



City of Peabody Conservation Commission

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

MINUTES

JANUARY 11, 2023

YouTube link: <https://www.youtube.com/watch?v=O7wzOUvueJc>

The Peabody Conservation Commission hearings will be held remotely until March 31, 2023. Remote participation is allowed in accordance with Section 20 of Chapter 22 of the Acts of 2021 signed into law by Governor Baker on February 12, 2022, suspending certain provisions of the Open Meeting Law, G.L. c. 30A, Section 18. as extended by Section 20 of Chapter 22 of the Acts of 2022.

Individuals may participate remotely in the meeting via a remote participation platform called Zoom.

MEMBERS PRESENT

Chairman Stewart Lazares
Vice Chairman Michael Rizzo
Sec. Michael Vivaldi
Bruce Comak
Arthur Athas
Amanda Green
Alt. Ritamarie Cavicchio

MEMBERS ABSENT

Travis Wojcik

1 alternate member opening
(forward resume to mayor's office
if interested in being appointed)

Also Present: Lucia DelNegro, Conservation Agent; Brendan Callahan,
Assistant Director of Planning

CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:12 PM

NOTICES OF INTENT

1. A continued Public Hearing on a Notice of Intent submitted by Hayes Engineering, Inc. (Anthony Capachietti) for Cy Tenney Residences, LLC (Arthur Pimental). The proposed work is the construction of a multi-family residential building with associated driveways, parking, access and utilities within buffer to BVW and IVW. The property is known as 190R Newbury Street, Map 35, Lot 38A, Peabody MA.

Motion to continue as made by Mr. Rizzo. Seconded by Comak. Adopted unanimously 7-0.

2. A continued Public Hearing on a Notice of Intent submitted by GZA GeoEnvironmental, Inc. (Dan Nitzsche) for Emmanuel and Rose Papanickolas (owners) and JD Raymond Transport, Inc. (Will Boyle-applicant). The proposed work is the construction of a stormwater infiltration basin partially within the buffer zone to a wetland resource. The property is known as 25 Farm Avenue, Map 69, Lot 006 and 007, Peabody MA.

Present: Attorney Kimberly Kroha (legal counsel), Dan Nitzsche (GZA GeoEnvironmental, Inc.), Steven T. D'Ambrosio (GZA GeoEnvironmental, Inc.)

Summary: Brendan Callahan is the Acting Agent for this project. The peer review has gone through several rounds. The applicant has addressed most of the issues. Mr. Callahan submitted a memo. The memo comments on catch basins along the driveway and a possible height restriction on the mulch piles. Attorney Kroha start by giving a background on the project and the use. Her team has been working with the Fire Department to make sure all their requirements are met. They are working on comments from the peer review and Mr. Callahan. **Discussion ensued.** The applicant believes they fall under redevelopment stormwater standards. Attorney Kroha stated the mulch piles cannot be lowered (height restriction) as recommended by staff and peer review comments. They are abiding by current fire rules in the Commonwealth of Massachusetts and feel reducing the amount of material that can be stored on site would be financially detrimental. The O&M will be revised to add inspections to catch basins and to make sure that mulch is not migrating into the wetlands. Any floating mulch will be removed from resource areas. **Discussion ensued.** Mr. D'Ambrosio went over the revised plans, wetland areas and revision history. They have identified three different Design Points where water is leaving the site presently (DP1, DP2 and DP3 as shown on plans). **Discussion ensued** about water quality treatment. Upstream of DP1 they are proposing a series of deep sump hooded catch basins draining to a hydro-dynamic separator which then drains to a stilling well for energy dissipation before discharging to downstream areas. Upgradient of DP2 they are proposing an infiltration basin (at grade) with two sediment forebays upgradient of the basin. The forebays will provide pretreatment before entering the infiltration basin. DP3 has a similar system as DP2. Test pits have been done and witnessed by the city engineer (William Paulitz). Historic fill was noted. The consultants feel that they accomplished retrofitting an existing site

with BMPs to treat for water quality and provide groundwater recharge. The project also includes vegetative screening and a six-foot-high chain-link fence that will be outfitted

