



City of Peabody
Conservation Commission

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

MINUTES

NOVEMBER 9, 2011

PEABODY CITY HALL
24 LOWELL STREET, LOWER LEVEL CONFERENCE ROOM

MEMBERS PRESENT

Michael Rizzo
Francis Lee
Joel Whitman
Alan Klapman
Bruce Comak
Jared Yagjian

MEMBERS ABSENT

Charles Denny
Jarrod Hochman

Also Present: Lucia DelNegro, Conservation Agent

CHAIRMAN LEE CALLED THE MEETING TO ORDER at 7:04 pm

NEXT MEETING- December 14, 2011 and January 11, 2012
Lower Level Conference Room - City Hall

COMMUNITY DEVELOPMENT

- **Reports-** **Brendan Callahan, Senior Planner** **NONE**

CERTIFICATE OF COMPLIANCE

1. A Request for a Full Certificate of Compliance made by Hayes Engineering, Inc. for Brooksby Village Inc. The DEP file No. is 55-738 and the property address is Brooksby Village Drive, Map 27, Lot 005X, Peabody MA.

Summary: The consultant was not present. Therefore, the commission felt the item should be continued. Staff had a few issues with the project site. A brief discussion ensued.

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

2. A Request for a FULL Certificate of Compliance made by VHB, Inc for Simpson Property Group. The DEP file No. 55-663 and the property address is Dearborn Road, Map 89, lot 10x, Peabody MA.

Summary: Robert Wilde of VHB was present.

MR WILDE: We have submitted the certificate of compliance request following the final two years monitoring of the wetlands mitigation area. In 2007 there was a partial certificate issued. As a result of the fire in building 8 and subsequent reworking of that area. The wetland mitigation area wasn't getting any water until that building was reconstructed and there was some restoration work in the wetland area that occurred. It kept setting the clock back. We started the mitigation monitoring in 2009 and then we just completed the second year this fall and we submitted the reports to Lucia.

MS DELNEGRO: So you remember, they had a partial certificate. Then building eight burned down to the ground. You let them work off the Order that was not officially closed. The order was still technically open. It was sort of good because they ended up finding out that the replication area had a torn liner. So this sort of opened that up again and they fixed the liner. My main concern is it drains into this gigantic detention basin. You look down on this huge basin. It is vegetated and it looks good. My recommendation would be that we get some sort of certification that it is still working. Brendan has secured grants and money. He has been working on retrofitting other detention basins. So I think we should make sure before we give a full certificate that this one is still functioning properly. That would be up to VHB to supply that to us.

MR WILDE: If I could make a comment on that. The 2007 partial certificate included an engineering certification that we did as built drawings and calculated volumes to confirm that it was designed according to specifications, built, and constructed according to the design. Nothing has changed since then. In that it is there and it is vegetated and it is stable. The outlet control structures are concrete structure with orifices of different levels to control flow in different storm events. There are no gaping holes in the side of the berm at all. So it is functional and unaltered from what it was in 2007.

MR LEE: And we approved that before is what you are saying?

MR WILDE: That is correct.

MS DELNEGRO: That is four years ago though. I am just saying we have a serious flooding problem. When I looked down, I could see broken pieces of concrete in it. I do not know where those came from. Peabody has a serious flooding problem. We are spending thousands of dollars to retrofit detention basins. I think it would be prudent for us to require that we get something in writing from the engineer saying that it is still functioning. We are talking 2007 that is almost five years ago. That is my recommendation. You do not have to listen to it.

MR COMAK: What do you have to do to do that?

MR WILDE: I guess it depends on what you would accept as a certification. From an engineering standpoint I think the certification would be to resurvey the whole basin and everything. I am not sure what the effect of that would be and it would be costly. The concrete that Lucia is talking about, there was some material

in the forebay. Probably a wheel barrels load. It may have been blown down through the storm drain system. I have notified the owners and they will have that removed. You can do a site walk and say this is still here. There is no evidence of erosion. There is no evidence of clogging. Unlike the other basins, that you had problems with this isn't hidden way in the back of someone's property for thirty years. It has been there and it is actively maintained site. The landscaping around it is all maintained as part of the landscaping for the apartment facility. So it is actively maintained.

Discussion ensued.

MR WHITMAN: If we ask you to recertify as you did in 2007 would that be a reasonable request? I agree with Lucia that being involved in this flooding here it really is difficult. We certainly do not want to see a detention basin that we have a chance to have a look at again and make sure it is still current.

MR RIZZO: Isn't there an O&M Plan for this project? Can we have an up to date report of the O&M Plan and the status of the plan and the findings. That would support the fact that everything is working properly.

Discussion ensued.

