



City of Peabody
Conservation Commission

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

MINUTES

SEPTEMBER 12, 2012

PEABODY CITY HALL
24 LOWELL STREET, LOWER LEVEL CONFERENCE ROOM

MEMBERS PRESENT

Chairman Francis Lee
Joel Whitman
Bruce Comak (left at 9:03)
Charles Denny
Mark Smith
Vice Chairman Michael Rizzo
Joseph Walsh

MEMBERS ABSENT

Alan Klapman

Also Present: Lucia DelNegro, Conservation Agent;
Brendan Callahan, Senior Planner

CHAIRMAN LEE CALLED THE MEETING TO ORDER at 7:03 pm

NEXT MEETING- October 10, 2012 AND November 14, 2012
Lower Level Conference Room - City Hall

CORRESPONDENCE-APPOINTMENT-DISCUSSION ITEMS

1. A request from Audrey Gordon to discuss her property at 17 Pine Street, Peabody MA.

Summary: Ms. DelNegro will conduct a site visit and discuss options with the homeowner.

CERTIFICATE OF COMPLIANCE

2. A request for a Full Certificate of Compliance made by David Aiello on DEP File No. 55-765. The property is located at 505 Lowell Street, Map 36, lot 8, Peabody MA.

Motion to issue a Full Certificate of Compliance as made by Mr. Denny. Seconded by Mr. Whitman. Adopted unanimously.

3. A continued request for a Full Certificate of Compliance made by Thomas Camire on DEP file No. 55-742. The property is located at 18-20 Pleasant Street, Map 95, Lot 151, Peabody MA.

Motion to issue a Full Certificate of Compliance as made by Mr. Rizzo. Seconded by Mr. Comak. Adopted unanimously.

REQUEST FOR DETERMINATION

4. A Public Hearing on a Request for Determination of Applicability submitted by Leo A. Martin. The proposed work is a second floor modular addition to an already existing home. The footprint of the home will not be enlarged. The property is known as 29 Jordan Road, Map 25, Lot 047, Peabody MA.

Summary: Leo A. Martin and David Martin were both present to discuss the proposed project. Discussion ensued. There were no comments from the public.

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

Motion to issue a Negative Determination with the stipulation that all work must be done according to plans submitted (the footprint of the structure must remain the same and all work must be staged in the front of the house) as made by Mr. Rizzo. Seconded by Mr. Comak. Adopted unanimously.

NOTICE OF INTENT

5. A Public Hearing on a Notice of Intent submitted by John R. Keilty, Esquire for the property owner named as Cheryl Penachi. The proposed work is the construction of a fence enclosing the rear yard area adjacent to Brown's Pond. The property is known as 251 Lynn Street, Map 120, Lot 158, Peabody MA. This is an "after the fact" filing regarding an Enforcement Order (EO) issued to Joseph and Cheryl Penachio for the property known as 251 Lynn Street, Map 120, lot 158, Peabody MA. The homeowners erected a fence within 5-10 feet from the edge of the mean annual high water line of Brown's Pond. For more details see minutes from the July 25, 2012 hearing.

Summary: Attorney Keilty is legal counsel for the owner of record. **Discussion ensued.** The commission asked if the owner would be willing to compromise and remove a few panels in lieu of cutting six inches from grade as mandated in the Amended EO. **Discussion ensued.** The discussion was open to the public. Nancy Spur of Tilly's Farm (and owner of 253 Lynn Street) had concerns for the wildlife. She agreed that removing a few panels would be a good compromise for both the neighbors and the wildlife. Mark Bow of 247 Lynn Street felt that allowing this fence would set precedent for future homeowners wishing to erect fences at the pond's edge. He has two small children and owns waterfront property as well. He does not have a fence around his property. Numerous neighbors from the previous hearing were also present to listen to the discussion. The chairman respectfully requested residents that spoke at the previous meeting to not repeat any issues that have already been mentioned (see minutes of July 25, 2012 for previous comments from the public). *****FLIP TAPE 1*** Discussion ensued** (There was a five minute recess). The owner was unwilling to compromise (i.e. remove fence panels).

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

Motion to deny the project under 310CMR10:02(2)(1)(b) and Peabody's Local Wetlands and River Protection Regulations Chapter 32 Sections 30 and 33 (see below for text) as made by Mr. Whitman. Seconded by Mr. Comak. Adopted unanimously.

The Peabody Conservation Commission determined the following:

A. Reasons to deny this project in accordance with 310CMR:

~~-10.02(2)(1)(b)-~~ "Fencing provided it will not constitute a barrier of wildlife movement; stonewalls; stacks of cordwood."

See Enforcement Order attached. The fence was already erected without a permit. This application was an "after the fact" filing for said fence.

