



## City of Peabody Conservation Commission

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### MINUTES

**March 8, 2023**

**Link:** <https://peabodytv.org/videos-on-demand/?vid=964>

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

#### **MEMBERS ABSENT**

Alt. Ritamarie Cavicchio

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

**Also Present:** Ward 3 Councillor Stephanie Peach; Lucia DelNegro,  
Conservation Agent

CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:02 PM

### **EXTENSION REQUESTS**

**1. Request from Attorney Steven Singer for Carl Crupi (Trustee of Little's Hill Realty Trust) for an Extension to the Order of Conditions for DEP file # 55-673. The order expires on 3.15.2023. This project was a (2) lot subdivision consisting of (2) two single family homes on separate lots. The reason for ongoing extensions is due to land court issues unrelated to wetlands. He is asking for a three-year extension under the state regulations and asking for a waiver of Peabody's Local Ordinance (one year extension is allowed). The property is known as 1 Antonio Drive, Map 106, Lot 98, Peabody MA.**

**Present:** Attorney Steven Singer

**Summary:** The file is sixteen (16) years old. Legal issues regarding boundary lines are interfering with the property owner to develop the site. The commission wants an update in 9 months. A three-year extension was not granted.

**Motion** to extend one year (extended until 3.15.2024) as made by Mr. Vivaldi. Seconded by Mr. Rizzo. Adopted unanimously 6-0.

### **CERTIFICATES OF COMPLIANCE**

**2. A request for a FULL Certificate of Compliance as made by John Dick for the property owners (George and Nancy Kappeler) on DEP File No. 55-883. The project was the construction of additions to existing single family home including removal/relocation of existing sheds and relocation/addition of paved areas. The address is known as 1 Hoover Terrace, Map 24, Lot 38, Peabody MA.**

**Present:** George Kappeler (owner) and John Dick (consultant)

**Summary:** There are some minor deviations from the originally approved plans (ex. concrete walk on Hoover Avenue side was not approved, the concrete patio in the rear was not approved and is in close proximity to the no disturb marker, the addition to the south was never constructed, shed work is not finished (electrical trench is open), and grass is not fully grown in. Snow was on the ground and stabilization of site was not confirmed. Staff also noted a very large landscape pile. The consultant admitted that the property owner was storing landscape debris on city land. The pile is right on the bank of the river. The owner's wetland scientist plans to come up with a removal method narrative and perhaps a planting plan for restoration. The item will be continued.

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

**3. A request for a FULL Certificate of Compliance as made by Mohammad Haque for Boston Muslim Cemetery (owner) on DEP File No. 55-878. The project was various activities related to the creation of a cemetery, including grading, retaining wall construction, path installation and landscaping for a "green" type of burial. The address is known as 530 Lowell Street, Map 35, Lot 27A, Peabody MA.**

**Present:** John R Keilty, Esquire (legal counsel) and MD Islam (Cemetery Board)

**Summary:** The twenty-five foot No Disturb Zone (NDZ) was encroached into by the construction of the retaining wall. The owner's attorney wanted to come up with compromises so that the wall does not need to be removed outside the NDZ. Attorney Keilty stated his client would agree to plantings to help offset the errors. The ConComm asked for actual calculations of the net difference of what the NDZ should be and what it is present date. The discussion went on and the applicant will need to come back next month with a planting plan and a plan showing the encroachments. The plan must show the square foot of encroachment into the NDZ and will be color labeled. Verbal numbers were stated but the loss/gain of NDZ was not confirmed. There are now eight hundred and twenty-seven (827) grave sites on the property. The revised plan will also show the accurate number of plots with the new orientation of each. The commission verbally granted permission for burials. They would prefer the cemetery to start burials outside the 100-foot buffer zone and along the access road near Lowell Street or in the interior as far away from the wetlands as possible. A discussion ensued regarding a motion to allow burials. The commission never made the motion, but all agreed the burials could start on the property.

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

#### **NOTICES OF INTENT**

**4. A Public Hearing on a Notice of Intent submitted by Attorney John R. Keilty for Josephine Cooke (owner). The proposed work is the construction of a single-family house with associated utilities, grading and driveway. The property is known as 29 Glendale Avenue, Map 120, Lot 27 (portion), Peabody MA.**

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

**Summary:** The current plans cannot be approved. A site visit will be held before the next meeting.

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

**5. A Public Hearing on a Notice of Intent submitted by Choubah Engineering Group, P.C. (Halim Choubah, P.E.) for New York Capital Investment Group, LLC. The proposed work is the upgrade to the vacuum system and installing pay stations within 672 square feet of the existing paved parking lot of existing car wash located in FEMA Flood Plain. The property is known as 27 Central Street, Map 75, Lots 211 and 218 , Peabody MA.**

#### **Documents:**

► Project: Proposed Modifications at 27 Central Street Peabody MA for New York Capital Investment Group, LLC prepared by Choubah Engineering Group, PC, stamped by Halim A Choubah-Civil Eng. Sheet 1 of 2 Existing Conditions and Sedimentation

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Controls & Details (to be revised). Sheet 2 of 2 Vacuum & Pay Stations Installation Plan final revision of 2.3.2023. Scale: 1" =20'.

