



City of Peabody Conservation Commission

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5782

MINUTES

October 12, 2011

PEABODY CITY HALL
24 LOWELL STREET, LOWER LEVEL CONFERENCE ROOM

MEMBERS PRESENT

Michael Rizzo
Francis Lee
Joel Whitman
Alan Klapman
Jarrod Hochman
Charles Denny
Bruce Comak

MEMBERS ABSENT

Jared Yagjian
Lucia DelNegro, Conservation Agent

Also Present: Councillor Rico Mello, Ward 3 City Councillor; Brendan Callahan, Senior Planner

CHAIRMAN LEE CALLED THE MEETING TO ORDER at 7:00 pm

NEXT MEETING- November 9, 2011 AND December 14, 2011
Lower Level Conference Room - City Hall

COMMUNITY DEVELOPMENT

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

Summary: Mr. Callahan reminded the commission that he was before them in June with the Massachusetts Audubon Society regarding his trail project around Sydney's Pond in South Peabody. **Discussion ensued.** Mr. Callahan requested funds from the Community Preservation Committee (CPC). **Discussion ensued.** CPC asked for a letter of support from the commission. Brendan was before the commission to request a letter of support to utilize the Community Preservation Act Funds for the development of the Sydney's Pond Conservation Area (SPCA) Trail Project. He asked the CPC for up to \$102,000.00. However, he is still looking for grant funds. If he successfully acquires more grant funds, he will not need the full amount requested from the CPC. **Discussion ensued.**

Motion to sign/ submit a letter of support to the CPC for the SPCA trail project made by Mr. Rizzo. Seconded by Mr. Hochman. Adopted unanimously.

CERTIFICATE OF COMPLIANCE

1. A Request for a Full Certificate of Compliance made by Steve Breitmaier of Brite Excavating for Johnathan and Sophia Petromelis. The DEP File No. is 55-705 and the property address is 33 Benevento Circle, Map 11, lot 57, Peabody MA 01960.

Summary: Steven Breitmaier and Sophia Petromelis were both present. The project is complete except the roof leaders are not connected to the dry well. Discussion ensued. Ms. DeINegro submitted a memo stating "If the commission wishes to vote on said Certificate of Compliance staff recommends making a motion contingent upon said above referenced work (roof leaders being tied into dry well) being done and approved by staff before the certificate is released". **Discussion ensued.** Mr. Breitmaier stated the leaders would be connected by Friday.

Motion to issue a full Certificate of Compliance as recommended in Agent DeINegro's memorandum as made by Mr. Whitman. Seconded by Mr. Rizzo. Adopted unanimously.

2. A Request for a Full Certificate of Compliance made by BSC Group for Aggregate Industries- NE Region, Inc. The DEP file No. is 55-728 and the property address is 55 Russell Street, Peabody MA. The project is known as the Improvement and Maintenance Sediment Control System.

Summary: Renwick Chapman of BSC Group was present as well as Stephen Simas from Aggregate Industries. Ms. DeINegro submitted a memorandum to the commission explaining her findings. Staff conducted a site visit on 9/27/2011. Staff noted a small amount of debris at the discharge point from the settling basins into the woods/wetlands as well as some scouring. Staff has discussed this with BSC Group and they agreed on the following action:

- Hand removal of all debris such as old silt fence, hay, accumulated sediment and sand bags.
- Hand rake the area after removing the debris and place 1" or 2" of 3/4" to 1 1/2 " crushed stone over the disturbed area to provide temporary stabilization and allow existing vegetation to grow.

Ms. DeINegro felt this method of cleanup would cause the least disturbance and allow the existing vegetation to reestablish itself. Mr. Chapman stated the work was complete. Ms. DeINegro's memorandum also stated the following: "If the commission wishes to vote on said Certificate of Compliance staff recommends making a motion contingent upon said above referenced work being done and approved by staff before the certificate is released". **Discussion ensued.**

Motion to issue a full Certificate of Compliance as recommended in Agent DeINegro's memorandum as made by Mr. Rizzo. Seconded by Mr. Whitman. Adopted unanimously.

3. 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.

