



## City of Peabody Conservation Commission

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

### MINUTES

**MAY 11, 2022**

**YouTube link:** <https://www.youtube.com/watch?v=mU98KLRZoHk>

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  
Travis Wojcik  
Alt. Ritamarie Cavicchio (left at 8:50PM)

### MEMBERS ABSENT

1 alternate member opening  
(forward resume to mayor's office  
if interested in being appointed)

**Also Present:** Lucia DelNegro, Conservation Agent; Brendan Callahan,  
Assistant Director of Planning (Acting Agent on Farm Ave)

**CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:08 PM**

**EMERGENCY CERT.**

●To be ratified: Request for an **Emergency Certificate** to remove a beaver dam and trap beaver population located along the bike path near Crystal Drive. Work dates are 5.10.22 - 6.8.22.

**Discussion ensued.** Ms. Green does not support the continual trapping and breaching of said beavers and associated dams. The owners of 61 Pine Street continuously requests such permits to be issued. Their home is situated next to wetlands and partially located in FEMA flood zone. She feels that the property owner should have some responsibility and accountability to alleviate flooding on their property instead of continuously requesting assistance from the city. Ms. Green does not believe there are any health concerns with the standing water as suggested in the permit from the Health Department since the property is already surrounded by natural wetlands. The beaver dam only adds water to existing wetlands that virtually surround their home and property. Some members felt that the ConComm's job is to protect wildlife, not kill it. **Discussion ensued.** Members of the ConComm will revisit the Beaver Management Plan that was drafted in 2019. They will reach out to other departments for further discussion. They are hopeful that a new beaver deceiver will work. Ms. DelNegro suggested that members read the Beaver Management Plan and submit comments to circulate and be discussed with other departments involved with the trapping/breaching.

**Motion** to ratify EC as made by Mr. Vivaldi. Seconded by Mr. Wojcik. The motion passed 5-2 with Ms. Green and Mr. Athas voting NO.

**OTHER:**

The July 2022 meeting will be held on July 13 instead of July 27. This meeting will be held remotely via zoom. No motion made.

**CERTIFICATES OF COMPLIANCE**

**1. A continued request for a FULL Certificate of Compliance as made by Attorney Mathew Snell on behalf of Stahl (USA), Inc. for DEP file 55-312. The project was the construction of a service building with associated appurtenances and land grading. The address is known as 13 Corwin Street, Map 92, Lot 6, Peabody MA.**

**Motion** to continue as made by Mr. Athas. Seconded by Mr. Rizzo. Adopted unanimously 7-0.

**2. A continued request for a FULL Certificate of Compliance as made by Attorney Mathew Snell on behalf of Stahl (USA), Inc. for DEP file 55-323. The project was the construction of a commercial building with associated appurtenances, grading and mitigation efforts for the demolition of an existing building and its appurtenances to accommodate commercial building. The address is known as 13 Corwin Street, Map 92, Lot 6, Peabody MA.**

**Motion** to continue as made by Mr. Athas. Seconded by Mr. Rizzo. Adopted unanimously 7-0.

**3. A continued request for a FULL Certificate of Compliance as made by Frederick Hostrop (Neptune Engineering) on behalf 160 Main Street Realty LLC (Nikolay Polinovskiy) for DEP File No. 55-793. The project was the redevelopment of a previously degraded site for commercial and residential use. The address is known as 166 Main Street, Map 086, Lot 150B, Peabody MA. Partial CC has been issued. Item will remain on agenda until a Full CC can be requested.**

**Present:** Nikolay Polinovskiy (property owner)

**Summary:** The only remaining work is the riverfront enhancement area and the invasive removal. All plants have been installed and are in the second growing season. The property owner is running into difficulties eradicating the Japanese knotweed on site. The abutter's property line runs along the enhancement/invasive removal area. The abutting lot is overrun with invasives and causing difficulty to eradicate on his property. He will reach out to the abutter to get permission to remove invasives on the abutting parcel. A site visit will be done again in the Fall. The commission felt he may have a difficult time removing all invasives from the area. **Discussion ensued.**

**Motion** to continue until the October hearing as made by Mr. Rizzo. Seconded by Mr. Wojcik. Adopted unanimously 7-0.

**4. A request for a FULL Certificate of Compliance as made by Mel Higgins (Weston & Sampson) on behalf the Salem Country Club for DEP File No. 55-821. The project was temporary improvements for the Senior Open 2017. The address is known as 150 Forest Street, Map 70, Lot 3, Peabody MA. No work was ever conducted under this permit and it is lapsed and no longer valid.**

**Present:** Mel Higgins (W&S) and other club representatives in the audience

**Motion** to issue a Full Certificate of Compliance checking off the "invalid" box as made by Mr. Wojcik. Seconded by Mr. Vivaldi. Adopted unanimously 7-0.

