



City of Peabody Conservation Commission

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

MINUTES

December 11, 2024

Link: https://www.youtube.com/watch?v=JyY_21FiSgI

At this time the Peabody Conservation Commission hearings will continue to be held remotely. 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 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 and further extended by the Final Compromise Bill enacted by the House and Senate on March 23, 2023, and signed by Governor Maura Healey on March 29, 2023.

MEMBERS PRESENT

Chairman Stewart Lazares
Vice Chairman Michael Rizzo
Sec. Michael Vivaldi
Amanda Green
Arthur Athas
Bruce Comak
Alternate Brian Cassidy
Alternate Jamie Harrop

MEMBERS ABSENT

Also Present: Lucia DeINegro, Conservation Agent

CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:00 PM

NOTICE OF INTENTS

1. A continued 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 aka 25 Glendale Avenue, Map 120, Lot 27, Peabody MA. Meeting opened on: 3.8.2023

Present: Attorney John Keilty (legal counsel)

Summary: The item was first heard at the 3.8.2023 hearing. There was a brief discussion about advertising the hearing again. The applicant has been dealing with zoning issues and the ZBA. The applicant did receive a favorable variance, but it expired. The ZBA recently denied the request for a new variance at the November 2024 hearing. However, Governor Healey passed a permit extension act reviving most types of permits for two years. The current ZBA was not aware of the older variance (not allowing further subdividing) as it was not disclosed during the hearing process. City officials and legal counsel have yet to weigh in with an opinion on the Permit Extension Act of 2024 regarding if the old, expired variance is still valid even though a new variance request has been denied. Attorney Keilty feels he has a valid lot and asked to move forward with the permit or continue for further deliberation at the January hearing after legal weighs in. **Discussion continued** regarding the old variance that stated further subdivision would not be allowed and the lack of transparency in front of the ZBA regarding the older variance. The property has already been subdivided once and was conditioned by ZBA to never be subdivided again. Mr. Rizzo feels that they created their own hardship trying to squeeze another house on a small lot. DEP issued comments regarding close proximity to the wetlands. The neighborhood already has serious flooding and water issues. Ms. Green stated she was never going to vote favorably after seeing videos, pictures and testimony from the neighbors. She feels that the new house will most likely flood or cause issues for abutting lots. She is not in support of the project. Mr. Lazares stated he also does not support the project because of flooding and water issues in the neighborhood. **Discussion continued** regarding the old variance from 2003 stating no further subdivision. Ms. DelNegro chimed in and let the commission know that if the commission denies the project, the applicant can appeal to DEP and the court. The item was open to members of the public.

Thomas Kench, 21 Glendale Avenue

MR KENCH: I wish you would vote on it, because I am watching my yard and I am getting close to getting flooded right now (aside: *it was presently raining in Peabody*). I had to put in some six-by-six posts to extend my deck and I had to be fifty feet from the wetlands. Ms. Cooke is going to be building in the wetlands so I don't think that is fair at all. That's it. That is all I had to say.

William Delp, 13 Granite Road

MR DELP: My name is William Delp and I have lived at 13 Granite Road for the past 57 years. My property backs up to this wetland. That has been a concern for the conservation commission and many of the abutters around this wetland. In fact, there