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

EXTENSION

4. A Request for an Extension on DEP file No. 55-628 made by John N. Karamas, Trustee. The property address is known as 6 Stacia Road (Lot C) Map 101, Lot 166C). THE ORDER EXPIRES ON 10/19/2011.

Motion to extend for one year as made by Mr. Denny. Seconded by Mr. Hochman. Adopted unanimously.

5. A Request for an Extension on DEP file no. 55- 706 from Gregory Cincotta on behalf of the Salem Country Club. The property is known as Salem Country Club, Forest Street, Map 72, lot 1, Peabody. THE ORDER EXPIRES ON 12/15/2011.

Motion to extend for one year as made by Mr. Whitman. Seconded by Mr. Rizzo. Adopted unanimously.

REQUEST FOR DETERMINATION

NONE

NOTICE OF INTENT

6. A Public Hearing on a Notice of Intent by Vanasse Hangen Brustlin, Inc. for the Town of Danvers (David Lane). The proposed work consists of roadway improvements involving milling and overlaying the current pavement. They will also add sidewalks, crosswalks, change traffic signals, update pavement markers, street signs and street lighting from the Endicott Street and Sylvan Street intersection to the east of Independence Way. The property is known as Sylvan Street , Map N/A, Lot N/A, (latitude- 42.54753N, Longitude- 70.94542W), Peabody MA.

Summary: Allary Braitsch, Wayne Amico both of VHB was present. Ms. Braitsch stated that the proposed work is an improvement and maintenance project on a very small portion of Sylvan Street (Road) south of the Peabody Danvers line. The project is basic milling, overlay and re-striping as well as safety improvements. She also stated there is about one hundred and twenty five feet of work area proposed in the city of Peabody. The portion of the project in Peabody is a very small part of a large project proposed in Danvers. Danvers will be doing work on Peabody land. Ms. Braitsch stated it was about transition. Danvers wants to have a smooth transition from the two cities. As Ms. Braitsch stated earlier only one hundred and twenty five feet of the project is located in Peabody's city line. The work being done in Peabody is approximately two or three percent of the entire project that Danvers is proposing. The bulk of the work is in the Town of Danvers. An intermittent stream flows beneath Sylvan Street. Erosion controls will be in place before work starts.

MR AMICO: The reason we are going into Peabody is the reconstruction of this traffic signal in Danvers with installation of loop detectors, pavement markings and basically cold plane and overlay in that section.

Summary: The portion of the project within Danvers town lines was continued at the last Danvers Conservation Commission hearing. There were no members of the public that wished to speak.

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

Motion to issue a Standard Order of Conditions 1-47 adding condition 48) There shall be no stockpiling of any construction debris, soil etc. in the city of Peabody as made by Mr. Rizzo. Seconded by Mr. Denny. Adopted unanimously.

7. A continued (re-advertised) 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.

Continued next page

Summary: At the last hearing the commission requested credible documentation to be exempt under the Historic Mill Act. Legal Counsel (Attorney John Keilty) did submit such evidence for the commission to review before the hearing. If the land is in fact, an historic mill it will be exempt from the Rivers Act. Discussion ensued. Peter Ogren of Hayes Engineering was also present to discuss the Historic Mill Exemption request. **Discussion ensued.** There is not any case law or any DEP policies regarding this exemption. The Salem Conservation Commission recently voted on the exemption for a parcel. The Order of Resource Area Delineation was appealed by residents of the city of Salem. The file is currently being reviewed by DEP. **Discussion ensued.** ***FLIP TAPE 1*** Discussion ensued regarding the definition of an historic mill. Attorney Keilty stated that the parking lot is a temporary use for the site. There was some discussion about the future development of the property. The hearing was open to members of the public. Darylann McCarthy of 47 Pulaski Street reminded the commission that bus storage is not allowed under the current zoning for this district. Kathy Wells of 22 Westview Circle submitted an email from William Power (Chairman of the Historic Commission) stating that there were mills located on Liberty Street only on the east side of the bridge.

