



City of Peabody Conservation Commission

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MINUTES

Special Hearing **MARCH 23, 2022**

YouTube link: <https://www.youtube.com/watch?v=9Fj9Cc-IGNY>

At this time the Peabody Conservation Commission will continue to meet via the Zoom platform until July 15, 2022 “Remote participation is allowed in accordance with Section 26 of Chapter 22 of the Acts of 2022 signed into law by Governor Baker on February 12, 2022, suspending certain provisions of the Open Meeting Law, G.L. c. 30A, Section 18.”, In the event that we are unable to do so on matters not requiring a public hearing, we will post on the City of Peabody’s website an audio or video recording, transcript, or other comprehensive recording as soon as possible after the meeting.

MEMBERS PRESENT

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

MEMBERS ABSENT

Travis Wojcik

Also Present: City Councillor Ann Manning-Martin; Lucia DeINegro,
Conservation Agent

VICE CHAIRMAN RIZZO CALLED THE MEETING TO ORDER at 7:09 pm

In the absence of 3 commissioners RitaMarie Cavicchio had voting rights.

► **Violation 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: Peter Fischl (General Manager-Salem Country Club), William Rocco (Director of Grounds-Salem Country Club), Attorney Barry Fogel (legal counsel), Mel Higgins (Weston & Sampson-Wetland Scientist), Devin Herrick (Batchelder) (Weston & Sampson-Wetland Scientist)

Summary: On 1.10.22 Conservation Agent Lucia DelNegro received an email from Devin Herrick-Batchelder (Weston & Sampson) on behalf of the Salem Country Club (SCC) stating that trees would be removed per an existing Order of Conditions 55-896 near holes 6&7 starting on 1.12.22. Twenty (20) trees were allowed to be removed under this Order of Conditions. On 1.15.22 Ms. DelNegro received complaints from city officials via text asking if the club had permission to remove trees. Staff assumed the Club was in compliance and was conducting work under 55-896. On 1.24.22 Ms. DelNegro received anonymous complaints that tree removal was not limited to holes 6 and 7. The anonymous complaint also stated bank to a jurisdictional pond was altered (vegetation, understory removed and replaced with sod) and complete bunker restoration occurred within buffer zones. On 1.27.22 the Agent conducted a site visit with members of the club (Bill Rocco) and (Mel Higgins) Weston & Sampson. A verbal cease and desist was issued on 1.27.22. At this site visit staff confirmed tree removal (grinding/grubbing of stumps) in jurisdictional areas and large amounts of wood chips were seen blown into buffer zone in various locations on the property. Staff also confirmed the alteration of a bank to an irrigation pond (natural vegetation replaced with grass appearing to expand the golf course green. On 1.31.22 the Agent issued a Violation Order (VO) with Action Items to make sure the violations were both state and local before the issuance of an Enforcement Order. A VO was issued to both Mayer Tree and the Salem Country Club.

MR FISCHL: I am the general manager of Salem Country Club. I would like to make some brief comments and then we will answer the questions that commission members may have. Salem Country Club takes full responsibility for the work to remove trees and other vegetation which is the subject of the Violation Notice. The commission can look to SCC to address these issues. Since receiving the notice we have carefully reviewed the work that was done and the full scope of the commission's jurisdiction under both the state and local rules. We are aware that some of the work was done within areas subject to the commission's jurisdiction. We also found that a lot of the work was outside those areas. We have determined that nearly all of the are that is within jurisdiction includes the one hundred (100) foot and two hundred (200) foot buffer zones that are established by the local ordinance. We also found that large portions of these areas are areas of continuous undisturbed vegetation where vegetation management is conducted including the mowing of fairways, rough and cutting of lower growing vegetation along the tree line next to these mowed areas. This is why we did not think that this tree cutting was something that needed prior review by the commission when we filed for the work near the wetlands by holes six and seven. However, we have become aware that the removal of trees in these areas should not have been conducted without your prior review and authorization. To move forward now we are prepared to discuss what kind of restoration activities might be appropriate. We would also like to discuss so we can identify and set the boundaries of no disturb zones on the property that will mark the limit of where the routine golf course maintenance work can be conducted. Thank you

Discussion ensued. Their Attorney Barry Fogel introduced himself. Ms. Herrick walked through a preliminary review of the site and alleged illegal work done. The placed a GPS marker on each stump that was cut in jurisdiction. The stumps are reflected on a plan as yellow and red dots. The

red dots represent stumps in jurisdictional areas. The plan showed buffer zones (local and state) and the number of trees removed. The wetlands are state and locally regulated. The wetlands have yet to be formally delineated in the field. Presently the consultant is using GIS as a guideline. **Discussion ensued.** Attorney Fogel had Ms. Herrick show a chart of tree removal stating that a total of 683 trees were removed on site. Only 205 were in Conservation jurisdiction. He felt that 116 were in areas regularly maintained by the club and only 89 were illegally removed without consent of the board. **Discussion ensued.** Vice Chairman Rizzo reminded the country club that this was not their first violation of the Wetland Protection Act and local ordinance.