B. Reasons to deny this project in accordance with City Ordinance Chapter 32 Wetlands and River Protection Regulations:

1. Chapter 32 § 30 Wildlife and Wildlife Habitat

B) The Commission shall retain the right to require measures (such as the planting of vegetative cover) to maintain and/or restore wildlife habitat in disturbed areas.

C) The Commission may require from the applicant an analysis, by an individual or firm acceptable to the Commission, of the impact on wildlife and/or wildlife habitat based upon a site inspection and review of the project where it is concluded that wildlife or wildlife habitat is of significant concern to the site.

D) The Commission may impose reasonable conditions as deemed necessary to limit adverse impacts on wildlife and/or wildlife habitat.

2. Chapter 32 § 33 No Disturb Zone Presumption

Lands within two hundred (200) feet of rivers, streams, creeks, and brooks, and lands within one hundred (100) feet of all other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas are presumed to result in alteration of the resource area and to have adverse impact upon the wetland values protected by this ordinance, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss or impairment of groundwater recharge or flood control, poor water quality, and loss of wildlife habitat. The Commission, therefore, may require that the applicant maintain a strip or buffer of continuous, undisturbed vegetative cover within 200 feet of resource areas defined in Sec. 32-2 Definitions Resource Area (I), and within 100 feet of resource areas

6. A continued Public Hearing on a Notice of Intent Submitted by Horsley Witten Group, Newburyport, MA for Brendan Callahan, Senior Planner, Peabody Community Development Department. The City of Peabody proposes to construct a stormwater management basin to reduce the amount of land area draining to Raymond Circle and diverting runoff from upgradient areas to the detention basin, the project also includes the development of a 9-Hole Frisbee Disc Golf Course at 0 Summit Street, Peabody MA. The property is known as Scouting Way, Map 083 Lot 007A.

Summary: Brendan Callahan, Senior Planner and David Ouellette of Horsley Witten Group (HWG) were both present. HWG provided a construction sequence for the disc golf course. The Park Commission has submitted a letter of support for the project. **Discussion ensued.**

MR COMAK: Is there going to be a maintenance plan for the detention basin and who is going to maintain it?

MR CALLAHAN: Yes and DPS will be responsible for the maintenance of the detention basin. Just like the other three storage projects that we have done. The one off of Summit Avenue and the one off Technology Drive. The one off the street I don't know but there are two right together. DPS is responsible for the maintenance of those three actually four. They oversee the maintenance of those. There has been some issues where some of the outlets have been clogged. DPS gets out there and they are the ones that are

clearing it out. They are responsible for the maintenance of the detention basin; the outlets and all the structures.

Dianne Hamilton, 35 Raymond Circle

MS HAMILTON: Thank you for the walk through. I appreciate it. It gave me a better view too. I have a couple questions on the basin itself. What is the bottom made of?

MR OUELLETTE: It will be loam and seeded.

MS HAMILTON: So it will be maintained because obviously things will grow there. That is the issue we had before with all those pipes. As years went by people forgot that those pipes were there and never cleaned them and then they clogged.

MR OUELLETTE: We have incorporated maintenance drives so that you can get to the critical areas. The outlet structures and things like. That the areas that you are occasionally going to have issues with.

MS HAMILTON: Will someone go by and check it or will they wait until we are flooded and then they go fix it?

MR OUELLETTE: That is up to DPS.

Discussion ensued.

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

Motion to issue a standard Order of Conditions 1-47 with the stipulation that a proper O&M Plan for the Golf Facility and the Detention Pond (identifying which department is responsible for the maintenance of both) must be submitted and approved prior to the issuance of the Order. The O&M Plan should include a maintenance schedule for poison ivy (and other harmful plants) removal to ensure the safety of individuals in respect to the disc course. Also adding checklist G as made by Mr. Comak. Seconded by Mr. Whitman. Adopted unanimously.

7. A Public Hearing on a Request for Determination of Applicability submitted by Hancock Associates, 185 Centre Street, Danvers MA for the property owner Adam Wozniak. The proposed work is the construction of a 15' x 26' shed to the left of the existing dwelling in a portion of the lot that is existing lawn. The property is known as 1 Brassie Way, Map 103, Lot 67B, Peabody MA.

Summary: Greg Hochmuth from Hancock Associates was the consultant for said project. The resource areas near the property are an intermittent stream and bordering vegetated wetlands (BVW) associated with this stream. If the consultant drafted an alternative analysis, the location of the proposed shed would have the least impact on the resource area. Discussion ensued. The hearing was open to members of the public. Russell Donovan of 12 Quail Road had concerns with zoning issues. The commission reminded him that their jurisdiction is limited.

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

Motion to issue a Negative Determination subject to the amended plan as changed at the hearing by Greg Hochmuth (hand drawn) as made by Mr. Rizzo. Seconded by Mr. Comak. Adopted unanimously.