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with geotextile filter fabric. **Discussion ensued** regarding spot grades. The O&M will be revised with all the revisions suggested by the peer review. Mr. Nitzsche went over the planting plan. They are now proposing Colorado Blue Spruce instead of Arborvitae. **Discussion ensued** regarding proposed plantings and their anticipated function on site. Brendan was uncertain if DPS has reviewed and signed off on the revisions. The commission will need written documentation by Mr. Langley before the commission feels comfortable closing and voting on the item. **Discussion ensued** regarding Fire Department requirements (incident planning and fire protection engineering evaluation). Attorney Kroha stated both have been completed and submitted appropriately. Continued discussion regarding fire requirements ensued. The item was open to members of the public. Tony Capachietti from Hayes Engineering was present for the abutter. He believes that the proposed work can not be achieved under redevelopment standards. His argument was that the property is not meeting Stormwater Standards. It would be considered a LUHPPL (Land Use Higher Potential Pollutant Loads-standard 5). He also stated the treatment train proposed is not allowed. **Discussion ensued** regarding his review of the project and discrepancies with meeting appropriate regulations for a property of this type. He stated the wetlands have not been flagged for over eleven years. It is questionable how the commission could vote on a project without an appropriate delineation. No flags are present on site. Mr. Capachietti brought up other issues with the proposed plan. The commission asked that Mr. Capachietti submit the slideshow presented for review by the ConComm. Attorney Jason Panos was also present and mentioned an old ACOP. He believes the Return to Compliance relates to an issue of illegal fill only and has nothing to do with preapproval from the MASSDEP. Attorney Panos ended by saying he felt it was too soon for the commission to vote on this project. There were no other members of the public that wished to speak. The commission would like the two engineers, the peer reviewer, the city engineer, and the acting agent to meet offline to try and come to an agreement on the plans. An updated application is required. The funds in the peer review have been exhausted. Attorney Kroha stated, "let us know what you need."

Motion to continue as made by Mr. Rizzo. Seconded by Mr. Athas. Adopted unanimously 7-0.

3. A Public hearing on a Notice of Intent submitted by Hayes Engineering, Inc. for Mills-58, LLC (Edward Greeley-owner). The proposed work is the reconfiguration and paving of an existing paved area adjacent to an existing multi-tenant commercial/industrial building, construction of retaining wall, landscaping/invasive removal and stormwater features in riverfront and buffer zone of coastal bank. The property is known as 58 Pulaski Street-Building A, Map 53, Lot 47, Peabody MA.

Present: Anthony Capachietti (Hayes Engineering, Inc.) and Attorney Jason Panos (legal counsel)

Documents:

- ▶ Plan to Accompany NOI-Residences at Mills58 prepared by Hayes Engineering, Inc. Stamped by Anthony Capachietti. Scale: 1"=20' (to be revised).
- ▶ Construction Period Pollution Prevention Plan as submitted with NOI.

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- ▶ Long Term Pollution Prevention Plan as submitted with NOI.

Summary: The proposed project has been approved by the Zoning Board of Appeals for a 40B housing development. They received waivers for all local wetland's ordinance regulations. The project is to be reviewed under the ACT only. Mr. Capachietti gave a presentation on the proposed work. The wetlands are coastal bank (the Waters River is tidal) buffer zone, riverfront and FEMA Flood Plain. The project is redevelopment of an existing parking lot. The building exists and will be refurbished. The proposed addition is outside ConComm jurisdiction. The bulk of the work is landscaping, stormwater components, invasive species removal and repaving. There will be a fifteen square foot decrease of impervious. The roof will have solar and a sitting area for residents. Picnic tables will also be on site at ground level for residents to enjoy along the river.

Discussion ensued regarding the DPS memo. Test pits have not been done. The property has a clean phase one and two on this building and area of the property.

