



City of Peabody
Conservation Commission

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5900

MINUTES

May 11, 2011

PEABODY CITY HALL
24 LOWELL STREET, LOWER LEVEL CONFERENCE ROOM

MEMBERS PRESENT

Michael Rizzo
Francis Lee
Joel Whitman
Alan Klapman

MEMBERS ABSENT

John McRobbie
Jarrod Hochman
Charles Denny
Bruce Comak
Jared Yagjian

Also Present: Lucia DelNegro, Conservation Agent; Brendan Callahan, Senior Planner; Councillor Rico Mello, Ward 3 City Councillor.

CHAIRMAN LEE CALLED THE MEETING TO ORDER at 7:01 pm

NEXT MEETING- June 8, 2011 AND July 27, 2011
Lower Level Conference Room - City Hall

COMMUNITY DEVELOPMENT

• **Reports- Brendan Callahan, Senior Planner**

Summary: Community Development will be at the June hearing to give an update on the Flood Mitigation Project. AECOM will be hired to conduct the work for Project 1.

There will also be a presentation on a trail project. Brendan Callahan is working on this project. The project will develop a trail network in South Peabody in the Sidney's Pond and Lower Spring Pond area. The draft plan currently links the two parcels together. Harmony Grove cemetery bisects the two parcels. The idea is to link approximately four hundred (400) acres of available open space together. Mr. Callahan has been working with the Massachusetts Audubon Society. They plan to present the draft plan to the commission in June. **Discussion ensued.**

Mr. Callahan explained that he is working on two more grants. He also gave an update on the Welch School project and the Perkins Street project. Both projects are almost finished. There are punch lists for both projects that still need to be completed. The Welch School also needs a fence erected around the detention basin. **Discussion ensued.**

REQUEST FOR DETERMINATION

1. A public hearing on a Request for Determination of Applicability by Karen Gatley-Herrick, 9 Dividence Road, Reading MA. The proposed project consists of the removal of an existing structure and the construction of a two family home with driveways and utilities. The property is known as 10 Rear County Street, Map 109, Lot 82, Peabody MA.

The applicant requested the item to be withdrawn without prejudice. She will file an NOI for the June hearing.

2. A public hearing on a Request for Determination of Applicability by Keith Morris for Pan Am Railways, Inc. The applicant is requesting verification of the wetland boundaries for future herbicide treatments. The sensitive areas have been delineated in the field by a color coded system approved by MDAR. This application is for verification of wetland boundaries only and not for the actual application of herbicides. Prior to the application of herbicides a Yearly Operational Plan (YOP) is submitted to each community and there is a 45-day review and comment period.

The applicant was not present to discuss the project. The commission had questions and decided to continue the item.

Motion to continue made by Mr. Whitman. Seconded by Mr. Rizzo. Adopted unanimously.

NOTICE OF INTENT

3. (Item Re-advertised) A Public Hearing on a Notice of Intent for 60 Pulaski Street LLC by Hayes Engineering, Inc. 603 Salem Street, Wakefield MA. The applicant proposes to construct a parking lot in the riverfront for bus storage. The property is known as 60 Pulaski Street, Map 53, Lot 85, Peabody MA.

MR LEE: This for everybody's information is a start again process. For technical, legal and procedural reasons that I sometimes question but all the evidence in this matter by the applicant and by members of the public will have to be resubmitted during this process. So we are starting from ground zero in that respect is what I am trying to say.

ATTY KEILTY: You are exactly right. I am John Keilty and represent 60 Pulaski Street LLC. I had asked this matter be re-advertised so we could get a full compliment of membership. We now sit here with four. I think I was down to three before. We couldn't of even done business. So I re-advertised it, informed the administrators to the board that there was nothing necessarily new to be presented. I would like this matter to be continued so I could not begin this public hearing tonight and then be faced with the same issue that I was faced with two weeks ago. Which was essentially too few members to do business. I have no objection and I would ask the board to look at the issue and anything that this group of neighbors have submitted in the past; I have no objection that anything that is already in the file be part of the ongoing file. I guess it is a

question for the city solicitor or DEP on whether I can do that. This activity that I am trying to undertake is not to deny anybody anything that they put in or testified to. All the habitat and the information with respect to any kind of air pollutants. Whatever has been submitted I have no objection to any of that paperwork being submitted already and accepted as part of this file. However given the number of members here this evening I would like to suspend this meeting until we get a better compliment or a higher number.

