previous minutes, alleged statements by ConCom members on site walks, and intense parsing of ConCom email responses.
 - She also took exception to complaints from Mr. Pointer that CA was being an out-of-control obstructionist, including for not issuing a field change on a particular lot (79B).
 - Chair Bacon had, just the previous week, emailed all parties that ConCom would be addressing its field change policy at its next meeting and, until then, Ms. Crystoff would not be approving any field changes.
 - Complaints against CA, who works under the direction of the Commission, were insulting and unprofessional.
 - JG emphasized this was particularly unfair given that the first opportunity since GB's email to review that policy under a new Chair was this evening (8/23), and that it was, in fact, on the agenda next.
 - How was it conducive to a constructive working relationship to pass on such complaints indirectly to the Town Manager – again, in a manner apparently intended to undercut both CA and the Commission behind their back?
 - JS agreed, and BT added that the Pingry Hill subdivision is a very large project.
 - Over the years, it has morphed substantially from the original site plans.
 - The Commission does its best as a volunteer commission.
 - From the audience, Mr. Routhier said he appreciated what the Commission does and that comments made would be passed on.
 - Regarding the nine applications to Amend OOCs:
 - GB made clear that the *only* thing the Commission was doing in this discussion was to decide, per Wetlands Program Policy 85-4, whether to accept these proposed changes



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through the Amendment process or whether to require the submission of new NOIs based on the requested changes being great enough to warrant such filing.

- Policy 85-4 suggests 4 criteria by which a Commission, using its discretionary authority, considers whether proposed changes are minor enough in scope that an Amendment may be sufficient:
 - whether the purpose of the project has changed;
 - whether the scope of the project has increased;
 - whether the project meets relevant performance standards;
 - whether the potential for adverse impacts to the protected statutory interests will be increased.
- GB expressed his view that he was not sure what could be gained via a new NOI that could not be handled and conditioned by the Commission under the Amendment process.
 - In issuing an Amended OOC, the Commission can add new Special Conditions.
- With these applications, the applicant is seeking the flexibility to offer potential buyers up to eleven different house styles.
 - Each style would have a different footprint that affects house/driveway size, house/driveway location, potential grading changes or the need for retaining walls.
 - The majority of the house/driveway options would involve changes to the Limit of Work (LOW) within the buffer zone of each lot.
 - Some design options, like the 'Bedford' would not affect the existing approved LOW or house footprint.
 - Again, the applicant is seeking flexibility to offer buyers a variety of options.
- Per the recommendation of Denise Child, MassDEP Wetlands Section Chief (Central Region), following a telephone call, Mr. Mullaney provided a revised plan based on the most impactful house/driveway design/layout for each lot.
 - Mr. Mullaney stressed that all of the already-approved work, as well as proposed possible changes, falls within buffer zone, not resource, areas.
 - In addition, he noted that a new NOI would add confusion as each lot, depending on which house style a potential owner chose, could potentially be built under either the original OOC or under a new OOC.
- The Commission proceeded to a discussion of each Request to Amend separately:
 - 130 Woodland Way (cont'd.) (Lot 134A) (DEP File # 100-0275), Assessor's Map 36, Parcel 176
 - BT said the Commission would be looking for ways that the developer could offset or mitigate some of the bigger buffer zone changes of the more impactful house/driveway designs.
 - Something like more tree plantings or rain gardens to balance the potential additional work.
 - Mr. Mullaney said that the Commission has previously requested additional plantings on other applications and saw no problem with this.
 - All agreed that this lot could be handled through the Amendment process.
 - 150 Woodland Way (cont'd.) (Lot 135B), (DEP File # 100-0279), Assessor's Map 36, Parcel 177
 - The most impactful house design increases the footprint by 1674 sq. ft.
 - An existing stone wall remains in place, regardless of the design choice, though with the most impactful one, the yard area will increase.