#### **REQUEST FOR DETERMINATION OF APPLICABILITY**

**5. A Public Hearing on a Request for Determination of Applicability submitted by Lorianne Tsoulas (owner). The proposed work is the installation of above ground pool to be installed on existing fenced in grassed yard space. The property is known as 10 Wright Road, Map 98, Lot 80, Peabody MA.**

**Present:** Lorianne Tsoulas

**Summary:** There was a brief discussion about the pool type and pool location. There were no members of the public that wished to comment on the proposed pool.

**Motion** to close the hearing as made by Mr. Wojcik. Seconded by Mr. Athas. Adopted unanimously 7-0.

**Motion** to issue a Negative Determination with the following conditions: **1)** Erosion controls must be installed & inspected before work can commence, **2)** In the event a swimming pool is placed on this lot, the following condition shall apply: The content of water in swimming pools can be detrimental to wetlands plant and animal species. To remove harmful chemicals, it is the applicant's responsibility to leave the pool water standing without the addition of chlorine for a minimum of seven (7) days before draining (per the City's Stormwater System Ordinance). In this way chlorine concentration will be significantly reduced due to volatilization. All pool water, wherever possible, shall be drained through a dry well, rather than allowed to spread over the surface of the land. The City of Peabody Conservation Commission Office shall be notified prior to draining and shall approve the method of draining (this condition is in perpetuity) as made by Mr. Rizzo. Seconded by Mr. Vivaldi. Adopted unanimously 7-0.

**6. A Public Hearing on a Request for Determination of Applicability submitted by North Coast Environmental Inc. (Michael Rostkowski Jr.). The proposed work is to establish a**

temporary, no impact vehicle wash location on the property to occasionally clean vehicle residue (dust, dirt, sap and other organics) that may accumulate on panels, windshields and windows. The property is known as 119 R Foster Street Building 7, Map 94, Lot 006F, Peabody MA.

**Summary:** The applicant's representative was not present and requested a continuance.

**Motion** to continue as made by Mr. Rizzo. Seconded by Mr. Athas. The motion passed 6-1 with Mr. Comak recusing himself and alternate member not voting.

### **NOTICE OF INTENT**

**7. A continued Public Hearing on a Notice of Intent submitted by Hancock Associates for Michael Larkin (40 Oak Street Development LLC). The proposed work is site improvements and redevelopment which includes a 40B housing project, paved vehicular and pedestrian access, landscaped areas, connections to municipal utility services and a stormwater management system. The property is known as 40 Oak Street, Map 95, Lot 89X, Peabody MA.**

**Present:** Mr. Larkin (owner/applicant)

**Summary:** The applicant has asked for a continuance.

**Motion** to continue as made by Mr. Athas. Seconded by Mr. Vivaldi. Adopted unanimously 7-0.

**8. A continued Public Hearing on a Notice of Intent submitted by Attorney John R Keilty for Michael Buonfiglio. The proposed work is the redevelopment of a former leather factory site. The property is known as 49 Tremont Street, Map 76, Lot 402, Peabody MA.**

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

**Summary:** The commission and city staff were waiting for more information. They have since received new paperwork and were ready to vote. There were no members of the public that wished to speak for or against the project.