MR RIZZO: I am sorry to say it, but you folks are habitual repeaters of doing work in buffer zone or resource without contacting the Conservation Commission or getting necessary permits for doing work in jurisdictional areas. This is not the first time. It has happened many times. It is almost frustrating having you here tonight almost asking for forgiveness instead of permission. In my opinion this is your M.O. You do this work knowingly that you are in resource areas. If anybody knows about lawns and understanding vegetation and trees; you folks are experts. There is no excuse for what you did. You didn't come to us and call us. Even just to walk the site. You folks know what is jurisdictional, what is not jurisdictional, what wetlands are and what wetlands aren't. This happens time and time again. You folks should be ashamed. You come here tonight with your hats in your hand. We shouldn't be here tonight for this. This should have all been determined ahead of time with us walking the course. You would have known ahead of time how we felt and what's jurisdictional. Right now, it is hard to determine. I will take your plan as correct. Where the resource areas really are, what work is jurisdictional and not jurisdictional. Speaking for myself and maybe for the rest of the commission I am really upset that we are here tonight. The way I see it is that we need to do a site visit. I would request that the commission have a peer review to determine the resource area boundaries independently at the cost of Salem Country Club and determine what needs to be done to correct that. You pointed out that 205 trees were jurisdictional. Although some are near fairways and you folks mow them, again if it is buffer zone or jurisdictional you can't cut trees down. You can't take those out of the list in my opinion. If there are 205 trees, they are all inclusive. You are supposed to maintain the areas by what the law says, and it says you can't clear or cut trees without permission. This is what you folks did in years past. You did this when we had the Senior Open (2017). Cutting trees down and creating parking lots for buses. I am also looking to issue fines for the work you did.

Discussion ensued regarding the size of trees that were removed and a restoration plan. Commissioner Athas asked the country club what their end goal was for removing said trees. Mr. Rocco and Mr. Fischl stated it was to create more sunlight/airflow and promote better turf and a better growing environment for the grass. He stated they are not changing their holes, but they are trying to improve what already exists on course. They felt that if the trees were in a maintained area, they were allowed to be cut the trees. **Discussion ensued.** Mr. Vivaldi stated he echoes the Vice Chairman's sentiments. He is hopeful this will never happen again. Mr. Comak stated he felt that this was most likely normal golf course maintenance that should have been brought to the commission's attention. He also stated that the club is an asset to the city, but the work done was blatant. **Discussion ensued.**

MR COMAK: Anybody that is in the golf course business knows what is jurisdictional and what is not. They know about wetlands. They know about streams. I get it. some of it is in maintained areas. Just to repeat what Michael said if you came to us and you presented all these things in a slick presentation, like the one you did just now, I guarantee you over fifty percent of the trees that were in maintained areas, we probably would have said go ahead and cut them. This makes a mockery of the commission. Every single time you come here and beg for forgiveness because you just want to go and do it. It is not right. Our job is to protect the wetland and again I am probably the guy that is going to more on your side than anyone. This is ridiculous. I know you all had meetings and said how are we going to present this? That is great. you did a great job. It is a real slick presentation. Everyone knew what they were doing beforehand. You came to us and

said you were going to do some work. You got the permits for the work you told us you were going to do. You knew you were doing the other work at the same time. You just happened to omit that. That is not right.

Discussion ensued. The turf manager has been employed by the club for a little over two years. Commissioner Green stated she would like to fine the club and come up with an O&M Plan so this does not happen again. Mr. Comak mentioned granite bounds on the property to demarcate wetlands in the future. The item was open to the public.

