



City of Peabody
Conservation Commission

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

MINUTES

September 14, 2011

PEABODY CITY HALL
24 LOWELL STREET, LOWER LEVEL CONFERENCE ROOM

MEMBERS PRESENT

Michael Rizzo
Francis Lee
Joel Whitman
Alan Klapman
Jared Yagjian
Charles Denny
Bruce Comak (arrived at 7:10)

MEMBERS ABSENT

Jarrod Hochman

Also Present: Lucia DeINegro, Conservation Agent; Councillor Rico Mello, Ward 3 City Councillor;

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

NEXT MEETING- October 12, 2011 AND November 9, 2011
Lower Level Conference Room - City Hall

COMMUNITY DEVELOPMENT

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

Mr. Callahan submitted a letter to the commission. He requested the commission appoint a member to the Recreation Open Space Plan Advisory Committee. The committee will meet sometime in October. The commission discussed whom the best candidate would be to appoint.

Motion to appoint Jarrod Hochman. If Mr. Hochman is not interested Mr. Denny will be appointed as made by Mr. Whitman. Seconded by Mr. Yagjian. Adopted unanimously.

CORRESPONDENCE- APPOINTMENT

1. Request for discussion from Katherine St. Peter, Principal of the Center School, and Dr. Levine, Interim Superintendent of Schools, to discuss the possibility of developing an outside science classroom (around a certified vernal pool).

Summary: Ms. St. Peter and Dr. Levine were both present. They were at the meeting to ask for guidance in the permitting process. Discussion ensued regarding if they should file an NOI or an RDA. The commission suggested a site visit before any determination could be made.

2. Request for discussion from Bernard Kallelis pertaining to work on his property located at 147 Bartholomew Street, Peabody MA.

The proponent was advised to file an NOI for the work he is proposing.

3. A continued Request for discussion from Roy Simoes from PMLP for the property located at 0 Russell Street. The proposed project would be a new sub-station for PMLP.

Summary: The following were present to discuss a proposed project: Christopher Mello, Eastern Land Survey Association Inc; Russ Dunne and Roy Simeos from PMLP and Bill Manuel from Wetland & Land Management Inc. They currently do not have concrete plans for a proposed sub station. They wanted to show their plans to the commission before they spend any further money. The discussion was for informational purposes only. Discussion ensued.

REQUEST FOR DETERMINATION

4. Request for Determination of Applicability by Andrea Norton of MASSDOT- Highway Division, 519 Appleton Street, Arlington MA. The proposed work consists of but is not limited to the following activities: full width pavement milling by cold planer and resurfacing the existing roadway. Also adjusting and/or rebuilding drainage structures. The work will take place on a section of Route 128 Northbound; on and off ramps at Exit 26 southbound; off ramp at Exit 25B Northbound; auxiliary ramp at exit 25A (for more specific locations contact Conservation staff), Peabody MA.

Summary: Andrea Norton of MASSDOT was present to discuss the proposed work. She explained that this is a maintenance project. The commission agreed that it is a very straightforward project. Discussion ensued. The commission requested that staff check with Department of Public Service (DPS) to see if they have any issues the board should be aware of prior to the determination being issued. There were no public comments.

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

Motion to issue a Negative Determination with the following condition: The Resident Engineer or MassDOT personnel must go on a "ride along" with Conservation staff after the erosion controls are installed. After this ride along Conservation Staff may require additional erosion barriers to be installed as made by Mr. Rizzo. Seconded by Mr. Yagjian. Adopted unanimously.

5. Request for Determination of Applicability by Siyan A. Man of 15 Beeman Road, Peabody MA. The proposed project consists of enclosing an existing 7'x15' deck for the use as a three season screened room. The property is known as 15 Beeman Road, Map 44, Lot 62, Peabody MA.

Summary: Mr. Man (owner) was at the hearing to answer any questions about the proposed project. The project is minor considering the applicant is proposing to enclose a preexisting deck. The deck is currently on asphalt. There will be very little impact to the resource as long as erosion controls are installed properly. Staff conducted a site visit and submitted pictures to the commission. No public comments.

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

Motion to issue a Negative Determination with the following conditions: 1) all work must be done according to plan submitted, approved and attached to this Determination; 2) Staff must be contacted via email or regular mail once erosion controls are installed. Staff must approve said erosion controls before any work can commence as made by Mr. Rizzo. Seconded by Mr. Klapman. Adopted unanimously.