**Motion** to close the public hearing as made by Mr. Rizzo. Seconded by Mr. Wojcik. Adopted unanimously 7-0.

**Motion** to issue a standard Order of Conditions **1-50** adding preamble- The stormwater for this file was approved and installed under DEP File. No. 55-801. It is still being reviewed by city officials. The permit has lapsed therefore requiring this new permit for a subdivided parcel and adding the following special conditions: **51)** Riverfront Area Enhancement Project shall commence at the same time as the foundation and site prep and a partial or full Certificate of Compliance will not be issued until work is complete; **52)** Large trees and non-invasive plant species shall not be removed from riverfront unless in bad health as stated in revised REP plan as referenced above; **53)** An As Built Plan is required for the issuance of a Partial or Full Certificate of Compliance. Neither shall be issued UNTIL the REP is completed and approved by the Commission; **54)** The existing trash rack must be replaced before a partial or full Certificate of Compliance is issued; **55)** Monthly reports are REQUIRED once work starts. Reports should be submitted via email on a monthly basis to [lucia.delnegro@peabody-ma.gov](mailto:lucia.delnegro@peabody-ma.gov); **56)** DPS COMMENTS/CONDITIONS: **1)** Stormwater and drainage calculations were submitted for original project site that now encompasses three individual building sites. **2)** The engineer of record contacted my office with applicant's counsel to assure me that the three parcels will conform to

the overall design and acknowledge occupancy permits not be issued for any site unless prior engineering comments on record have been satisfied. **3)** The applicant will need to satisfy any engineering comments made from previous reviews for the entire site as applicable to this parcel as made by Mr. Rizzo. Seconded by Mr. Vivaldi. Adopted unanimously 7-0.

**9. A Public Hearing on a Notice of Intent submitted by Horsley Witten, Inc. (Brian Kuchar) for City of Peabody Community Development Department (Andrew Levin-Sr. Planner). The proposed work is an accessible pedestrian walking path through an existing wooded area connecting James Street Park, Emerson Park and Higgins Middle School. The property is known as 0 Perkins Street, Map 084, Lot 214, Peabody MA.**

**Present:** Brian Kuchar (HWG) and Andrew Levin (Senior Planner-city of Peabody)

**Summary:** Andrew and Brian gave a brief overview of the project. The project has an invasive species removal plan. It is three-pronged approach. The chairman inquired about the budget for maintenance. Andrew stated the budget for maintenance is secured for three years in a bid contract with consultant/contractor. Parks and Recreation will take over after the three years is up with the bid contract. There have been neighborhood meetings to discuss the project. They will be back next month with the project team to answer any new questions and discuss comments made this evening. There were further discussions regarding the boardwalk through the wetlands and stormwater features. At this time DPS has not provided comments and the commission felt they could not vote favorably this evening. The work is proposed to be finished by June 30, 2023. There were no members of the public that wished to comment this evening.

**Motion** to continue the public hearing as made by Mr. Vivaldi. Seconded by Mr. Comak. Adopted unanimously 7-0.

**10. A 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.**

Mr. Callahan is the Acting Agent on this item.

**Present:** Daniel Nitzsche (GZA GeoEnvironmental, Inc.) and Steven Dambrosio (GZA Environmental, Inc.)

**Summary:** Mr. Callahan is recommending the file goes out to peer review. There was confusion as to if the item should be open to the public this evening. **Discussion ensued.** The commission decided a quick presentation was appropriate. There are two proposed infiltration basins. The NOI is filed at the request of the city for stormwater compliance near the mulch piles. There are very tall mulch piles that is causing debris to be scattered along the property and abutting lots via wind/air migration. There is a chance the mulch piles are larger than what is allowed per local laws. The current plans show jersey barriers as a solution and the commission stated this is not an acceptable solution. **Discussion ensued.** The item was open to members of the public. The comments will be limited to two minutes per person. Tony Capachietti (Hayes Engineering) and Attorney Jason Panos asked that their letter submitted the previous day be accepted by the board. The board did not have a chance to read it given the late submittal date but did accept it this evening.

**Motion** to accept the letter from Hayes Engineering and Jason Panos as made by Mr. Rizzo. Seconded by Mr. Athas. The motion passed 5-2 with Ms. Green and Mr. Wojcik voting NO.