8. A Public Hearing on a Notice of Intent submitted by Robert L. Holloway Jr., Esquire for the property owner named as Essen Foods, Inc. d/b/a Sylvan Street Grille. The proposed work is the reconstruction of the existing restaurant entrance. The property is known as 12 Sylvan Street, Map 30, Lot 14, Peabody, MA.

COMMISSIONER COMAK RECUSED HIMSELF AND LEFT THE MEETING AT 9:03 PM.

Summary: Attorney Peter Nechtum and Christopher Mello of ELSA, Inc were both present to explain the project in detail. Discussion ensued. There were no comments from the public.

Motion to close the public hearing as made by Mr. Rizzo. Seconded by Mr. Denny. The motion passed 6-0 with Mr. Comak recusing himself.

Motion to issue a standard Order of Conditions 1-47 and adding **48**. All stockpiling must be done outside the 200 foot Riverfront boundary and **49**. Silt socks or hay/straw bales must be on site at all times to manage siltation as needed as made by Mr. Rizzo. Seconded by Mr. Denny. The motion passed 6-0 with Mr. Comak recusing himself.

(Commissioner Comak left the meeting at 9:03. He did not participate in agenda items below.)

9. A Public Hearing on a Notice of Intent submitted by CEC for Warren Innis. The proposed work is the repairing of sewer manhole in a city sewer easement to eliminate infiltration. The property is known as Fifth Street, Map 90, Lot 33, Peabody MA.

TAPE TWO

Summary: The following were present to represent the applicant: Attorney John R. Keilty, Frederick Geisel, Engineer and Kenneth Bouffard of CEC. Discussion ensued. Russell Donovan of 12 Quail road had a few questions regarding the location of the project. There were no other comments/questions from the public.

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

Motion to issue a standard Order of Conditions 1-19 as made by Mr. Rizzo. Seconded by Mr. Denny. Adopted unanimously.

10. A continued public hearing on a Notice of Intent for EH Porter Construction Inc. by Attorney Philip T. Durkin. The proposed work is the redevelopment of a site for a new United States Post Office Facility. The property is known as 15 Wallis Street, Map 85, Lot 41, Peabody MA.

Summary: The following were present to answer questions on the proposed project: Attorney Durkin, Mr. Diambro and Mr. Mello of ELSA, Inc. The project has been on the agenda for months. Discussion ensued.

MS. DELNEGRO: I want to reiterate that they have a valid Order of Conditions (55-645). This order is still valid because Governor Patrick passed another Extension Act. They have a valid Order of Conditions to build a larger building on the site if they wanted to. What is before you is a smaller building. The ACOP (Consent Order) with DEP is completely out of our jurisdiction. The old building I believe was partially at elevation sixteen (16). That was the big target number at the last meeting. What I am trying to say is they could build a larger building now if they want to.

Discussion ensued. There were no comments from the public.

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

Motion to issue a standard Order of Conditions 1-47 adding checklist D as made by Mr. Rizzo. Seconded by Mr. Denny. Adopted unanimously.

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

11. A Public Hearing on an Abbreviated Notice of Resource Area Delineation by Attorney Athan Vontzalides for Joseph Salvaggio of Salvaggio Enterprises LLC. 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 Rear, Map 45, Lots 15 and 21, Peabody, MA.

Summary: Christopher Mello of ELSA, Inc. and the homeowner Mr. Salvaggio were both present.

MS DELNEGRO: To reiterate, you are only approving wetland boundaries. You are not approving any project tonight. After we decide, he will draft that plan and come back to us at another public hearing. I was on the site yesterday. There was some dumping done by the previous owner. The wildlife is abundant out there. I saw at least three frogs. They literally jumped over my feet. There were signs of larger animals most likely deer in the area. The flags that were missing, I have already discussed this with Mr. Mello as well as Mr. Manuell, were A8, A12, A25 to A27. R8 was missing and I actually put it back to where I thought it was. Mr. Manuell probably wants to make sure I put R8 back in the correct spot. I may have been a little conservative with my spot. This is one hundred and fifty times better than the last filing a year ago. They did not actually retract it; we denied it. We said it was inaccurate and we issued an ORAD stating it was inaccurate and that the riverfront was not on it. In the watercourse, right near RA7 flag there is a little arrow. That arrow I believe flows into an area that is clearly cattails and another resource area. That should be listed on here because looking at this you would assume it is not a resource area. It is definitely a resource area. I saw cattails. So that should be reflected on here. The one hundred inner riparian zone is not on the plan and it should be. Over where it says Pine Brook Condominiums to the right of the right; there is the waterway, Norris Brook, I do not see the continuation of the riverfront. I do not know if we need it but that is something that I am noting.

MR MELLO: I agree with everything Lucia said except the last one. We stopped right here because our property line is here and the riverfront is out here so we are completely jurisdictional. There is no point in going any further. No point on getting on anybody else's land. We would concede that the land on the roadway side of the water is jurisdictional.