► Operation & Maintenance Plan drafted by Choubah Engineering Group, PC (to be revised).

**Present:** Halim Choubah (engineer)

**Summary:** The project involves the installation of eleven (11) modern vacuum stations, two pay stations and other minor improvements within FEMA Flood Plain. There will be no change in grade. The motors of the vacuums will be installed inside to lessen noise pollution. They will remove three concrete pedestals (240 cubic feet (CF) out of Flood Plain). The net gain of flood storage will be ninety-five (95 CF). No flood storage will be lost. Chairman Lazares read a letter aloud from Councilor Peach (please contact staff if you would like a copy of this letter). The main concern was chemical use, and it did not support the upgrades to the site. The plan needs to be revised showing different erosion controls because haybales are not allowed in Peabody. The O&M Plan must be revised. Ms. DeINegro explained what happened over the summer at the property. She was on site with a health/code enforcer and building inspector or complaints at the site. There is an oil water separator device inside the carwash. The refuse water does not get drained into storm drains or into the river. The only reason anything would be directed into a storm drain is if they did so illegally with a hose. This happened years ago. Over the summer the violation was the manual digging and removal of sludge from the catchment inside the building. The sludge was then placed inside an unlined dumpster and contaminated water was dripping through the cracks onto pavement. That should never happen again as long as the Commission requires an O&M and conditions the Order appropriately as mentioned earlier in the discussion by Commissioner Comak. The gas inspector should also be requiring conditions on said separators under the building. The item was open to members of the public.

### **Ward 3 Councillor Stephanie Peach**

CLLR PEACH: Hi Mr. Chairman. I don't have much to add. I worked with Hal, his company and the owners of the car wash through the Special Permit Process. It was unclear how the vacuums would be installed. Those plans were not finalized. I have spoken with the neighbors. They have submitted that letter and I think we addressed those concerns specifically about the pollution and making sure that is taken care of. There is contention around the project in general, but it is a preexisting nonconforming use in the neighborhood. The Council did move forward and approve the additional vacuums. The internal storage of the motors and the main part of the vacuum system will help significantly with noise pollution.

**Discussion ensued.** A revised O&M plan and site plan are required. The commission also requested a list of chemicals to be submitted before the Order is released.

**Motion** to close the public hearing as made by Mr. Rizzo. Seconded by Mr. Athas. Adopted unanimously 6-0.

**Motion** to issue a standard Order of Conditions 1-50 adding the following special conditions: **51)** Operation & Maintenance Plan drafted by Choubah Engineering Group,

PC (to be revised) is in perpetuity. Maintenance logs shall be submitted annually on 10.31 via email to city conservation staff once the system is online and functioning; **52)** The applicant shall supply a full set of as built drawing to the engineering department of DPS upon completion of the improvements and before application of Certificate of Compliance. Two full sets of As Built Plans are required. FEMA Flood Plain grade change is NOT allowed; **53)** Catch basins must be protected as shown on plan and listed in O&M plan above; **54)** Manifests for the cleaning of tanks inside the building should be submitted to the commission via email or USPS each time the tanks are emptied, or any maintenance work is performed as made by Mr. Rizzo. Seconded by Mr. Comak. Adopted unanimously 6-0.

**6. 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.**

**Present:** Attorney John R Keilty (legal counsel), Anthony Capachietti (Hayes Engineering, Inc.)

**Summary:** The plans have been revised for the city's DPS. The amount of fill that was proposed on top of city sewer lines was unacceptable. The new plans reflect the change of elevation. Discussion ensued about a site visit and continuance. The commission agreed that a site visit was not necessary. Tony Capachietti gave a presentation of the proposed revised work. The plan will be revised to show changes for DPS/Engineering dept. and metal guardrails (wood guardrails are not allowed). The O&M Plan and LTPPP must be revised to state trash will be removed weekly, no car washing on site and dumpster must always have a cover on. The Commission also asked for a Narrative for the Replication/Enhancement Areas (75% survival rate blurb) and a construction sequence. The replication area must be staked in the field before any work commences. Chairman Lazares read aloud various proposed conditions. Mr. Rizzo was concerned with the length of the city engineer's memo. The memo will be attached to any future Order. The item was open to the public. Audrey Gordan and Richard Reed, residents of 17 Pine Street, support the project. The commission asked that the plans be revised to show ConComm's and DPS's requested changes.