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- CA and BT suggested options to consider would be to add resource area posts/signs along the wall or to beef up the wall with additional stones.
 - All agreed that this lot could be handled through the Amendment process.
- 186 Woodland Way (cont'd.) (Lot 137B), (DEP File # 100-0280), Assessor's Map 36, Parcel 179
 - The most impactful scenario involves more tree clearing and grading.
 - Mr. Mullaney pointed out that grading would be further removed from wetlands.
 - While BT initially wondered if an NOI was more appropriate, CA suggested an Amended Order could still add a Special Condition requiring the expanded tree clearing be mitigated with new trees to be planted elsewhere on the lot.
 - All agreed that this lot could be handled through the Amendment process.
- 169 Woodland Way (Lot 71A), (DEP File # 100-0413), Assessor's Map 36, Parcel 113
 - More grading would be required for the yard area in the most impactful scenario.
 - Extending a retaining wall and hooking it around a bend, and/or requiring signage, and/or requiring new trees to be planted between the retaining wall and the wetlands will be considered.
 - Also to be considered is having the retaining wall pulled further from the wetlands, and closer to the house.
 - All agreed that this lot could be handled through the Amendment process.
- 143 Hemlock Drive (Lot 146A), (DEP File # 100-0410), Assessor's Map 36, Parcel 222
 - All agreed that this lot could be handled through the Amendment process.
- 165 Hemlock Drive (Lot 78B), (DEP File # 100-0411), Assessor's Map 36, Parcel 120
 - All agreed that this lot could be handled through the Amendment process.
- 259 Woodland Way (Lot 142A), (DEP File # 100-0418), Assessor's Map 36, Parcel 418
 - In the most impactful scenario, a retaining wall would replace the previously required boulder line to delineate the yard from the resource area.
 - Mr. Mullaney said the existing Planning Board covenant, barring development of the lot until 2019, can potentially, upon request by the developer, be released at any time.
 - All agreed that this lot could be handled through the Amendment process.
- 237 Woodland Way (Lot 76A), (DEP File # 100-0417), Assessor's Map 36, Parcel 118
 - The existing Planning Board covenant, barring development of the lot until 2019, can potentially, upon request by the developer, be released at any time.
 - All agreed that this lot could be handled through the Amendment process.
- 219 Woodland Way (Lot 75A), (DEP File # 100-0416), Assessor's Map 36, Parcel 117
 - The addition of more trees to mitigate expanded impact will be considered.
 - The existing Planning Board covenant, barring development of the lot until 2019, could potentially, upon request by the developer, be released at any time.
 - All agreed that this lot could be handled through the Amendment process.
- **VOTE:**
 - GB asked for a motion to accept the applications for all nine lots discussed above as Requests to Amend the Orders of Conditions or to Amend previously Amended OOCs.
 - BT so moved; JS 2nd.
 - Motion approved unanimously.



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- Given limitations in the Commission's agendas (i.e. other applicants and Town business), GB said these nine amendment requests will be taken up by ConCom in groups of three at three different meetings.
- GB also said the Commission will specify a Condition that no work can take place on any of these lots until the house/driveway design has been confirmed, including documentation with the final plan, to the Commission via CA.
- **Discussion: Ayer Conservation Commission Field Change Policy**
 - The issue of ConCom's ability to approve field changes came up recently with respect to Pingry Hill Lot 79B (50 Hemlock Drive, MassDEP # 100-0282).
 - In this case, the developer is asking to flip the orientation of the house and driveway.
 - This places the driveway further from the wetlands and reduces its buffer zone impact by 250 sq. ft.
 - GB referred back to the minutes for 5/10/2018 where ConCom previously discussed its ability to approve field changes in reference to the State's regulation, "Wetlands Program Policy 85-4, Amended Orders."
 - This applies to changes that could be considered minor in scope.
 - GB noted, however, that there is always the risk that what a builder considers minor is not something that the Commission would regard as minor.
 - BT said therefore that CA must be notified of any plan changes so that ConCom can maintain its check-and-balance function.
 - After further discussion and fine-tuning, it was decided:
 - CA is authorized by the Commission to approve, at her discretion, plan changes that involve the same or reduced buffer zone impact within the approved LOW.
 - CA will evaluate if changes have less, the same, or more impact.
 - This evaluation will be made on the basis of notification with a plan-drawing clearly showing the changes, as well as a site walk if CA considers it necessary.
 - In terms of paperwork/procedures, CA can then authorize approved field changes through an email, referencing the newly-documented plan-change, to the applicant.
 - In addition, CA will report such approvals to ConCom at its next meeting so that the approval can be noted in the official minutes.
 - Proposed changes that, in CA's view, are more impactful will be brought before the Commission for consideration of whether an Amendment to the existing OOC or a new Notice of Intent must be filed.
- **Discussion: Ayer Conservation Commission Meeting Schedule**
 - The Commission will no longer dedicate one of its two meetings/month to applications and the other to Commission/Town business.
 - Both meetings will be open to applications and Town business.
 - Among the items that ConCom will consider under the 'business' category:
 - drafting a new Ayer Wetland Bylaw for submission to Town Meeting;
 - managing the Conservation Fund;
 - revision of ConCom's boilerplate Special Conditions for the OOC;
 - developing a more specific pond management policy;
 - updating the Commission's policies and procedures;
 - public outreach;