MS WELLS: We received a copy of the letter that Mr. Keilty submitted in regards to the Historic Mill Complex. We wrote up something and I would like to read it. This is our response. "After reviewing Mr. Keilty's responses and documentation we have contacted Mr. Trask the historian for the town of Danvers to gain further information on whether a mill ever existed on the site. Mr. Trask stated that both the 1852 map of Danvers, which included Peabody, and the 1872 atlas of Essex County showed only one factory passed the Danvers river bridge towards Peabody. This was listed as a slaughter house. Mr. Trask also stated that the Waters River was only possibly navigable past the Waters River Bridge in the early 1900's prior to approximately 1919. Once the present bridge was built it was no longer navigable past the bridge towards Peabody due to the shallowness of the water. Mr. Trask also stated that a mill differs from a manufacturing plant or factory because a mill has to have a means of utilizing water, a water wheel and a formal mechanical sluiceway. In speaking with Karen Davis, of the Massachusetts Historical Commission, she noted that 60 Pulaski is listed as a tannery and chemical processing plant. They have no record of an historical mill ever existing on the 60 Pulaski Street property. In response to Mr. Keilty's letter and the information he submitted we would like to state the following in regards to your questions." (Ms Wells continued to read the letter dated 10/12/2011 signed by The Waters River Community Coalition. It is in the file for viewing).

Let's say there is no Mill Act. Let's go that route too. You are supposed to try and conserve and make sure there is a place for the animals. One of the things I have in here and I can dig it up. It says that noise pollution is the major cause of wildlife relocating or deteriorating at the site. Last Thursday I was trying to take a nap. I recorded this in my bedroom. This is what I listen to for at least four (4) hours a day. (Ms. Wells played a recording of bus beepers.) That is over three hundred (300) yards at least. I am on Westview Circle. I am not even on Pulaski. I am hearing that with my window open from my bed as I am trying to take a nap. How do you think the wildlife can handle it. Do you think they can live there? Easily three to four hours a day. It could be more. It starts at 5:30 in the morning and some nights until eight o'clock at night you hear that beeping from the buses backing up. That is thirty five buses. We are talking adding over a hundred buses there. What is that going to be like to the wildlife and to us neighbors? That is all I have to say. Thank you I appreciate it.

ATTY KEILTY: Let the record show the fire that destroyed the Monier building occurred on March 31, 1997.

John Serman, 53 Pulaski Street

MR SERMAN: I will try to be brief. Right in here there is wildlife. Obviously, you guys know that. There is fish here and clams. Before his client owned the property he was leasing that. That is when the place blew up with Tannin corporation's chemicals in there. Right in between where the buses are now and the footprint of the building they dug a big whole. That is where the building is probably buried. Which is right in here.

Summary: Mr. Serman believes that asbestos as well as chemicals were buried on the site after the fire. Mr. Serman also stated he believes there was filling of resources over the years by numerous landowners. Discussion ensued.

Caroline Busta, 44 Pulaski Street

MS BUSTA: I would like to correct the records. The fire of the Monier building was March 30, 1998. I have a few pictures here showing that there was no wall behind the main building. This is a picture of the river behind the building and there is no wall there. (The pictures were submitted and accepted).

Discussion ensued. ***TAPE 2***

Motion that the applicant has not satisfied the standards numerated in the CMR that they qualify for the mill Exemption (therefore the WPA regulation for Riverfront areas apply to this project and this parcel) it is not a site of an historic mill as made by Mr. Hochman. Seconded by Mr. Klapman. The Vote passed 5-1 with Mr. Comak abstaining.

Discussion ensued regarding the NOI still in front of the commission at this time. There is confusion on the riverfront delineation. There was discussion about a third party peer review after the applicant properly delineates the river. The commission will vote next hearing to create an escrow account for said work.

Motion to continue the matter so that the applicant can provide documentation or support as to what the Waters River encompasses as made by Mr. Hochman. Seconded by Mr. Whitman. Adopted unanimously.

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

8. A Continued Public Hearing on an Abbreviated Notice of Resource Area Delineation by Attorney Athan Vontzalides, 246 Andover Street, Peabody MA for Salvaggio Enterprises LLC, Joseph Salvaggio, 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.