was an easement applied to my property for a pipe for an underground brook that feeds this wetland. In the past 57 years we have experienced many flooding issues and overflowing of this wetland causing hardships and damage to properties around it and also upstream from it. Due to the lack of maintenance in this area, it has filled in with vegetation, silt, and street sand carried in from the brook. The capacity of the water storage has been diminished greatly in the time I have lived here. The city granted a building permit for Granite Road Extension with no apparent thought to the effect that this would have on the brook. The brook originates at the base of the hills at the end of Granite Road Extension. This water comes from runoff and from fissures in the granite where Boudlerwood development is today. The problem with Granite Road extension has caused with water runoff has cost the city so far approximately \$450,000.00. With phase two plans on the table, if phase one doesn't cure the problem. That would be an additional cost of \$400,000.00. The project they did, does not reduce the waterflow to the wetlands. It increases it and gets the water there faster. I have seen the water table in this area come up in the past to the point that my sump pump tank has water in it most of the year. When I moved in, it never had water in it. Only when we had flooding rains, and it would be dry in a day or two. I am very concerned of anything that will reduce the area of water storage and anything put into the ground to bring the water table up any higher. At this time, I have added an additional sump pump, hinged three sections of my fence to allow water to flow through my yard, made a plug to seal off my cellar window and I have had to replace my garage floor. This is because of repeated flooding of my garage; water got underneath the slab and compromised the support to the slab. It cracked and was hollow underneath. I am in fear of any additional changes that might cause this wetland that would make more hardships we might experience. Thank you very much.

Motion to close as made by Mr. Athas. Seconded by Mr. Comak. The motion passed 6-0 with the alternates not voting.

Motion to DENY the Order of Conditions for the following reasons: **Reasons to deny this project in accordance with City Ordinance Chapter 32 Wetlands and River Protection Regulations:** ▶ 32-22 D and E- ▶ 32-33. ▶ 32-38 ▶ 32-54; **Reasons to deny under the Wetlands Protection Act 310CMR10:** ▶ 310 CMR 10.53(1) ▶ DEP also commented: The clearing of mature trees is likely to adversely affect the function of the Bank through the loss of shading, changes in temperature, as well as changes in the plant community characteristics. ▶ 310CMR10.05(6)(c) ▶ In the opinion of the Peabody Conservation Commission the following performance standards are also not being met: 310CMR10.54(4)1 and 3. **In addition the Commission's denial is based upon the following:** 1. Protect resource areas because activities undertaken in close proximity to resource area will result in alteration of resource area; 2. Protect neighbors and the entire community from adverse flood conditions due to unwise land development in the buffer zone; 3. Protect the buffer zone area because land within 100' of said resource area is significant to maintaining the wetland values to the maximum extent practicable by the City's Wetland and River Protection Regulations; 4. Previous minutes of past hearings as well as testimony from abutting neighbors. The neighbors have submitted pictures, emails and videos sharing that Granite Road, Rockway Road, Troy Street and Glendale Avenue have experienced ongoing issues with water and flooding; 5. In addition to the reasons listed above, a Zoning Boards of Appeal's Variance from 2003 prohibits any further houses on said lot. It was not disclosed during

the hearing process. There is also a new decision dated 11.19.24 that has also denied any future subdivision. This is not a legal lot. 29 Glendale Avenue does not exist. A house already exists at 25 Glendale Avenue. The motion was made by Mr. Athas. Seconded by Rizzo. The motion passed 5-1 with Mr. Comak voting NO with the alternates not voting.

2. A Public Hearing on a Notice of Intent submitted by Allen & Major Associates Inc. (Jacqui Trainer) for Atlantic Oliver 140 Summit Street LLC-Michael Shunta (applicant/owner). The project consists of constructing a paved truck parking area at the rear of the site in an existing grass area with curbing. The property is known as 140 Summit Street, Map: 93, Lot: 8, Peabody MA. Meeting to be opened on: 12.11.2024

Present: David Robinson (Allen & Major Associates)

Documents:

- ▶ Civil Site Plans-Christian Book Truck Court Parking Area-140 Summit Street-Peabody MA. Prepared by Allen & Major Associates, Inc. dated 11.7.24. Stamped by Carlton M. Quinn. Scale is as shown.
- ▶ Operation and Maintenance Plan prepared by A&M dated October 31, 2024 as submitted with NOI.
- ▶ Operation & Maintenance Plan dated December 22, 2015 (for original detention basins) prepared by SMMA.
- ▶ Proposed Watershed Plan

Summary: Christian Book Distributors (CBD) has a current open Order for other work. A NOI is being submitted for further work separate from the original filing. Mr. Robinson gave a brief presentation. The proposed turnaround area is where CBD recently used to stockpile during recent work. No work is proposed within the riverfront. Work is only in the buffer zone. The area will be used for a truck court parking and turnaround area. There is also a proposed walking path for employees and sidewalk extensions.