MS DELNEGRO: Well you can put an ongoing condition in it. The condition is that it is a complete Certification but the ongoing condition that the O&M Plan is in perpetuity.

Discussion ensued.

Summary: The commission asked for a copy of all the maintenance reports. Mr. Wilde stated he would submit said documentation.

Motion to issue a Full Certificate of Compliance with the ongoing condition "the O&M Plan is in Perpetuity and annual reports shall be submitted to the commission" the certificate will not be released until a status report is submitted demonstrating compliance with the O&M Plan to date as made by Mr. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

3. 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 take off the agenda as made by Mr. Rizzo. Seconded by Mr. Whitman. Adopted unanimously.

EXTENSION

NONE

CORRESPONDENCE- APPOINTMENT

4. Sidneys Pond Dam- Phase I - Inspection/Evaluation Report- DPS has submitted a copy of the report. The report is available for review in the Community Development Department. Staff will conduct a site visit with a city engineer in November.

The staff was asked to come back with an update after the site visit with DPW staff. The commission also requested an update on the Mill Pond Dam project that DPW is working on.

REQUEST FOR DETERMINATION

5. A Public Hearing on a Request for Determination of Applicability by Andrea Norton of MASSDOT Highway Division, 519 Appleton Street, Arlington MA. The proposed work consists of full width pavement milling by cold planer and resurfacing the existing roadway with hot asphalt mix. Work will also include the following: adjusting and/or rebuilding drainage structures in the roadway only and installing new frames, grates or covers to the new pavement surface, adjusting sewer structures, water gates, and gas gates, and reapplying pavement markings. Driveway aprons will only be addresses if damaged while performing work. All work will remain within the right of way. The property is known as Sylvan Street, Map N/A, Lot N/A, Peabody MA.

Summary: Andrea Norton from MASSDOT was present and explained the project. Discussion ensued. There were no comments from the public.

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

6. A Public Hearing on a Request for Determination of Applicability by John Barth, Springvale Maine. The proposed work consists of the rebuilding of a home recently demolished. The property is known as 4 Lynn Street, Map 102, Lot 255, Peabody MA.

Summary: John Barth the land owner was present. There was a brief discussion on the request. Staff and the commission felt that this was riverfront and a Notice of Intent filing was required. The property owner understands that he may appeal with DEP if he feels the commission was incorrect. There were no members of the public that wished to respond.

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

Motion to issue a Positive Determination because the area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent the homeowner needs to file a Notice of Intent because the land is riverfront as well as land subject to flooding as made by Mr. Yagjian. Seconded by Mr. Whitman. Adopted unaimously.

NOTICE OF INTENT

7. A Public Hearing on a Notice of Intent by Fraggie Rock Environmental (Damon Burt), 38 Garland Road, Stafford NH for Bosun's Marine, 100 Falmouth Road, Mashpee MA. The proposed work consists of re-grading a parking lot for the use of boat storage and sales to an existing facility to allow for an improved use. The property is known as 205 Newbury Street, Map 35, Lot 33/33B, Peabody MA.

The consultant submitted a letter requesting a continuance until the December hearing.

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

8. 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.

Motion to continue as made by Mr. Rizzo. Seconded by Mr. Klapman. Adopted unaimously.

ORDER OF CONDITIONS

9. A continued public hearing on an 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.

Motion to continue the Amendment portion of the request as made by Mr. Klapman. Seconded by Mr. Whitman. Adopted unaimously.

Motion to extend the Order from one year of expiration date as made by Mr. Klapman. Seconded by Mr. Whitman. Adopted unaimously.

10. A continued public hearing on an 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.

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

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

11. 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.

MS DELNEGRO: No one is here but I still want to talk about this.

MR COMAK: We turned them down last time.

MS DELNEGRO: Well you didn't actually turn them down. You signed the papers but you never made a motion about the ORAD. The motion you made was that the Rivers Act, The Wetlands Protection Act apply and that there is riverfront on this site. They were trying to say that it is an intermittent stream and clearly, it is a perennial stream. That is all you made a motion for. I came back from vacation and I received a letter from Christopher Mello and two plans. The plan in my opinion is still wrong. I have no idea how he flagged the riverfront. I spoke with Bill Manuell today and he said he never flagged the riverfront. I have no idea where he is coming up with the riverfront. If this is continued again, which it seems it is going to be. Now we are going into December. It will be on the agenda for one year. We are going to run into the same problem as we did last year. They came before us in January. There was three feet of snow on the ground. I requested that this be continued until July. We continued it until July and then they kept continuing it. Now we are here and Bill Manuel still has not flagged it properly.

MR COMAK: Bill Manuel didn't flag it all?