**Motion** to continue as made by Mr. Wojcik. Seconded by Mr. Athas. Adopted unanimously 7-0.

**11. A continued Public Hearing on a Notice of Intent submitted by Sean O'Neill (applicant). The owner of record is OHC Walnut Place LLC. The proposed work is the construction of a duplex condominium within Bordering Land Subject to Flooding. The property is known as 10 Munroe Street, Map 85, Lot 2H, Peabody MA.**

**Motion** to continue as made by Mr. Rizzo. Seconded by Mr. Athas. Adopted unanimously 7-0.

**12. A continued Public Hearing on a Notice of Intent submitted by Sean O'Neill (applicant). The owner of record is OHC Walnut Place LLC. The proposed work is the construction of a duplex condominium within Bordering Land Subject to Flooding. The property is known as 12 Munroe Street, Map 85, Lot 2L, Peabody MA.**

**Motion** to continue as made by Mr. Rizzo. Seconded by Mr. Athas. Adopted unanimously 7-0.

**13. A continued Public Hearing on a Notice of Intent submitted by William Manuell (Wetlands & Land Management, Inc.) for Regency Realty Trust-Alfred Dimambro (Trustee). The proposed project is the construction of two buildings and site improvements paving, utilities etc. in riverfront to the North River. The property is known as 11-13 Wallis Street, Map 85, Lot 41A, Peabody MA. ITEM CONTINUED UNTIL JUNE 15 AT PREVIOUS HEARING. MOTION NOT NEEDED.**

#### **ENFORCEMENT ORDER/VIOLATION ORDERS**

**14. 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:** 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), Kevin McIntire, Peter Fischl (Salem Country Club)

**Summary:** There was a discussion about an arborist being part of the team for the proposed peer review.

**Motion** to approve and hire DeRosa Environmental Consulting, Inc. as made by Mr. Rizzo. Seconded by Mr. Athas. The motion passed 6-1 with Mr. Wojcik not voting because he did not hear the conversation in its entirety.

**Discussion ensued.** The chairman read aloud a chronological timeline of events. Mayer Tree was not present. Ms. Green stated the commission needs to issue an EO to Mayer Tree. She also would like to see the tree removal contract and any other invoices to find out what happened to the lumber. Attorney Fogel stated they will not provide the documents requested stating it was not germane. The commission members did not agree. Mr. Fogel stated that Mayer Tree was not responsible for the compliance with the ConComm. They take responsibility for the illegal actions. He continued to state that it is not germane if the tree company sold the lumber.

MS GREEN: I think it is relevant if there was profit that was made from a violation.

**Summary:** Attorney Fogel stated it was still not germane to the issue. The ConComm wanted to know why the tree company was working inside the actual wetlands. The attorney stated work was done in the winter.

ATTNY FOGEL: Peter Fischl said during the first public hearing on this matter several months ago that Salem Country Club is taking full responsibility for any violation of your ordinance.

MR RIZZO: I want to make a point that the restoration plan, whatever it might be, will include the replacement of trees, understory with native species and promote natural (inaudible). I want to make that very clear.

ATTY FOGEL: That is actually an issue for the club that we need to address.

MR RIZZO: If it is not what I just said it is definitely an issue to me.

**Discussion ensued.** Attorney Fogel shared a Restoration Plan Concept with the commission. It is unclear if a wetland scientist prepared said outline. **Discussion ensued.** The attorney went on to say that the club felt work was normal maintenance even though trees were removed in the actual wetlands. The commission was not happy with the presentation and a dispute occurred between members of the commission and the club's attorney. Commissioners believe that the contract with the tree company is germane, and they would like to see it. Vice Chairman Rizzo reminded the commission that any buffer zone activity does fall under the ConComm, and permission needs to be granted. He compared a single-family property with grassy yard that is buffer zone. They still need to get permission from the commission if they wish to remove trees, install a pool or alter the buffer in any way. Mr. Wojcik reminded everyone at the meeting that this is not the first violation or Enforcement Order on the property. The Club is a chronic violator. They have conducted illegal work in the past and ask for forgiveness. The commission has never fined the club and has always worked amicably with them. They allowed an after the fact filing during the Senior Open. The attorney for the club continued to state that the club was unaware that the work was illegal. Mr. Wojcik felt it was important that the commission see the contract to understand what happened in January. The commission asked who orchestrated what trees were removed on site. Mr. Rocco and the landscape architect told the tree company which trees to remove. There was confusion as to why they were not aware of the wetlands and buffer zone locations. The agent reminded the board that the club has a feasibility study which shows all the resource areas and associated buffers. She also stated the city has a GIS map that is very easy for layman to use and determine approximate wetland locations via desktop analysis. Ms. DelNegro recommended issuing an EO to Mayer Tree. She explained that various tree companies call her daily to remove a few trees on properties. It is a normal occurrence for tree companies to inquire with local agents about tree removal policy. If Mayer Tree called the agent, the illegal work would have never occurred. **Discussion ensued** further about what happened to the wood and the relevance of the contract and invoices. The commission wants to know if the tree company made a profit from the wood that was removed illegally from the property.