Discussion continued regarding the stormwater elements. Trailer cabs will not be stored in the area (only trailers to be stored in area). Site plan review is not needed. Mr. Rizzo asked if the parking spaces could be cut down to 26 instead of 30. If they eliminated some spots, they would be outside of the buffer. CBD has been expanding and needs the area in case they subdivide or lease out a portion of the warehouse. They do not want to revise the plan to be outside of the buffer. **Discussion continued** regarding the potential vernal pool on site (within an existing detention basin). It is functioning as both a vernal pool and a detention basin. There were no members of the public that wished to speak.

Motion to close as made by Mr. Rizzo. Seconded by Mrs. Harrop. Adopted unanimously 8-0.

Motion to issue a Standard Order of Conditions 1-50 adding the following special conditions **51)** The Operation and Maintenance Plans listed above are in perpetuity. Annual reports should be emailed to Commission staff on or before 10.31 every year. There will not be a reminder from city staff; **52)** The resource areas (BVW) shall be kept

clear of debris. They shall be inspected Winter/Spring/Summer/Fall and debris shall be removed as soon as possible as made by Mr. Rizzo. Seconded by Ms. Green. Adopted unanimously.

**Please note an uncertified vernal pool is located on the site but is not labeled. Per chapter 32 even uncertified vernal pools are protected. If the plan needs to be revised the vernal pool shall be labeled appropriately with associated buffer zone. This will be noted on the OOC mentioned above.*

**A Master O&M plan will be drafted in the near future per the request of the board.*

CERTIFICATE OF COMPLIANCE

3. A request for a FULL Certificate of Compliance as made by Daniela DeOliver on DEP File No. 55-922. The project was the construction of a 360 SF single story addition to the existing commercial building in riverfront. The address is known as 168 Main Street, Map 86, lot 159, Peabody MA. The Order of Conditions expired on 11/16/24. First meeting date: 12.11.2024

Summary: The property owner was not present but since the project was simple, some members felt a discussion could occur without the applicant.

Motion to issue a Full Certificate of Compliance with the following conditions in perpetuity: **51)** Drywell ports need to be accessible for future maintenance.
52) Operation and Maintenance Plan is in perpetuity. Maintenance reports must be submitted annually on 10.31.24 for the life of the drywells as made by Mr. Rizzo. Seconded by Mrs. Harrop. The motion passed 6-2 with Mr. Vivaldi and Ms. Green voting NO.

4. A request for a FULL Certificate of Compliance as made by Karen Repucci (PMLP) on DEP File No. 55-916. The project was the repaving of an existing parking lot and the creation of a paved access to the "spray pond" parking lot along Warren Street. The address is known as 201 Warren Street Ext., Map 63, lot 95, Peabody MA. The Order of Conditions expires on 10.27.25. First meeting date: 12.11.2024

Present: Daron Kurkjian (Weston & Sampson- project engineer) and Karen Repucci (PMLP-finance manager)

Summary: A brief discussion ensued regarding the project components.

Motion to issue Full Certificate of Compliance adding the following condition in perpetuity: **50)** O&M Plan is in perpetuity. Maintenance logs shall be submitted annually on 10.31 via email to conservation staff as made by Mr. Vivaldi. Seconded by Mr. Rizzo. Adopted unanimously 8-0.