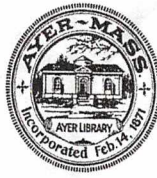


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- sending an advisory letter from the Commission to the Board of Selectmen/DPW regarding the need for the Town to push for further action to address Balch Dam.
 - On the issue of drafting a new Bylaw, GB asked JG to take point on this by reviewing previous discussions and comments (winter/spring 2017) and organizing a plan to move forward.
- **Discussion: Ayer Conservation Commission Reorganization**
 - Chair
 - JG moved to nominate GB as Chair; BT 2nd.
 - Motion approved unanimously.
 - Vice-Chair
 - JG moved to nominate BT as Vice-Chair; JS 2nd.
 - Motion approved unanimously.
 - Clerk
 - JG will remain as Clerk.
- **Interview: Mark Phillips, Applicant for Commission Vacancy**
 - Mr. Phillips previously submitted a letter of interest and resume to Town Manager Pontbriand.
 - Among the things he is interested in is participating in the Commission's Bylaw update.
 - After further discussion, JG moved that the Commission make a recommendation to the Board of Selectmen that they approve the appointment of Mr. Phillips to ConCom at their next meeting, Sept. 11; BT 2nd.
 - Motion approved unanimously.
 - JG will notify Town Manager Pontbriand of this vote so that the BOS can then take action.
- **Conservation Commission Office Updates**
 - Orion Park
 - CA was contacted by someone from Orion Park asking for a re-issue of a Certificate of Compliance (COC).
 - They lost the original signed COC for MassDEP # 100-0222, approved by ConCom on 6/22/2017 and signed at the following meeting on 7/13/2017.
 - This was prior to Ms. Crystoff becoming CA.
 - She also cannot find any copies of this in the ConCom files.
 - CA will also check with the BOS office records to see if the Conservation Restriction associated with this project was implemented.
 - Rte. 2A/Littleton Road
 - DPW has contacted CA asking if the existing old silt fence/erosion controls along the Pingry Hill subdivision as it abuts Littleton Road between Snake Hill Road and Hemlock Drive can be removed.
 - This old material gets tangled with DPW equipment when it mows the area once or twice a year.
 - This will be a question for Mr. Mullaney, asking for the state of completion of the road area in terms of Pingry Hill permits.
 - The Commission will probably not have an objection to these old controls being removed unless there is a good reason for them to remain or be replaced by new controls.
 - 25 West Main Street
 - Part of the building at this address, near a stream-bed, has been condemned.



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- CA has issued an Emergency Certification, re ConCom's interests, for okaying the demolition.
 - The demolition is planned for right after the Labor Day holiday.
- ConCom members signed the Emergency Certification.
- **Member Updates**
 - BT asked for more information on mosquito spraying in Ayer (as a preventative to spread of West Nile virus).
 - It is her understanding that the spray can also be toxic to fish, bees, and other insects.
 - CA will contact Bridgette at the Nashoba Board of Health.
 - Regarding funding for pond weed control, BT asked ConCom's recurring question as to why the Town cannot figure out a means of having budget requests be part of the Town's line-item annual budget rather than, each year, ConCom having to have a special article asking for new funding.
 - It has become clear that the Town needs to provide regular annual maintenance to the ponds (Sandy, Pine Meadow, Flannagan).
 - The Commission (as well as the previously active Pond & Dam Committee) has repeatedly asked for a line-item in the annual Omnibus budget, voted on yearly at Spring Town meeting.
 - At the same time, since it is expected some years will require more treatment while others will require less, the Commission had previously requested that unexpended funds in this line-item be allowed to roll-over to the following fiscal year(s).
 - That way funds could accumulate to handle the heavier treatment years.
 - Thus far, the Town Accountant has indicated this is not possible.
 - The Commission will ask again why this can't be handled in this way.
 - JG will draft a letter on behalf of the Chair to Town Manager Pontbriand.
 - BT said she has heard talk of weed treatment for Grove Pond.
 - This is unsubstantiated rumor.
 - Because of the arsenic levels in Grove Pond sediments, the Commission has never been in support of treating this pond
 - BT also asked if anything further was going to be done about the invasive water chestnut at the eastern end of Grove Pond.
 - While previous testing of individual sample water chestnuts indicated a low level of arsenic, the unresolved question is how to safely/legally dispose of a large bulk of arsenic-contaminated invasives.
 - Solving one problem while creating an entirely new one is to be avoided.
- **10:17 PM – Adjourn Meeting**
 - JG moved to adjourn; JS 2nd.
 - Motion approved unanimously.

Minutes Recorded and Submitted by Jessica G. Gugino, Clerk

Date Minutes Approved by Conservation Commission: _____

9/6/2018

Signature Indicating Approval: _____

Jessica G. Gugino