MS DELNEGRO: He flagged the BVW because that is what he was told to flag. He was never told to flag riverfront. I talked to him today and I said did you ever flag riverfront. He said no. So I am not really sure. There should be the one hundred BVW , then the one hundred inner riparian and the two hundred outer riparian. There are no flags on the riverfront.

Discussion ensued. Ms DelNegro stated she never verified one flag on the property. She explained she should verify flags for riverfront and the BVW before the item can be voted on. There are no flags along the riverfront and the BVW was flagged a year ago. Ms. DelNegro stated she felt the plan was not accurate. Discussion ensued. ***FLIP TAPE 1*** Ms. DelNegro explained that there should be flags at the mean annual high water line of the river. **Discussion ensued.**

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

Motion that the plan submitted is inaccurate and inadequate (the applicant failed to submit an accurate plan) as made by Mr. Yagjian. Seconded by Mr. Whitman. Adopted unanimously.

EMERGENCY CERTIFICATION

NONE

ENFORCEMENT ORDER

12. 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.

This item is continued until the April 2012 meeting.

13. 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: Ms DeINegro explained that the representative for the homeowner submitted a bill of laden today. She has also spoken with their consultant. All the work is done under the current Order of Conditions. The agent and the consultant for the homeowner agreed to discuss both the Enforcement Order (EO) and the Certificate Compliance request at the same time. When they file for a Certificate of Compliance, they will need to submit an as built plan. The EO requires an as built plan as well. Therefore when they request the Certificate of Compliance on DEP file No. 55-742 they will also ask for the withdrawal of the current EO. The commission agreed that this was a good compromise.

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

14. 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 continue as made by Mr. Yagjian. Seconded by Mr. Rizzo. Adopted unanimously.

15. 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. Whitman. Seconded by Mr. Klapman. Adopted unanimously.

16. 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. DEP HAS TAKEN OVER ENFORCMENT ACTION BUT THE ITEM WILL REMAIN ON THE AGENDA UNTIL NOTICE IS GIVEN FROM DEP.

Remove item from the agenda.

17. 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.

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

18. Enforcement Order on Spinelli's, Newbury Street Peabody MA

MS DELNEGRO: I went out on Friday and if you move around the leaves and the needles that have fallen you will see the material still has not been removed. I did talk to Bill Manuel today. He submitted a letter to me saying that all the fill was removed. I called him and asked when he was out there. He said he was out there Thursday. I told him I was out there Friday and the fill was still there. I don't know if he missed it because of the debris that was on top of the ground. I got out walked down and moved the leaves around and the needles and it is still there. We have to remember this is our drinking water. We saw this on August 18th 2011. It is now November and the fill is still there. Really the restoration plan was lacking. Bill Manuel should have been there when the debris was allegedly removed and he was not.

ATTY KEILTY: So what I would suggest is that the commission say they find the November 7th letter from Bill Manuel inadequate and that all inappropriate fill should be removed immediately.

Discussion ensued.

MS DELNEGRO: The restoration plan needs to be revised and I think Bill Manuel needs to be on site when the debris is removed. Chris Mello drafted the restoration plan. It was probably my fault for approving it. I was trying to expedite this because I thought it was going to get done properly. It obviously was not done properly. I think maybe you should amend the Enforcement Order (EO) saying that Bill Manuel needs to be on site when the debris is removed. I am a little frustrated. I can not say it enough. This is our drinking water and it is still there three months later. It frustrated me so much that I actually called Jack from my cell phone while I was on site. I was so aggravated that it was still out there. I think it is really important that Bill Manuel gets out there. My recommendation is that you amend the EO that Bill Manuel is on site during removal. And that it is removed by November 18. If he comes up with some stabilization maybe some sort of geo-textile fabric. I wouldn't suggest the plants because I think they will die.

Discussion ensued. The commission wants the plants in.

Motion to amend the EO to require Bill Manuel to be on site when debris is removed and the work be done on or before November 18, 2011 and the plantings shall be planted by the end of November if practicable. If the work is not complete there will be a \$300.00 fine a day starting on December 1, 2011 as made by Mr. Rizzo. Seconded by Mr. Yagjian. Adopted unanimously.

19. Enforcement Order issued to RTW Realty LLC (Fran and Rick Tower) for the property located at 119 R Foster Street Building 13, map 094, lot 006C, Peabody MA.

Motion to ratify the EO as made by Mr. Rizzo. Seconded by Mr. Yagjian. Adopted unanimously.

SUBCOMMITTEE REPORTS

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

APPROVAL OF MINUTES

- Minutes- 9/14/2011

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

OTHER

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

Motion to adjourn as made by Mr. Whitman. Seconded by Mr. Rizzo. Adopted unanimously.
The hearing adjourned at 8:24 pm

Respectfully submitted-

Francis Lee, Chairman