MR LEE: In my opinion I have no problems with what he said. You can resubmit the evidence you have objecting to this proposal. I don't think there was any support. I do think it might be to your advantage to at least briefly summarize verbally for the commission what the problems are that you have. For the applicant he gave us a lot of plans that were revised and revised. He is not going to have to go back and put in all the revisions. We are going to start from a new ground zero which would be changes from the original project I presume but up to date. And you can do the same thing. I think the applicant's attorney is trying to be helpful so you don't have to do too much work. When we get going I think the applicant should come in with a rather crisp case on the issues which have been beaten to death over the number of periods with different people. The public should feel free to do the same thing. Yes submit your evidence but summarize for the commission members that may not have been here to hear you originally. Then they can hear what your problems are. What I am trying to say is that you don't have to start with Adam and Eve. I am trying to be helpful and efficient with my time and your time.

Kathy Wells, 22 Westview Circle

MS WELLS: I have a question. Where the previous commission had a walk through of the site. Is it possible to bring that piece up to date for the new members as well? And some of the past things like the cease and desist orders that have occurred.

MR LEE: You can put that in your summary. The walk through we did it once before I don't see why we can't do it again. I think that is open. I do not know if members of the commission will want to do it.

ATTY KEILTY: If the commission wants to have another walk through they certainly can. With respect to the Cease and Desist they continue to be alive and we discuss them.

MR LEE: I want people to know because this is really unusual to go back to ground zero. That it really is a ground zero but we don't have to go through all of evolution to get us here. We can almost pick it up and summarize where we were last time we met and follow the issues from that point on.

ATTY KEILTY: I think that for instance with respect to Ms. Wells who has submitted a fair amount of physical documentation. Anyone else that has done that they could reference the date.

MR LEE: You do not need to run any more xerox copies.

ATTY KEILTY: I am trying to create an avenue if you can recall the date you submitted a pile of stuff. Just reference that date. You can do whatever you like. I do not represent you.

Discussion ensued. Mr. Callahan stated the residents could come in and go through the file.

CLLR MELLO: You re-advertised?

ATTY KEILTY: Yes.

CLLR MELLO: You said there is going to be a change. Is it that you think that the ConComm is no longer going to be part of this process? Has that change occurred at this time?

ATTY KEILTY: ConComm will always be a part of this process. However our tactic if you will; we are now saying we are an Historic Mill. That takes us out of the Riverfront Act in and of itself. That doesn't mean that statements that people made no longer apply. We are exempt from the Riverfront Act based on our Historic Mill status.

CLLR MELLO: How does that apply to what has sort of already happened with this board? And the fact that the applicant has changed their point of view.

MR RIZZO: Our position still may be the same. Just because the applicant is saying that there is some historic significance I am not convinced of that. It is not on the historic register. The building is gone so I have no idea what the historic issue is yet.

MR LEE: The applicant will have to come in and state what he just did and we have to be judges of it. I think he is going to have a good argument on his hands. I do not know that and I don't want to hear that now.

ATTY KEILTY: To be fair to the public we will file a new NOI taking sort of that position and readvertise.

Discussion ensued. Mr. Lee briefly mentioned that our local ordinance still did apply even if the property was discovered to be in fact a Historic Mill site. The counsel for the applicant explained that he plans to file a revised NOI without the intention of receiving a new file number from DEP. Chairman Lee also requested some documentation to persuade the board that they are in fact a Historic Mill site. There were no more comments from the public.

Motion to continue made by Mr. Whitman. Seconded by Mr. Rizzo. Adopted unanimously.

4. A Continued Public Hearing on a Notice of Intent for OHC Walnut Place LLC (10 Dearborn Road, Peabody MA) by Hayes Engineering, Inc. with a business address of 603 Salem Street, Wakefield MA. The applicant proposes to construct multi family buildings with associated parking areas, drives, utility and drainage structure installation, pavement removal and grading. The property is known as 0 Hardy Street and 10 & 12 Munroe Street, Map 85, Lots 001, 002H and 0021, Peabody MA.

Motion to continue made by Mr. Klapman. Seconded by Mr. Whitman. Adopted unanimously.

Item 5 and 7 were discussed together.

5. A Continued Public Hearing on a Notice of Intent for E.H. Porter Construction, Inc. 15-17 Wallis Street (PO Box 708), Peabody MA.. The applicant is proposing to redevelop the site for the construction of a new building to house, in part, the United States Post Office as shown on the plan for property known as 15-17 Wallis Street, Peabody MA, Map 85, Lot 41. The proposed work is in the buffer zone and riverfront area.

Attorney Philip Durkin respectfully requested that the item be withdrawn.

ORDER OF CONDITIONS

7. A Public Hearing an Amendment to an issued Order of Conditions requested by Attorney Philip Durkin, 27 Lowell Street, Peabody MA. There was an Order of Conditions with a DEP file No. 55-645 issued on 10/17/2006 and recorded at the Essex South Registry of Deeds in Certificate of Title No. 44748 and Document No. 483871. The property is known as 15 Wallis Street, Map 85, Lot 41, Peabody, MA.