Councillor Anne Manning-Martin

CLLR MANNING-MARTIN: I appreciate this opportunity. I am not an expert on environmental law. I am very appreciative and quite frankly fascinated by the level of care and attention this board applies to matters within its jurisdiction. I thank you all for your due diligence. I the case of cutting trees and disturbing buffer zone and resource areas by the Salem Country Club, ignorance of the law is no excuse. From my point of view in this case it is not even believable, and I will tell you why. Throughout the Salem Country Club (SCC) expansion feasibility report conducted by Weston & Sampson (W&S) it is repeatedly mentioned that Peabody zoning and wetland bylaws are stricter than state and federal regulations. In their report W&S identify buffer zones and setbacks. W&S explained the city of Peabody ordinance requires one-hundred-foot buffer zones that should indicate do not disturb area and that no work be allowed in this area. Yet I am told that extensive renovation bunker work was done in the buffer area to include the removal of hundred of trees without Conservation Commission knowledge or approval. SCC was well informed of our city ordinance protecting certain areas of the golf course but moved forward with work anyway. Our city ordinance also protects ponds, streams, creeks, whether intermittent or continuous, natural, or man-made. Any activity proposed or undertaken to disrupt these areas require a Notice of Intent or Requests for Determination. I am told these steps were not taken until the ConComm initiated that requirement only until after the work came to their attention and after the damage was done. I recognize that only altering or disruptive activity in the buffer zone or resource area is under the ConComm's jurisdiction. I want you to know that I applaud the ConComm's serious review of these allegations and appreciate your effort to hold the club accountable should your investigation warrant fines or other reparations. I want the ConComm members to know as well that I have taken steps to address the removal of hundreds of trees outside of your jurisdiction. I found their removal devastating since 1983 has been granted a seventy-five (75) percent discount on the property tax under Chapter 61b Open Space and Recreation. Amounting to a break of hundreds of thousands of dollars annually. They apply for this yearly and have been granted the relief due to the public's benefit such as wildlife habitats and clean water. However, Chapter 61 does not allow for clear cutting of trees. On the contrary requires a state approved Forest Cutting Plan to harvest any trees to improve the value of the land whether for the wildlife, scenic, health or dollar value. I am told they have no state approved cutting plan. Such a plan would have spared centuries old trees and otherwise healthy trees from being destroyed. As a resident and taxpayer and a city councillor whose responsibility it is among other things to set the tax rate, I find it galling that they are pleading either ignorance or error in clear cutting hundreds of beautiful trees they used to set themselves apart from being taxed at the same rate as other private businesses. Given their annual 75% tax discount I consider the SCC a guest of Peabody homeowners and businesses. Who instead experience increased taxes year after year. I feel as though the SCC should have protected the very trees they hid behind for years. Instead, they killed them. This appears deliberate and a case of it is easier to ask for forgiveness than permission. I feel it is time for the guests to pay their fair share and be held accountable for their actions as would any other resident or business in the city. I thank you for doing your part. I assure you I will do mine. I have already asked the city solicitor to review if these actions have jeopardized their 75% tax discount. I believe they have. Thank you for your time and I look forward to the results of your investigation.

Discussion ensued. Chairman Lazares stated he agrees with Vice Chairman and City Councillor Manning-Martin 100%. He would like to formulate a plan to remedy the situation as quickly as possible. The SCC will need to reimburse the city for any expenses incurred.

Discussion ensued regarding wetland delineation and a site walk. At this point stumps have been ground in place. It will be difficult to determine what was removed (size, amount etc.). Attorney Barry Fogel was mostly concerned about cleanup of the course so there is not a delayed opening of the club (downed branches etc.). He also stated that W&S is in the process of preparing a delineation report. **Discussion ensued** about the delineation and site walk.

Site visit to be held on 3.28.22 at 1pm.

The item was open to members of the public.

Susan Smoller. Breath Clean North Shore

MS SMOLLER: I expect there are other people that would like to speak but they are just trying to digest everything that has been happening. I am here because I am really active these days with Breath Clean North Shore. We are very much concerned with climate change. According to my research SCC originally said they were going to remove forty (40) trees and that they would replant two trees for every tree that they removed legally. They then removed two hundred and five trees (205). So even if you just held them to that two for every one they took away that is four hundred and ten trees (410). I think it should be even greater than that if you really want to send them a message. One mature tree (one) absorbs carbo dioxide at a rate of forty-eight (48) pounds per year. In one year an acre of forest can absorb twice the CO2 by the annual car's annual mileage. We have to start thinking about this. We have to start thinking about carbon capture and that trees play a role in cleaning our atmosphere. You can't just go around cutting them down because your grass doesn't grow great. That is all I have to say. Thank you.

Discussion ensued.

Motion to hire a third-party peer review at the expense of the SCC as made by Mr. Vivaldi. Seconded by Mr. Lazares. Adopted unanimously 7-0.

Motion to issue an Enforcement Order to SCC with Action Items discussed as made by Mr. Vivaldi. Seconded by Mr. Comak. Adopted unanimously.

Discussion ensued. The commission discussed bounds to be installed along resource areas near fairways/maintained areas and O&M Plan. They also feel that the SCC should update them at least once a year. To be discussed at later meetings or the EO can be amended as necessary.

Discussion ensued about an older open Order of Conditions 55-896 that is currently not in compliance. The item was open to the public again. No one wished to speak but there was 48 people in attendance. Dan Mayer of Mayer Tree was present. The commission asked him a few questions. Mayer Tree has been in business for about 25 years. He stated this was his first time dealing with the Peabody ConComm. He normally makes the property owner get permission from local commissions. Mr. Mayer downplayed the number of trees that were removed and the health of a few was mentioned. He stated he is not a surveyor or an engineer. He did not realize it was under Chapter 61B. He stated he is under the guidance of his customer and there was snow cover.

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Motion to continue to the April 13 hearing as made by Mr. Athas. Seconded by Ms. Cavicchio. Adopted unanimously 7-0.

Motion to adjourn as made. Athas. Seconded by Ms. Cavicchio. Adopted unanimously 7-0.

The meeting adjourned at 9:06 PM

Respectfully submitted, (To be signed electronically)

Chairman Stewart Lazares