Discussion ensued regarding the invasive removal plan. It will need to be revised slightly. Once snow storage areas as shown designated on the plan are exhausted the snow will be removed to other portions of the complex not within ConComm's jurisdiction (Mr. Greeley controls numerous buildings and parking lots in the complex along Pulaski).

Discussion ensued regarding invasive removal area as well as proposed outdoor amenities on site. There were no public comments for or against the project.

Motion to close the public hearing as made by Mr. Vivaldi. Seconded by Mr. Rizzo. Adopted unanimously 7-0.

Motion to issue a Standard Order of Conditions 1-50 adding the following special conditions: 51) Operation & Maintenance Plan (LTPPP) is in perpetuity. Maintenance logs shall be submitted annually on 10.31 via email to city conservation staff once the stormwater system is online and functioning; 52) Bed bottom inspections need to be conducted on the infiltration systems that will be installed (prior to the fabric and stone being installed) by the applicant's design engineer and licensed soil evaluator. The inspection should be witnessed by DPS engineering staff; 53) The applicant MUST notify DPS engineering staff to be witness to all test pits conducted on property. Proper notification is required in order to ensure availability of staff; 54) The applicant must supply a full set of As Built plans to the engineering department/DPS upon completion of the improvements and before the Certificate of Completion. DPS MUST sign off on a partial or full Certificate of Compliance; 55) Granit posts with signs reading "Environmentally Sensitive Area-No Snow Stockpiling-No Disturb" as shown on sheet NOI2 shall remain on site in perpetuity.; 56) Recommendations for debris removal within the resource/channel/culvert on site as made by Rizzo. Seconded by Mr. Comak. Adopted unanimously 7-0.

ENFORCEMENT ORDERS

4. A continued Enforcement Order issued to the Salem Country Club- for the following activities: Removal of living trees/grinding/grubbing stumps in buffer zone/in close proximity to jurisdictional resource areas and depositing woodchips

in buffer zones and along local riverfront woods. The property address is known as 133 Forest Street, Peabody MA.

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Present: Michael DeRosa (DeRosa Environmental Consulting, Inc.), Barry Fogel (legal counsel for SCC), William Rocco (SCC)

Summary: There was a brief public hearing on January 10th. At the public meeting portion of the hearing the commission voted to receive a restoration narrative. To date the commission does not have an actual restoration “plan.” Mr. DeRosa will respond to the narrative before the next meeting with their responses to the proposed work. It was submitted too close to the meeting date for the commission or it’s consultant to have time to review it in its entirety. The commission needs an actual plan to show mitigation/restoration areas, proposed plantings and proposed work. **Discussion ensued** regarding the need for a plan to be submitted to the ConComm.

Mr. Rizzo reminded the commission that additional funds are necessary for the peer review to continue. Attorney Fogel stated he will not replenish the funds as requested by the Vice Chairman. He will replenish only as necessary. The club is not willing to put indefinite amounts of money into the account. The club, through Attorney Fogel, feel that enough money has been deposited into the account to finish the peer review.

Discussion ensued regarding “plans” or “figures” for plantings. Attorney Fogel does not believe the canopy loss review was accurate. Their opinion is that the canopy loss was based on shadows and the methodology was inaccurate. They do not feel a plan or figures should be required. Their argument is that roots and rocks could change locations of trees to be planted. The club suggested that they do not know where any trees are going to end up because of the root ball or two-inch caliper trees and the composition of the soils. They prefer to GPS each tree as they are planted. They would then give an As Built plan for review once work is complete. **Discussion ensued** regarding this issue. They are looking for permission to order trees. Permission was not granted at this hearing.

A meeting with some members of the club, commission, peer review and city staff will meet offline to go over what has been submitted thus far. Attorney Fogel stated again that the club does not agree with the canopy loss figure. They do not feel that they are required to replicate canopy loss from the figures submitted. Although invasive species have been established in at least one area of alteration, the club still believes they have not caused any adverse effect on resource areas or their values. Attorney Fogel requested a non-quorum group meeting to discuss the proposed paperwork and revisions to said narrative. A date will be decided via email.