ATTY DURKIN: As you know this has been going on for the last couple of years. We originally back about a year ago we filed a new NOI pursuant to a Consent Decree that we entered into with DEP. On the belief that we could not proceed with amending what was previously amended and approved by the commission. As it turns out Mr. Callahan stated we don't need a new Order. We can proceed on amending the existing plan. That is what I am doing.

[Aside: The Stimulus Act extended the Order until October 2011 therefore the applicant can amend the current Order of Conditions.]

ATTY DURKIN: You have the plan. The plan is not different from the plan that was filed with the NOI from a year ago prepared by Eastern Land Survey. It is the same plan and essentially, it is just to comply with the Order by DEP. With modifications as far as what DEP wants and support when we proceed with the construction of the building. If you recall on the original NOI the city building department made its comments. We worked through that. We amended that at the request of the city with their approval. Then when we filed a new NOI a year ago we did not expect or anticipate all the new conditions that the city was trying to put on us. Never the less Chris Mello did follow through on a lot of loose items. As it turns out if we can proceed with an amended order there would be relatively few comments.

MR CALLAHAN: The impression that I have been under from DEP is they have a Consent Order from DEP to restore the channel.

Discussion ensued * FLIP TAPE 1***** There were no comments from the public.

MR CALLAHAN: They need to put the walls back to the preexisting conditions. That is what this plan reflects. They went in there to do the work and they started putting in the footings to what the proposed building was. The work started and the railroad came in and then the Army Corps came in. The railroad was concerned with the structural integrity of the bridge and with the increased flow that was potentially going to happen there. DEP came in and they wanted to see what was amended and what was submitted. They wanted the documentation to support the amendment. There was none. So since, we had no documentation to show that we were increasing or decreasing the flow or showing what the impacts would be down stream; we did not have any of that documentation. So essentially the property owner had to go back to DEP and they settled the deal. They have a Consent Order. DEP's final call was put it back to the preexisting condition. Which was the ninety degree turns and rebuild the wall. Right now, the walls are gone. This plan allows them to go back and reconstruct.

Discussion ensued.

Motion to close the public hearing made by Mr. Rizzo. Seconded by Mr. Whitman. Adopted unanimously.

Motion to accept the Amended plan and amend the Order of Conditions (55-645) adding the Consent Order from DEP as made by Mr. Rizzo. Seconded by Mr. Klapman. Adopted unanimously.

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

6. A Continued Public Hearing on an Abbreviated Notice of Resource Area Delineation by Attorney Athan Vontzalides, 246 Andover Street, Peabody MA for Salvage Enterprises LLC, Joseph Salvage, 10 Monson Drive, Peabody MA. The applicant is seeking confirmation for the extent and location of wetland resource areas that may be subject to jurisdiction under the Massachusetts Wetland Protection Act and the City of Peabody Wetlands Ordinance within and surrounding the proposed project for the property known as 83 Winona Street and 86 Pine Street, Map 45, Lots 15 and 21, Peabody, MA.

*****CONTINUED UNTIL THE JULY 27, 2011 HEARING*****

MODIFICATION and EXTENSION

- NONE

CERTIFICATE OF COMPLIANCE

8. Continued Request for a FULL Certificate of Compliance made by Marc Marrocco of Stop & Shop Supermarket Company, LLC. The DEP file No. is 55-724 and the property address is 19 Howley Street, Map 86, lot 130X. The project is known as the Stop & Shop Fueling Facility Project.

*****CONTINUED UNTIL THE JUNE 8, 2011 HEARING*****

9. Continued Request for a FULL Certificate of Compliance made by Attorney David Ankeles for Lynnfield Street Properties, Inc. The DEP File No. is 55-707 and the property address is 139 Lynnfield Street, Map 101, Lot 12, Peabody MA.

*****CONTINUED UNTIL THE JUNE 8, 2011 HEARING*****

ENFORCEMENT ORDER

10. A hearing on an Enforcement Order issued to Arthur Yiakas. The property is known as 181 Lynnfield Street, Map 100, lot 143, Peabody MA. A concrete block retaining wall along Goldthwaite Brook is in disrepair. The owner's presence is requested at the hearing to address the issue and decide on a resolution. Continued on next page.

Summary: Mr. Yiakas stated there is currently three feet of water in the brook. He cannot do any work until August when the water levels are low. His intent is to replace the wall. He stated he has a very old Order of Conditions to construct the wall many years ago (55-64). The commission asked Ms. DelNegro to find the old DEP file. Ms. DelNegro explained the file might be very hard to locate since it is most likely in dead storage. Mr. Yiakas stated he first constructed the wall of railroad ties. He came before the board years later to replace them because they were rotting. He replaced them with cinderblocks. The cinderblocks are now in disrepair. The item will stay on the agenda.