ATTY VONTZALIDES: I know we had a site inspection last week. Only one of your members could attend. Michael was there. We walked the watercourse. We colored the watercourse blue. The green line is (inaudible).

MR MELLO: The blue line there is the nearest side of the watercourse. The green line is the flagged BVW. The red line is the one hundred foot buffer to the BVW. The light blue line is the two hundred foot buffer of the watercourse.

MR LEE: Do you believe it is a riverfront area?

ATTY VONTZALIDES: We believe it is a riverfront area under the local wetland by-law. What we were looking to do is see if the commission would take the same jurisdiction, they did on the Pine Street project. Define the one hundred foot buffer and the two hundred foot buffer under the local river act.

MR LEE: The staff recommendation is the plan should be changed clearly depicting the watercourse, as Norris Brook and the plan should include the two hundred foot riverfront area. She also included DEP comments.

ATTY VONTZALIDES: Chris shows the one hundred foot. He shows the two hundred feet. When designating it we want it under the local wetland by law. It does show two hundred feet but he is labeling it under the local wetland by law not the state.

Discussion ensued.

MR CALLAHAN: The agent and DEP are both saying that it is riverfront.

MR RIZZO: My confusion is and I apologize but I do not understand the difference of whether you are before us under our local by law or Chapter 131. My understanding is that Chapter 131 holds all the time. We can be more restrictive than Chapter 131 but we cannot be less restrictive. We can not allow more things that Chapter 131 doesn't allow. So I do not understand the difference between the two. How you can get more done under our local by law than you can under the state law.

MR MELLO: If it is a river under the state law it has certain characteristics and there are certain requirements. You can only alter ten percent of it. If it is a watercourse or a ditch or something that runs

through under your local by law and not a river we can alter whatever the commission sees fit within two hundred feet. Four or five years ago the commission permitted a house right here. We looked at that. There is a watercourse that runs through here and through here. What they did they permitted it as BVW and a watercourse with local riverfront. It has been built and constructed. What we are looking for is pretty much the same thing. If the commission sees fit to issue a resource area delineation as shown we will be able to come back with a notice of intent. We have a little plan showing what we want to.

SUMMARY: A plan was shown that had nothing to do with the ANRAD before the board this evening. It was a plan showing what the applicant would like to do with the property. Discussion ensued. The hearing was open to members of the public.

Russell Donovan, 12 Quail Road

MR DONOVAN: You are asking whether it is a watercourse or not. I refer the conservation commission to the city zoning about the wetland conservancy district. They have delineated here Norris Brook. It says upstream of Pine Street elevation of 63 feet. Devils Dishful Pond 88 feet. I think it is very important if that is Norris Brook or not. The wetland Conservancy District might apply. So we should know if that is Norris Brook because that is part of the Wetlands Conservancy District and the elevations do apply. According to the Conservancy District any fill or construction within thirty (30) feet of the brook.

Discussion ensued.

Motion that the state Wetlands Protection Act Regulations on Riverfront apply to this parcel(s) of land as made by Mr. Hochman. Seconded by Mr. Klapman. Adopted unanimously.

ORDER OF CONDITIONS

9. A public hearing on an Amendment to an Order of Conditions (DEP file No. 55-753) by Eaglebrook Engineering & Survey, LLC, 199 Newbury Street, Danvers MA. The applicant is asking for an amendment to construct a 42 inch wide bituminous concrete walkway to be located at the rear of the building. The property is known as 247 Lynnfield Street, Map 99, Lot 13A, Peabody MA.

Summary: Michael Juliano of Eaglebrook Engineering was present. He explained that they would like to add a walkway in the rear of the building. The total width of the proposed walkway pavement is 43 inches and a total of 470 Square feet. The walkway would be for an emergency exit. Discussion ensued. It was open to members of the public. Russell Donovan of 12 Quail Road wished to speak. He reminded the commission that this is Wetland Conservancy District land. Mr. Donovan feels that the permit is not an allowed use. ***FLIP TAPE 2*** discussion ensued.

Motion to close the public hearing made by Mr. Hochman. Seconded by Mr. Klapman. Adopted unaimously

Motin to Amend DEP file no. 55-753 to only allow a walkway in the rear of the building for emergency exit with the condition that it must be constrctued with porous pavers as made by Mr. Rizzo. Seconded by Mr. Hochman. Adopted unaimously.