The commission requested a planting plan to the best of their ability showing proposed locations of said plantings. **Discussion continued** regarding the plan, the canopy loss, funds, and other items discussed earlier. Attorney Conn will pursue collecting the remaining escrow funds if necessary. Attorney Fogel also continued to pushback against landscaping plans for the proposed plantings. He stated it was an “impossibility”. It is his opinion GPS should be fine for what the group wants to accomplish.

Discussion ensued regarding canopy loss and future “plans” to review. Attorney Fogel reminded the commission that an appeal is pending in court. If the commission and club cannot reach an agreement regarding the restoration work, it will be heard in court via litigation procedures. There will be a meeting with a non-quorum group,

DeRosa Team, country club team and city staff to discuss the proposed restoration. Attorney Fogel continued about plantings being punishment for to the club to replace.

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Mr. Comak stated it would take 50 years plus for 2-inch caliper trees to reach the canopy that was lost. Another commissioner made an analogy comparing the situation to bank robbers getting to keep the money after they have been caught. The commission does not feel their requests are out of line and replication/restoration is required. A meeting will be scheduled as discussed.

Motion to continue as made by Mr. Vivaldi. Seconded by Ms. Green. Adopted unanimously 7-0.

5. A continued Enforcement Order issued to Dan Mayer (Mayer Tree)- for the following activities: Removal of living trees/grinding/grubbing stumps in buffer zone/in close proximity to jurisdictional resource areas and depositing woodchips in buffer zones and along local riverfront woods. The property address is known as 133 Forest Street, Peabody MA.

Present: Attorney Kate Moran Carter (legal counsel)

Discussion ensued regarding the EO. Attorney Moran Carter believes her client is in compliance with the EO. Her client will not be submitting invoices as discussed and requested previously. There was not a written contract between the club and tree company. Therefore, no invoices or documents can be provided. It is Attorney Carter's position that the enforcement should fall on the country club and not her client. She also made it clear that any profit made off the trees after they left the club is not under the ConComm's jurisdiction or scope. She went on to say that it is the owner's responsibility to obtain all permits if necessary. The agent reminded the commission and audience that the city has "tree protocol" to remove trees in ConComm jurisdiction. The attorney stated going forward Mayer Tree will abide by local tree protocol and request permission going forward if necessary. She continued to express that even if he was in wetlands or near jurisdictional areas there was snow on the ground. The commission agreed to disagree. No decision was made at this hearing.

Motion to continue as made by Mr. Rizzo. Seconded by Ms. Cavicchio. The motion passed 6-1 with Mr. Athas not voting.

6. An Enforcement Order issued to Alfred Dimambro, Trustee (Regency Realty Trust) for work located at 11-13 Wallis Street. There are ongoing as well as historic violations on this property (illegal dumping (appliances etc.), stockpiling of various items in riverfront/flood plain, fill in FEMA flood plain, alteration of riverfront without permit and ongoing "use" as what appears to be a contractor's yard.

Present: Attorney Richard Nysten (legal counsel)

Summary: A brief discussion ensued. Attorney Nysten feels that the property is a grandfathered use and does not require ConComm permission or permission from other city departments. He claims the property has been a contractor yard for over one

hundred (100) years. The local ordinance also exempts existing uses if they were before the ordinance was enacted. **Discussion ensued** regarding the “use”. The existing ORAD showed the debris piles. The commission feels that more debris and dumping
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has taken place since the ORAD was issued. They feel the flood plain has been altered. Although they may be exempt from the local ordinance there is still a question as to if the state regulations are being violated for riverfront and stormwater standards.

Motion to continue as made by Mr. Rizzo. Seconded by Ms. Green. Adopted unanimously 7-0.

OTHER ITEMS

- **MINUTES- December 14, 2022**

Motion to approve the minutes as made by Mr. Athas. Seconded by Ms. Green. Adopted 6-1 with Bruce not voting.

- **Adjournment**

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

The meeting adjourned at 10:48 PM.

Respectfully submitted, (To be signed electronically)

Chairman Stewart Lazares