5. A request for a FULL Certificate of Compliance as made by Karen Repucci (PMLP) on DEP File No. 55-855. The project was the construction of a fueling system and site drainage improvements. The address is known as 201 Warren Street Ext., Map 63, lot 95, Peabody MA. The Order of Conditions expired on 6.21.21. First meeting date: 12.11.2024

Present: Daron Kurkjian (Weston & Sampson- project engineer) and Karen Repucci (PMLP-finance manager)

Summary: The project was the construction of a fueling system (gas and diesel) and site drainage improvements. Mr. Lazares inquired about electric chargers. Ms. Repucci stated the electric charging stations are presently inside. **Discussion continued** regarding the 2500-gallon tanks (one each diesel and gas-both double walled) and the safety measures to protect the resource. The tanks are inspected annually by a third party. Bollards surround the tanks to prevent impacts from vehicles. Currently there is no secondary containment. The commission asked for a revised As Built Plan showing the sign, remove snow storage area and clean up as needed. Snow will not be stockpiled near the wetlands. Jersey barriers currently act as a barrier.

Motion to issue a Full Certificate of Compliance adding the following conditions in perpetuity: **47)** signs shall remain in perpetuity; **46)** O&M Plan is in perpetuity and maintenance reports shall be submitted annually to staff via email on 10.31 as made by Mr. Rizzo. Seconded by Mr. Athas. Adopted unanimously 8-0. (to be held until a revised As Built Plan is submitted as requested).

ENFORCEMENT ORDERS/VIOLATION ORDERS

6. 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. Meeting opened on: 4.13.22

ITEM WAS CONTINUED TO THE JANUARY 8, 2025 MEETING. NO MOTION IS NECESSARY.

7. An Enforcement Order issued to MK Peabody Investments, LLC (Michael Mei- Resident Agent)- for the following activities: alteration of FEMA Flood Plain (BLSF) without a permit from the MASSDEP and Peabody ConComm. The property is known as 2 Central Street, Map 85, Lot 59, Peabody MA. First meeting date: 12.11.24

Present: David Cowell (PWS). Jack Keilty (legal counsel) and Robert Lavoie (legal counsel)

Summary: They are working on an after-the-fact NOI application. They believe they can meet the performance standards for BLSF. The building department erroneously issued a building permit without having the ConComm review it. The applicant was not aware

that the property was located in FEMA Flood Plain. There was confusion because they were able to receive a building permit. **Discussion continued** regarding the building department issuing permits in ConComm jurisdiction without staff signing off. Both departments are working internally to make sure the issue does not happen again.

Motion to continue as made by Mr. Athas. Seconded by Ms. Green. Adopted unanimously 8-0.

8. A continued Violation Order issued to Joseph and Donna Vieira. The property address is 154 Goodale Street, Map 25, Lot 64. The alleged work involves: 1) alleged possible alteration to buffer zone of intermittent stream and buffer zone to BVW (adding truckloads of fill to change the grade, performing grading/alterations and stockpiling various items such as construction debris, gravel piles, concrete blocks, ladders, wood, tarps, trash barrels, sawhorse and a storage container.) The deadline for a plot plan showing buffer zones and all activities was due on November 13, 2024.

Summary: Ms. DelNegro gave a brief update. The owner was not present. He did drop off a plan showing resource areas and alterations. He will be filing an RDA for the work. He will be at the January meeting to discuss.

Motion to continue to the January hearing as made by Mr. Rizzo. Seconded by Ms. Green. Adopted unanimously 8-0.

MINOR PERMIT REQUESTS

● **Minor Permit-Mystic River Contracting, Inc./owner: Ken Kolodziej for work at 11 Clement Avenue. The proposed work is a second story deck over and existing first floor deck (sonotubes work only-erosion controls to be installed before any digging occurs).** Work was approved on 11.18.24

Motion to accept/approve as made by Mr. Comak. Seconded by Ms. Green. Adopted unanimously 8-0.

TREE REQUESTS -NONE

● **MINUTES- NONE**

● **Adjournment**

Motion to adjourn as made by Mrs. Harrop. Seconded by Ms. Green. Adopted unanimously 8-0.

The meeting adjourned at 9:18 PM.

Chairman Stewart Lazares