6. A continued 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.

Summary: The item has been on the agenda for months. A representative for PanAm Railways Inc. has failed to appear at numerous meetings. The commission will remove the item from the agenda. If the applicant wishes to follow through with said work they must file again.

Motion to remove the item from the agenda as made by Mr. Denny. Seconded by Mr. Whitman. Adopted unanimously.

NOTICE OF INTENT

7. Notice of Intent by SP Engineering Inc., Bruce Poole, Salem MA for Plus One Realty Trust, Gary Cole, 54 Granite Street, Peabody MA . The proposed project consists of the removal of contaminated materials as cited in RAM plan RTN # 3-00196. The property is known as 3 Mason Street, Map 95, Lot 3F, Peabody MA.

Summary: The following were present: Bruce Poole of SP Engineering and Gary Cole of Plus One Realty. They are proposing to conduct a site cleanup under the 21E Massachusetts Contingency Plan. The property was once the site of the Osborn Tannery Complex in the 1900's. Discussion ensued. Historic filling of leather, ash and lime are present on the property. In 2007 there was an extensive comprehensive site investigation done on the property by Decoulas Associates. Arsenic cadmium and lead were also found on the property. Discussion ensued. No public comments.

MR POOLE: So here we have arsenic that exceed the upper concentration limits. Because the site is entirely paved we could do an AUL and close the site as basically what they call a "controlled secure site". But because they are over the upper concentration limits they cant remain. There might be a risk in the future when they are dug up or to the groundwater. Now these materials only extend five to seven feet below grade. So they aren't in the groundwater normally. I am sure under flood conditions the groundwater doesn't flood the building particularly but I am sure it raises the groundwater table. **Discussion ensued.**

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

Motion to issue standard Order of Conditions (OoC)1-47 attaching Letter from SP Engineering, Inc dated August 16, 2011 and with the following conditions: 48. The applicant is to notify Department of Public Services (DPS) and the Peabody Conservation Commission (PCC) of the project start date. The notification should be in writing (email is acceptable). 49. DPS and the PCC should receive a copy of waste manifests. 50. DPS and PCC should receive a copy of all sampling results as made by Mr. Rizzo. Seconded by Mr. Klapman. Adopted unanimously.

8. Notice of Intent for Luciano M. Dinis of 21 Leblanc Drive, Peabody MA. The project consists of the removal of an existing above ground pool and replacing it with an in-ground pool, patio and replacing an existing shed with a new shed. The property is known as 21 Leblanc Drive, Map 25, Lot 107, Peabody MA.

Summary: Attorney John Slattery was at the meeting to represent the proponent. There is a currently a twenty-eight foot round above ground pool on the property. There is also a deck (20' x 40'). The proponent wishes to remove the existing above ground pool and the attached associated decks. They propose to install a 16' x 32' kidney shaped in ground pool. Attorney Slattery brought in pictures of the existing yard. There will not be any grading. The lot is currently level. Discussion ensued. No public comments.

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

Motion to issue standard Order of Conditions adding a blurb as follows: "This Order does not delineate any wetlands or approve said boundaries of any resource areas shown on said plan" as well as condition 48- There shall be no washing of concrete trucks in the back yard. The concrete trucks shoots must be washed on the driveway. No water from the trucks shall be directed toward any resource areas as made by Mr. Rizzo. Seconded by Mr. Yagjian. Adopted unanimously.

9. A continued public hearing on a Notice of Intent by Attorney John R. Keilty for Spinelli's LLC (Anthony Roberto), 282 Bennington Street, East Boston MA. The proposed project consists of the construction of two building additions in the buffer zone to a drinking water supply (Suntaug Lake). The property is known as 10 Newbury Street, Map 88, Lot 1, Peabody MA.

Summary: Attorney Keilty is legal counsel for the applicant. An Enforcement Order (EO) was issued on August 22, 2011. The summation of the violation is as follows: On 8/18/2011 at approximately 6:00 pm, staff conducted a site visit regarding an NOI application. Attorney John R Keilty was present as well as the following commissioners: Charles Denny, Michael Rizzo, Francis Lee and Joel Whitman and City Engineer William Paulitz. The slope adjacent to the parking lot (Northwest) appeared to be altered. Vegetation in the buffer zone to Suntaug Lake along the slope was disturbed. It appeared that fill may also have been dumped on site along with other landscaping and construction debris. Staff noticed a guardrail along the perimeter of the parking lot that appeared to be recently installed. The owner is in violation of 310CMR 10.02(2) altering a buffer zone without an Order of Conditions as well as The City of Peabody-Wetlands and Rivers Protection Ordinance Chapter 32.

