



## City of Peabody Conservation Commission

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

### MINUTES

**February 8, 2023**

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

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  
Alt. Ritamarie Cavicchio (left at 8:57 PM)

#### **MEMBERS ABSENT**

Amanda Green

**2 alternate member openings**  
(forward resume to mayor's office  
if interested in being appointed)

**Also Present:** Lucia DelNegro, Conservation Agent

CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:00 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 Mr. Comak. Seconded by Mr. Rizzo. Adopted unanimously 6-0.

**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.**

**Motion** to continue as made Mr. Comak. Seconded by Ms. Cavicchio. Adopted unanimously 6-0.

**ENFORCEMENT ORDERS**

**3. 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.**

**Present:** Attorney Barry Fogel (legal counsel) and William Rocco

**Summary:** On January 26, 2023, Michael DeRosa, Ben Staples, Ms. DelNegro and Mr. Lazares met with country club representatives in city hall to discuss some items offline. Mr. DeRosa went over some of the talking points from the internal meeting. The tree list was modified at this meeting. There was discussion about an NOI filing for some items that perhaps did not need to be mandated in the EO. Michael DeRosa met with Bill at the club on 1.27.23 to discuss the intermittent streams and vegetated buffer strips. Mr. DeRosa went over a summary of what has taken place to date. The club has not submitted a list of proposed understory plants yet (with the only exception of what is proposed along the pond bank). There is not a list of understory species to date for other restoration areas. The proposed trees have been agreed to and a list has been revised. The club can place their tree order. At this time the club has not submitted a list or plan of understory plantings (except for pond bank plantings). Understory will need to be discussed and decided on soon. Mr. DeRosa recommends all new trees are tagged in the field until 5-year monitoring is complete. The trees will be ordered. **Discussion ensued** regarding birch trees and geo locating trees planted for an As Built Plan to be

submitted after restoration is complete. The club would like to plant the trees and then return with an understory planting plan.

**Page 3- 2.8.2023**

**Further discussion ensued** regarding the locations of tree plantings/survival rates, peer review team monitoring during restoration progress, an amended EO versus a new NOI for some items listed in the Amended EO (no disturb zones, intermittent stream buffer strips, pollinator habitats, maintenance plan etc.). No decisions were made tonight regarding a second amended EO and a new NOI. The commission made motions and nothing else was decided at the hearing. Attorney Fogel stated he will submit an NOI in April for a May meeting review. He feels the club is being “punished” by having to comply with the existing Amended EO. Mr. Rizzo asked that he not use the word punishment for mandated action items. The action items were created to offset the planting plan. The club has stated in the past that they would refuse to plant large caliber trees. The club removed 233 trees and is replacing exactly 233 trees. Attorney Fogel continued to state that certain action items are punishment imposed upon them as an additive to the EO for the cutting of the trees. Mr. Rizzo reminded everyone that these items were added to the EO to demarcate no disturb zones and to deter any future enforcement action. The commission will decide what is allowed to be included in an NOI and what will remain part of the Enforcement Order. Attorney Fogel will submit their request in writing. The commission will review and decide accordingly. The discussion will be continued at the March hearing.

**Motion** to authorize the SCC to order trees/shrubs and allow yellow and black birch clump/cluster 12'-14' tall substitute as made by Mr. Rizzo. Seconded by Mr. Vivaldi. Adopted unanimously 6-0.

**Motion** to approve restoration of Japanese Hops removal and stump grinding/filling holes/seed/mulch areas on course **incorporating all** DeRosa comments as made by Mr. Rizzo. Seconded by Mr. Vivaldi. Adopted unanimously 6-0.

**Motion** to continue as made by Mr. Athas. Seconded by Mr. Rizzo. Adopted unanimously 6-0.

*RitaMarie Cavicchio left the hearing at 8:57 PM.*

**4. 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 Susan Murphy (legal counsel)

**Summary:** Attorney Murphy requested that the item be returned to compliance. She feels that her client is in full compliance and the court dismissed the fines. **Discussion ensued** regarding the EO and future work in the city limits. Mayer Tree will make sure proper tree protocol is followed for future jobs in Peabody. Mr. Athas reminded the commission that an appeal to the magistrate’s decision was a possibility. The commission needs to hold an Executive Session to discuss matters with the city solicitor before any return to compliance can be voted on.

**Motion** to continue until the March hearing as made by Mr. Athas. Seconded by Mr. Comak. (The motion passed 5-1 with Mr. Cavicchio no longer in attendance).

**Motion** to hold a special public hearing and Executive Session on Tuesday February 21 at 4pm in the Wiggin Auditorium/Peabody City Hall for the Salem Country Club and Mayer Tree (items 3 and 4) as made by Mr. Athas. Seconded by Mr. Rizzo. (The motion passed 5-1 with Ms. Cavicchio no longer in attendance).

**5. A continued 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 “Chip” Nylen (legal counsel)

**Summary:** Mr. Lazares asked various questions about the use of the property and Attorney Nylen responded. He continued to explain the history of the property.

**Discussion ensued** regarding illegal dumping, homeless encampments, and the contractor’s “use.” Attorney Nylen stated that Verizon is an ongoing tenant. He feels that he meets zoning requirements as a preexisting non-conforming use. The discussion moved to FEMA Flood Plain violations and stormwater standards/riverfront performance standards (310CMR10). A SWPPP, erosion controls, 21E issues and flooding events were also discussed. This area of the city is known to flood in front of the post office. A doodle poll will be emailed, and a site visit will be scheduled.

**Motion** to continue as made by Mr. Rizzo. Seconded by Mr. Athas. (The motion passed 5-1 with Ms. Cavicchio no longer in attendance).

### **CERTIFICATE OF COMPLIANCE**

**6. A request for a PARTIAL or FULL Certificate of Compliance as made by Attorney John R Keilty on DEP File No. 55-903. The project was a commercial development which included riverfront enhancement. The address is known as 49 Tremont Street, Map 76, Lot 402, Peabody MA.**

**Present:** John R Keilty (legal counsel)

**Summary:** The project is not near completion. The commission felt that the applicant prematurely requested a CC. They did not feel comfortable issuing a partial CC. The commission gave verbal approval for the agent to sign off on a temporary occupancy permit from the city’s building department. The commission requests that the building department does not give the proponent a full occupancy permit until, at a minimum, a partial CC is voted on and issued by the board. This was a condition agreed to in the original Order of Conditions. The commission also discussed the need for a guardrail at the culvert headwall.

**Page 5- 2.8.2023**

**Motion** to continue to the April hearing allowing the agent to sign off on a temporary building occupancy permit as made by Mr. Athas. Seconded by Mr. Rizzo. (The motion passed 5-1 with Ms. Cavicchio no longer in attendance).

**OTHER ITEMS**

• **MINUTES- January 11, 2023**

**Motion** to approve as made by Mr. Vivaldi. Seconded by Mr. Athas. (The motion passed 5-1 with Ms. Cavicchio no longer in attendance).

• **Adjournment**

**Motion** to adjourn as made by Mr. Rizzo. Seconded by Mr. Comak. (The motion passed 5-1 with Ms. Cavicchio no longer in attendance).

**The meeting adjourned at 10:18 PM.**

**Respectfully submitted, (To be signed electronically)**

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**Chairman Stewart Lazares**