Discussion ensued. Ms. DelNegro reminded the applicant that the flags must be visible throughout the entire construction process. The hearing was open to members of the public. Russell Donovan of 12 Quail Road inquired about the Surface Water Protection Zone and Groundwater Protection Zone.

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

Motion to issue an ORAD contingent upon the applicant submitting a revised plan showing the resource area as mentioned by staff and the inner riparian zone. The missing flags must be replaced. Both should be approved by staff before the release of the Order as made by Mr. Rizzo. Seconded by Mr. Smith. Adopted unanimously.

ORDER OF CONDITIONS

12. A public hearing on an Amendment to Order of Conditions DEP file No. 55-624 for Spinelli's LLC (Anthony Roberto) by Hayes Engineering Inc.. The proponent is requesting to extend a patio approximately 2,250 square feet. They are also proposing the construction of a retaining wall. The property is known as 10 Newbury Street, Map 88, Lot 1, Peabody MA.

Motion to continue as made by Mr. Denny. Seconded by Mr. Smith. Adopted unanimously.

13. A public hearing on an Amendment to Order of Conditions DEP file No. 55-624 for Warren Innis Trustee by Attorney John R. Keilty, 40 Lowell Street, Peabody, MA. The proponent is requesting numerous conditions be removed from the Order of Conditions. The property is known as 0 R Bartholomew Street (a/k/a Town Line Acres Subdivision), Map 106, Lot 2X, Peabody MA.

Motion to Amend DEP file no. 55-624 only eliminating Checklist D. Checklist D is being omitted because the commission believes it was added erroneously to the Original Order of Conditions. The original Order and this Amended Order will retain all other conditions for the reason specified in the memorandum from LEC Environmental Consultants LLC from Ann Marton dated July 25, 2012 as made by Mr. Denny. Seconded by Mr. Whitman. Adopted unanimously.

EXTENSION REQUESTS

14. A request for an extension on DEP file No. 55-624 made by Attorney John R. Keilty. The property is known as Town Line Acres Subdivision (Pearl Street), Map 106, Lots 102, 103 and 103A, Peabody MA.

Motion to extend per the Governor's Stimulus Act as made by Mr. Rizzo. Seconded by Mr. Smith. Adopted unanimously.

FLIP TAPE 2

ENFORCEMENT ORDER

15. A Hearing on an Enforcement Order issued to Shelby LLC and Robert Denisco for the property now known as Andrew Brothers Way (f/k/a 0 Clark Road), Map 97, Peabody MA. The extent of the activity is compromised erosion controls. An un-stabilized slope has eroded into the buffer zone and over the failed erosion controls. The extent of the disturbance is estimated about 35-40 feet from the edge of the resource area.

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

16. A continued hearing on an Enforcement Order issued to James Kaloutas for the property known as 34 Railroad Avenue, Map 085, lot 236, Peabody MA. A large section of a retaining wall associated with Proctor Brook is in severe disrepair.

Motion to continue as made by Mr. Walsh. Seconded by Mr. Smith. Adopted unanimously.

17. 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.

Motion to continue as made by Mr. Walsh. Seconded by Mr. Smith. Adopted unanimously.

18. 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 as made by Mr. Walsh. Seconded by Mr. Smith. Adopted unanimously.

19. A continued hearing on an Enforcement Order issued to Spinelli's LLC for the property known as 10 Newbury Street, Map 88, lot 1, Peabody MA. The EO work is mandated under Order of Conditions file No. 55-757. The EO work must be complete and approved by staff before any approved work can start under the current OoC.

Motion to continue as made by Mr. Walsh. Seconded by Mr. Smith. Adopted unanimously.

20. A continued hearing on an 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: Ms. Pino was asked to file a NOI for the work she would like to complete.

Motion to continue as made by Mr. Denny. Seconded by Mr. Smith. Adopted unanimously.

21. A continued hearing on an Enforcement Order issued to 60 Pulaski Street LLC with a business address of 65 Walnut Street Peabody MA. The alleged illegal activity was work in riverfront without a valid Order of Conditions. The matter is presently in the court system awaiting trial.

Motion to continue as made by Mr. Walsh. Seconded by Mr. Smith. Adopted unanimously.

SUBCOMMITTEE REPORTS

- Land Acquisition Committee- Chairman Rizzo NONE
- Flood Mitigation- Chairman Whitman NONE

APPROVAL OF MINUTES

. **NONE**

OTHER

. **Any other matter presented to the commission at this time.**
. **Adjournment**

Motion to adjourn as made by Mr. Rizzo. Seconded by Mr. Walsh. Adopted unanimously.

The meeting adjourned at 10:47.

Respectfully submitted-

Francis Lee, Chairman