The commission wanted to focus on the proposed project before dealing with the EO. Attorney Keilty explained that they would most likely need a crane to stage for the project. The contractor will draft a narrative of the construction methods proposed for access to the rear of the building for William Paulitz. There will be no stockpiling on the site during construction. Discussion ensued. ***FLIP TAPE 1*** There were no public comments. Staff had recommendations for the commission. Ms. DelNegro recommended that the Enforcement Order work should be complete before any of the proposed new project starts. She suggested that they mandate the EO work in the OoC. This will ensure that the EO work will be complete before the new proposed work commences. Staff reminded the commission of possible conditions discussed at previous hearings. The commission requested a revised plan with the following: erosion controls (silt soc) to the rear of the patio, and a detail of the transformer containment system. The OoC shall not be released until staff receives and approves said plan. Discussion ensued. There were no public comments.

Motion to continue the Enforcement Order and that the applicant provides a restoration plan to staff by 9/26/2011 and staff must approve as made by Mr. Rizzo. Seconded by Mr. Whitman. Adopted unanimously.

Motion to close the public hearing on the NOI application as made by Mr. Rizzo. Seconded by Mr. Klapman. Adopted unanimously.

Motion to issue a standard Order of Conditions 1-47 adding the following: Preconstruction blurb mandating the EO work with the following action items: ►A Wetland Restoration Plan must be drafted by a wetland scientist and submitted for approval. Conservation Staff must approve said plan. ►Resource area alterations resulting from said illegal activity shall be corrected and the resource areas shall be returned to their original condition per plan submitted and approved. ►No work under DEP file 55-757 can commence until such time as said restoration work has been completed and approved by conservation staff; as well as the following conditions on the OoC: **48.** No heavy equipment is allowed on the landscaped area below the

existing patio. **49.** All fueling of vehicles and machines must be done on the south side of the building in paved areas. **50.** There shall be no future development beyond the limits of the existing disturbed areas. Any expansion that is not allowed in this order is prohibited. This condition will last in perpetuity. (Maintenance and minor repairs to the retaining wall (et al) are the only exception). **51.** Part of the work allowed under this Order allows modifications to the existing roof recharge area as noted on sheet 1 of 2 and entitled "Notes Regarding Modifications to Existing Roof Recharge Area." The applicant must take pictures of the underground units once they are relocated. Any maintenance needed shall be done before they are covered per the O&M Plan section C; also attached the O&M plan dated 6/2011 as made by Mr. Rizzo. Seconded by Mr. Yagjian. Adopted unanimously.

10. 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.

Discussion ensued about the Historic Mill Exemption. Attorney Keilty requested that the meeting be continued so he can have more time to submit historic mill evidence. They also briefly discussed the resource area across Pulaski Street that was not on any plans. Legal counsel does not believe there are any impacts to this wetland. Mr. Lee told the commission that the Zoning Board of Appeals (ZBA) drafted a letter. The letter states that bus storage is not allowed in this zoning district. Mr. Lee recited a provision of 310CMR 10.05(04)(e)(f) stating that we can deny the permit because they have failed to obtain the zoning permit. Discussion ensued. The commission asked for the resource area across the street to be depicted on a revised plan. The neighbors believe that it is only sixty feet from the existing bus parking lot. The meeting was open to members of the public.

Kathy Wells, Crestview Circle

MS WELLS: We have been here every month for a year now and we have brought you a lot of information. I do not see that Mr. Keilty has brought you any information. We have been waiting since July 8th. We have been very patient. I would like to bring to your attention that in Peabody's Wetland Protection Act section 32-22 it says that you can deny a permit for failure to submit necessary information or plans requested by the commission. This commission has requested a lot of information. I do not see that you have received much information from him. We have waited and waited. If you are going to ask for the Mill Act you should come in and gave the information ready.

Discussion ensued. Mr. Lee stated we requested the information on June 8. Attorney Keilty requested one more month to submit the Historic Mill documents. Ms. Wells showed pictures of coyotes. She stated the coyotes were seen on the property in early June. She believes they are gone now because the buses are back on the site. Ms. Wells also thinks they have illegally expanded the parking lot. She reminded the commission that they are here to protect the wildlife in Peabody. Discussion ensued regarding the possibility of them illegally expanding the lot over the weekend. The results were inconclusive. Staff will need to go out to the site again to verify.

MR RIZZO: The point is whether there is a resource area on the other side of the street. If it is within a certain distance of the project; the resource area should be shown on the plan whether or not it has any adverse impacts.