Motion to continue made by Mr. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

11 . A continued hearing on an Enforcement Order issued to Adam and Doreen Kobierski. The property is known as 503 Lowell Street, Map 36, Lot 008B, Peabody MA. The illegal activity observed was altering, filling and grading within 200 feet of a vernal pool as well as the construction of a riprap type retaining wall to extend their backyard. It appears that the construction of the riprap wall is taking place in the "No Cut Zone" as depicted on approved plans under the original Order DEP file no. 55-569.

Summary: At the last hearing, the commission voted to issue fines.

Motion to abate all fines as made by Mr. Rizzo. Seconded by Mr. Klapman. Adopted unanimously.

Summary: At the March hearing, the commission asked John Dick of Hancock Associates to have the original plan approved by ConComm with the No Disturb Zone to be recorded at the registry of deeds in Salem. Proof of recording was required before the EO would be lifted. Mrs. Kobierski tried to record it at the registry. They would not record it because there are two other lots on the plan. She would need all three landowners permission to record it. The reason the commission requested the plan to be recorded was to ensure that if the properties passed hands the new owners would be aware of the "no cut zone". The commission asked Ms. DelNegro to send letters to all three parcel owners asking them to request a Full Certificate of Compliance on their lot. Ms. DelNegro wanted Commissioner Hochman to weigh in on the legal aspects of recording the plan at the registry. Discussion ensued. The item will remain on the agenda.

Motion to continue made by Mr. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

12. A continued hearing on an Enforcement Order issued to Michael Chiaradonna. The property is known as 119 Foster Street Rear, Building 10, Map 04, lot 007B, Peabody MA. The illegal activity is storing pallets of Wet Blue Chrome Scraps (old leather hides). The leather hides are also piled on the abutting property. The property is bounded to the north by a channellized section of Goldthwaite Brook. This site is located entirely within the Riverfront (RF) associated with Goldthwaite Brook. The wet blue scraps are being stored in RF without a valid Order of Conditions.

The item will stay on the agenda until all offending fill is removed and the court order is satisfied.

Motion to continue made by Mr. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

FINDING OF NON SIGNIFICANCE

- NONE

CITY COUNCIL- Special Permits- Motions

- NONE

VIOLATION ORDER

13. Violation Order- 147 Bartholomew Street. Violation- The removal of 3-7 living trees in the Buffer Zone of Bartholomew Pond. Discussion ensued.

Motion to issue an Enforcement Order made by Mr. Rizzo. Seconded by Mr. Whitman. Adopted unanimously.

EMERGENCY CERTIFICATION

- NONE

CORRESPONDENCE- APPOINTMENT

- NONE

SUBCOMMITTEE REPORTS

- Land Acquisition Committee- Chairman Rizzo
- Flood Mitigation- Chairman Whitman

OTHER

- Any other matter presented to the commission at this time.

58 R Pulaski Street as presented by John Serman and Kathy Wells. They submitted pictures and requested the commission to conduct a site visit and investigate. The pictures appeared to be taken recently and showed dumping, filling and other violations of the Wetlands Protection Act as well as the Local Wetlands Ordinance. Ms. DelNegro stated she has already contacted the owner of the property and set up a site visit for May 13 at 10 am. The commission felt that the violations presented by the neighbors were accurate and decided to issue an Enforcement Order. **TAPE 2** The neighbors suspected that the owners were filling the edge of the bank and then moving their jersey barriers to expand their lot size. They speculate that this may have been going on for years. The Commission requested that staff follow up on Friday to determine if said violations are in fact true. If there are violations, the commission staff was asked to issue an Enforcement Order and report their findings at the next hearing. The commissioners signed an EO and gave Ms. DelNegro permission to issue it after the site visit is conducted if violations are apparent.

Community Preservation Committee-

Currently Michael Rizzo is the only commissioner on this Committee. There is supposed to be a voting member and a non-voting alternate member that represents the Conservation Commission. Both members attend the meetings and participate in all discussion etc. Only the voting member will vote on an application. The alternate will have voting rights in the absence of the voting member. The commission is requesting a volunteer to be on this committee. Ms. DelNegro will send out an email asking if any commissioners are interested.

Nominating Committee- Joel Whitman- For the record, the slate of office that is being proposed is the following for a term of one year:

Francis Lee, Chairman
Michael Rizzo, Vice Chairman
Jared Yagjian, Secretary

Motion that the slate is accepted as made by Mr. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

APPROVAL OF MINUTES

• **Minutes- 4.13.2011**

The commission will vote on the minutes at the next regularly scheduled hearing.

- **Adjournment** The meeting adjourned at 9:22 pm.

Respectfully submitted-

Francis Lee, Chairman