10. A continued public hearing on an Amendment to an Order of Conditions (DEP file No. 55-670) by John R. Keilty Esquire for Gilbert Aleixo-Filho, Trustee of 18 Carell Road Nominee Trust. The applicant is asking for an amendment to increase the size of the approved dwelling, add a deck, a two garages and a swimming pool. The property is known as 18 Carell Road, Map 57, Lot 72 & 74 (portion), Peabody MA. THE APPLICANT IS ALSO REQUESTING AN Extension on said DEP file No. 55-670.

Motion to continue as made by Mr. Whitman. Seconded by Mr. Hochman. Adopted unaimously.

11. A continued public hearing on an Amendment to an Order of Conditions (DEP file No. 55-721) by John R. Keilty Esquire for Lowell Street CVS Peabody LLC. The applicant is asking for an amendment to change the following: building footprint, parking lot configuration, location of proposed bioretention cell, construction of a closed box culvert in lieu of previous designs and reconfiguring the dumpster location. The property is known as 532 Lowell Street, Map 35, Lot 28 and 27 (portion), Peabody MA.

Motion to continue as made by Mr. Whitman. Seconded by Mr. Hochman. Adopted unaimously.

EMERGENCY CERTIFICATION

12. Site location: 109 and 111 Newbury Street, Reason for emergency: Buildings are deemed unsafe per Building Commissioner, Kevin Goggin, Work to be performed: The demolition of the buildings located at 109 and 111 Newbury Street, Peabody MA.

Motion to ratify made by Mr. Hochman. Seconded by Mr. Whitman. Adopted unanimously.

ENFORCEMENT ORDER

13. Enforcement Order issued to Lamb and Vila Pino both of 501 Lowell Street, Peabody MA. The alleged illegal activity is work within the 100 foot buffer zone to a certified vernal pool.

Summary: The homeowner was present.

MR RIZZO: You can repair the existing driveway but you cannot make it bigger.

MR COMAK: Why don't you have them put a curbing in?

MR RIZZO: It will control the water to run down the driveway and not on the grass.

MS PINO: So I put grass in and Lucia will call me in April.

MR COMAK: You call Lucia next week and she will explain it to you.

MS PINO: I don't like to talk to her because she is so not nice to me.

MR COMAK: She will be nice to you.

MR LEE: She is very businesslike.

Motion to allow the homeowner to restore the disturbed area with loam and seed; no expansion of the driveway is allowed in the buffer zone; the homeowner must report to the commission in April 2012 with a status update of the site as made by Mr. Hochman. Seconded by Mr. Rizzo.

14. Enforcement Order on DEP file No. 55-742 for the property known as 18-20 Pleasant Street, Peabody MA. The applicant is not complying with conditions as cited in the Order of conditions of file 55-742.

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

15. A continued 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.

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

16. 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.

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

17. A hearing on an Enforcement Order issued to DEK Limited Partnership- Donald Kelly. The property is known as 58 Rear Pulaski Street, Parcels 53-046A and 53-083A, Peabody MA. See EO for illegal activity reference. DEP HAS TAKEN OVER ENFORCMENT ACTION BUT THE ITEM WILL REMAIN ON THE AGENDA UNTIL NOTICE IS GIVING FROM DEP.

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

18. A Hearing on an Enforcement Order issued to 49R Lowell Street LLC and M. Dullea Landscaping. The property is known as 49R Lowell Street, Map 85, lot 244A, Peabody MA. The illegal activity was the dismantling of air conditioners approximately eighty feet from Proctor Brook.

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

- NONE

SUBCOMMITTEE REPORTS

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

Discussion ensued regarding the flooding earlier in the month.

APPROVAL OF MINUTES

- Minutes- 9/14/2011- The minutes were not done.

OTHER

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

20. Adjournment

Motion to adjourn made by Mr. Rizzo. Seconded by Mr. Hochman. Adopted unanimously.

The meeting adjourned at 10:51 pm

Respectfully submitted-

Francis Lee, Chairman