The applicant agreed to show the resource area across Pulaski Street on a revised plan and submit it the commission. Discussion ensued.

CLLR MELLO: One thing that is standing out from me in this meeting and the other meetings. There is the idea that this board makes a balance between the conservation areas and the business areas and strikes a balance around that area. I think all these issues may not apply any longer now that we have a decision from the ZBA and we had a decision from the city council before. Why are we balancing anything around expansion for a business that doesn't belong there? For me it is pretty straightforward that there should be no balance. The buffer should stay the same because the business has been determined not to be there regardless of appeals. My understanding is that the decision has been made whether they stay there and fight it. That is a different issue. Why is the board considering to strike a balance between the business and usage when the usage has been determined not to be there.

Discussion ensued. The commission requested that the applicant provide mill documentation by the next meeting. Legal counsel agreed to provide such documentation. ***TAPE TWO*** the residents are frustrated that the item has been on the agenda for such a long time.

Motion to continue by Mr. Yagjain. Seconded by Mr. Rizzo. Adopted unanimously.

11. 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.

Summary: John Morin of NeveMorin was hired by the city as a third party peer review on the NOI. Mr. Morin was present as well as John R. Keilty (the applicant's legal representation). There were no comments from the public.

ATTY KEILTY: I am John Keilty representing the developer for the property at Hardy and Munroe Streets. This matter was sent out for peer review. We have supplied funds to the city of Peabody who engaged the services of Neve-Morin. They looked specifically at the issue of whether or not there was by the development of this property if that would have a negative impact on flooding in the downtown area. They have determined that the removal of a series of buildings over a period leaves us with sufficient compensatory storage. So as to be able to develop these properties and not impact neighboring properties with respect to increase flooding.

Discussion ensued. Neve-Morin has submitted their peer review. The item was before the commission.

MR MORIN: Based on our original proposal we were retained to review the floodplain calculations. That is what we did.

Discussion ensued.

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

Motion to issue an Order of Conditions Standard 1-47 adding the following: Checklist D, Checklist B, all plans approved at previous meetings, attach the Neve-Morin Group letter and use the old OoC as a guideline as made by Mr. Rizzo. Seconded by Mr. Yagjian. Adopted unanimously.

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

12. 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.

Summary: Attorney Athan Vontzalides was present to represent the applicant. The applicant believes that it is an intermittent stream. Staff believes that it is a perennial stream. Staff will set up a site visit before the October hearing. The item has been on the agenda since the January 2011 meeting.

MS DELNEGRO: I believe that this is a perennial stream. It shows on the USGS map; which I do have. DEP agrees with me. I am going to read their comments. They did call it Pine Brook but I think it is Norris Brook. "Pine Brook is shown as a perennial stream on current USGS maps. Riverfront area boundaries should be included on this plan." I agree with MASSDEP. That it is riverfront. That it is a perennial stream. It is not intermittent.

Discussion ensued. Ms. DelNegro read from a memo she wrote for the January hearing "if the applicant feels that this is not riverfront they should submit a wetland report from a wetland scientist listing the reason

why it does not meet the criteria as outlined in 310CMR10.58(2)". The item was open to members of the public.

Mark Bunal, 87 Winona Street

MR BUNAL: I have lived at 87 Winona since 1993. That brook has never been dry. It does not matter if it is a wet summer or a dry summer.

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

ORDER OF CONDITIONS

13. Amendment to an Order of Conditions (DEP file No. 55-672) by Eric Couture, 75 Margin street, Peabody MA. The applicant is asking for an amendment to add a deck to the rear of the approved dwelling. The property is known as 3 Antonio Drive, Map 106, Lot 99, Peabody MA.

Motion to close the hearing as made by Mr. Yagjian. Seconded by Mr. Klapman. The motion passed 6-0 with Mr. Rizzo abstaining.

Motion to issue the Amended Order of Conditions on 55-672 adding the condition that the proposed deck shall remain an open aired deck. Said deck cannot be enclosed and this condition shall remain in perpetuity as made by Mr. Yagjian. Seconded by Mr. Klapman. The motion passed 6-0 with Mr. Rizzo abstaining.

The amended order is only being amended to allow the construction of said deck. No other changes are allowed to the already approved plans sited in the original Order of Conditions.

14. 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.