**Motion** to close the public hearing as made by Mr. Athas. Seconded by Mr. Rizzo. Adopted unanimously 6-0.

**Motion** to issue Standard Order of Conditions 1-50 adding the following special conditions: **51)** Construction Period Pollution Prevention Plan must be followed during construction; **52)** O&M LTPPP are in perpetuity (O&M to be revised); **53)** Annual maintenance reports are due on 10.31 once stormwater system is online; **54)** No parking is allowed along the access roadway; **55)** Trash shall be removed from wetlands on a weekly basis, the dumpster(s) must be covered at all times and no car washing is allowed (NEED revised O&M); **56)** AS built required with CC request and must be done

at the same time as requesting occupancy permit from building department; **57)** Buffer Zone enhancement areas and wetlands replication areas must be completed BEFORE  
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the issuance of a partial or full CC. At least 75% of vegetation must be in good health. The areas should be monitored for at least two growing seasons as stated in Document entitled \_\_\_\_\_ (to be created and approved) **58)** Wetlands narrative sequence (condition 57) to be followed and implemented. Replication and BZ enhancement areas should be staked and labeled in the field before any earthwork commences; **59)** The wetlands flags MUST be reestablished and inspected by ConComm staff before work can commence also adding DPS conditions and adding said DPS memo. The Order will be held contingent on revised documents being submitted and approved by William Paultiz as stated and made by Mr. Vivaldi. Seconded by Mr. Rizzo. The motion passed 5-1 with Ms. Green voting NO.

**7. 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 by Mr. Rizzo. Seconded by Ms. Green. Adopted unanimously 6-0.

### **ENFORCEMENT ORDERS**

**8. 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:** Ben Staples (Master Arborist), Evin Guvendiren (DeRosa Environmental), Barry Fogel (legal counsel for Country Club) and William Rocco (Country Club)

**Discussion ensued** about drafting a Second Amendment to the Enforcement Order. The EO will be amended for a second time. Currently the ConComm does not have a Final Restoration Plan. The chairman made it clear that the DeRosa Team will be involved in the restoration of the property until the EO is withdrawn and a return to compliance is issued. The ConComm is no longer pursuing the restoration of an existing lined pond. The club can file a separate NOI if they wish to do anything further to the pond. There was further discussion regarding an updated diverse plant/species list and survivorship of trees and understory (75% vs 100% survival rate). This will be addressed in the amended EO. The Vice Chairman echoed the Chairman's statement that the DeRosa Team must and will be involved during the planting stages of the project and every aspect of the restoration plan. **Discussion ensued** regarding granite markers, but no decision was finalized.

**Motion** to have the agent and DeRosa Team draft revised Action Items to a Second Amended Enforcement Order as made by Mr. Athas. Seconded by Mr. Rizzo. Adopted unanimously 6-0.

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**Discussion continued.** Attorney Fogel was allowed to speak. He demanded that he be promoted to a panelist instead of speaking as an attendee to the hearing. He asked that William Rocco also be promoted to panelist and stated he would not speak until both were promoted to panelists. They both were promoted to panelists. He went on to say he wants a Final Enforcement Order issued and not an Amended EO. He reminded the commission that they have a complaint in court they are still pursuing. **Discussion ensued.** Attorney Fogel stated he wants the following wording removed from all future documents: “supervise and monitor”. The commission agreed to use the words: “inspect, review and comment” regarding the third-party oversight of plantings. The commission agreed that the wording can be revised but the DeRosa Team will be on site during work. The DeRosa Team will inspect, review and comment only. **Further discussion ensued** regarding the planting timeline. The club believes they will acquire all the trees required. Attorney Fogel stated again that he wants a Final EO issued and not an Amended EO. Attorney Fogel agreed that the DeRosa team can be hired until the work is complete and a return to compliance is issued. He would like to see an updated scope of work. Attorney Fogel continued to opine his opinions. No new motions were made or revised regarding the EO or action items. **Discussion ensued** regarding markers. No decision was made at the hearing. The club did agree to markers but no specifics about location and type were decided. There was a continued discussion about sourcing the tree species. Ben stated he has no problem with single stem trees but if they are under the two (2) inch caliper they need to purchase more than required. Attorney Fogel continued to state that he wants a Final EO and not an Amended EO. The commission told them to order the trees and move on. Mr. Athas reminded him to order extra trees. Chairman Lazares also told them to order the trees and to remember to order extra as discussed with Ben Staples earlier in the discussion.

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

**9. 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.**

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

**10. 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 Nylen (legal counsel) and Alfred DiMambro (property owner)

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**Summary:** A site visit was held, and the commission and the property owner are trying to work together outside of court. Attorney Nylen has submitted a letter with a timeline of what was agreed to at the site visit. A revised letter has six bullets of what was agreed to by all parties.

**Motion** to accept the letter as made by Ms. Green. Seconded by Mr. Athas. Adopted unanimously 6-0.

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

**OTHER ITEMS**

● **MINUTES- February 8, 2023 (TBD)**

**Motion** to accept the minutes as made by Mr. Rizzo. Seconded by Ms. Green. Adopted unanimously 6-0.

**Motion** to adjourn as made by Mr. Rizzo. Seconded by Ms. Green. Adopted unanimously 6-0.

**The meeting adjourned at 10:22 PM.**

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

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**Chairman Stewart Lazares**