Summary: John Keilty was legal counsel for the applicant. Mr. Mello was also present as the applicant's consultant. Ms. DeINegro stated she found a condition from the Planning Board when the subdivision was granted. The condition was as follows: "A conservation easement shall be created on the right hand side of the driveway at the dead end of Carrel Road on lot 14. Said easement shall be deeded to the city of Peabody." Ms. DeINegro does not think they should be allowed to do work in the easement. The applicant is proposing to construct a stormwater basin within the supposed conservation easement. Mr. Mello stated she was wrong and they would not deed anything to the city. They would only deed the "easement" to the city. Attorney Keilty then stated that the easement has not been granted to the city yet. Discussion ensued. Ms. DeINegro wanted to remind the commission of the DEP amendment policy. Typically amendments are for "relatively minor changes and will have unchanged or less impact on the interests protected by the ACT." Ms. DeINegro does not recommend amending said Order of Conditions. She recommended having the applicant file a new NOI. The item was open to members of the public.

Resident, 13 Carell Road

RESIDENT: I was notified about a week and half ago about the amendments (plural). I noticed when you mentioned the amendments. I think there are about six different amendments. You only mentioned about three. You are covering up a lot of land with these two new 40' x 36' garages. You are quadrupling the size of your driveway. What will happen with the runoff. These are two garages. They are 40'x36'. They certainly don't fit with the rest of the area. They are monsters. They are bigger than my house on one floor. Another thing they didn't mention in the amendment was a deck was added on. Another thing they didn't mention was the size of the original dwelling which has increased. There is a pool too that you mentioned before. I believe this is zoned R1. That is residential. Someone with any common sense can see that these are probably going to be used for something more than just a single or double car garage.

Discussion ensued. the commission requested comments regarding the DPS memorandum.

Motion to continue the hearing as made by Mr. Whitman. Seconded by Mr. Yagjian. Adopted unaimously.

15. 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.

Summary: This item was on the agenda in 2009. DEP file no. 55-721 was part of DEP files 55-723 and 55-722. All three DEP files are linked together. Staff reminded the commission that the city hired Horsley Witten Group (HWG) as a third party peer reviewer. DEP file 55-722 was for wetland restoration. 55-723 was road alteration for the cemetery. The DEP file No. 55-721 that is currently requesting an amendment is for a proposed retail facility. This Order is tied to the two other orders. Staff suggested that HWG review this filing to make sure that stormwater regulations and other requirements are still being met with the new design. All three files are contingent upon the other files. A covenant was drafted interlocking the three orders together. Staff recommended HWG review the amendments. Staff will check to see if there are any funds left in the escrow account.

Motion to continue the item until HWG has reviewed said changes as made by Mr. Klapman. Seconded by Mr. Yagjian.

CERTIFICATE OF COMPLIANCE

16. 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 made by Mr. Yagjian. Seconded by Mr. Whitman. Adopted unanimously.

ENFORCEMENT ORDER

17. 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.

Summary: The applicant is not in compliance with the Order of Conditions. The compensatory flood storage area has been built. However the soil was left on site. The OoC states it must be removed off site and an As-Built plan must be submitted to show that the grading has not changed.

Motion to continue until the November 9th hearing as made by Mr. Whitman. Seconded by Mr. Yagjian. Adopted unanimously.

18. 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 allow the owner to reclaim his yard and patio as made by Mr. Yagjian. Seconded by Mr. Whitman. Adopted unanimously.

19. 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 rip rap type retaining wall to extend their backyard. It appears that the construction of the rip rap wall is taking place in the "No Cut Zone" as depicted on approved plans under the original Order DEP file no. 55-569.

Motion to withdraw the EO as made by Mr. Denny. Seconded by Mr. Klapman. Adopted unanimously.

20. 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 Mr. Yagjian. Seconded by Mr. Klapman. Adopted unanimously.

21. 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.

THIS FILE HAS BEEN TAKEN OVER BY MASS-DEP.

22. 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.

Summary: Robert Corbin of R49 LLC was present. This item is currently in court with the health department. The commission has not received any documentation showing that it was dismissed. ***FLIP TAPE TWO*** Discussion ensued.

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

Motion to withdraw the EO contingent upon receiving documentation from the health department that the item has been taken care of as made by Mr. Whitman. Seconded by Mr. Rizzo. Adopted unanimously.

EMERGENCY CERTIFICATION

23. Discussion- Emergency Response Activities - Approved.

SUBCOMMITTEE REPORTS

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

APPROVAL OF MINUTES

. Minutes- 7.27.2011

Motion to approve the minutes made by Mr. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

OTHER

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

25. Adjournment

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

The meeting adjourned at 11:50 pm.

Respectfully submitted-

Francis Lee, Chairman