**Motion** to issue Enforcement Order to Mayer Tree as made by Mr. Athas. Seconded by Mr. Wojcik. Adopted unanimously 7-0.

**Action items** for the EO are **1-** Invoices/contract (redacted as necessary for privacy) and any relevant paperwork to show the process of tree removal, **2-** Attend June 15 hearing.

**Discussion ensued.** The club made false statements at a site visit. They stated they did not redesign the club at all. This was proven inaccurate as a newspaper article ran stating the entire club was redesigned with drainage structures etc. The article ran in the Salem Evening News in January 2022 and was cited in the EO. The attorney continued to give a presentation about the restoration plan outline. Mr. Rocco stated no trees were removed along the bank of the pond only shrubs. The commission wanted to know why the plan did not show the trees being replaced at the locations they were removed. Attorney Fogel stated it is counterproductive to their intentions for the club future. The trees were removed to create air and light flow for the golf course.

MR. ATHAS: Right now, you are saying you should be rewarded for bad behavior.

**Discussion ensued.** The restoration concept continued. Some commission members did not think the club should decide where and how many trees are replaced. They felt it was strange that the attorney was presenting the wetland restoration plan with two wetland scientists present. Ms. Green questioned if a professional drafted the outline. The chairman stated the commission's consultant will review any restoration plan once they are hired. The commission did feel that the vegetation should be replaced near or in the exact location that it was removed. Attorney Fogel stated he did not draft the plan. The club proposed the outline being presented in concert with their consultants. The commission would like the trees in the BVW to be replaced in the BVW.

**Discussion ensued** regarding clean up of tree debris and hydro-seeding on site.

ATTY FOGEL: Here comes a very important point that is clearly not going to make the commission happy. This is the Salem Country's Club perspective on it. At present they are not proposing to replant trees for the trees that were cut in the buffer zone. The objective for removing those trees and trees outside the buffer was to reduce the trees in areas of the course near certain tees, greens, and fairways in order to improve circulation of air and sunlight in those areas. That was intended to promote better natural growth and reduce the need for supplemental treatment of those areas with fertilizer and pesticides. The concept of replanting a large number of trees on the course in those same locations would be in direct conflict with the goals of the project. I think it was member Athas that asked the question, "was this to redesign the course?" this was not to redesign the course. It was to open up areas of the course that had grown in where trees were creating difficulty for air circulation and sunlight and causing problems with the course itself. There just isn't the capacity for basically the course to reverse the proposal of work.

**Discussion ensued.** Attorney Fogel opined that the ConComm probably would have approved the work had they filed an NOI or RDA. The chairman rebutted that perhaps they would have allowed trimming and vista pruning. It was not productive to simulate how the commission would have voted on a permit application since one does not exist. The commission did not agree about the location of the proposed restoration as presented.

MR WOJCIK: It does not appear to me as though the Commission is in opposition to the country club's goals. It appears that the country club's goals are in opposition to our local ordinance.

**Discussion ensued** about the no disturb zones in the local ordinance. Attorney Fogel continued to opine about the possible outcome of a hearing had they filed properly with the commission to remove said trees and bank work. The club will not replace trees along the green as it is contrary to what they achieved by their project that was undertaken illegally without approval by DEP/ConComm.

MR. ATHAS: It seems that the restoration plan that the golf course is presenting isn't really a restoration plan. Their definition of restoration is to clean up their mess. I don't think cleaning up stumps they cut is a restoration plan.

**Discussion ensued** about the replacement of trees and their proposed locations. Commission members started to get frustrated with the presentation. The vice chairman reminded them that they violated 310CMR10 and Chapter 32. The presumption is that all the trees in the buffer are valuable, and the course does not get to make the judgement on their own. Attorney Fogel continued to opine about an RDA application and that he believes an approval would have been granted. They reminded him the club is currently under an enforcement order and they are not an applicant. Vice Chairman stated he may have tried to have the trees trimmed or pruned as well and not necessarily allow all the trees to be removed as suggested by Attorney Fogel. The commission should have been part of that decision. The agent chimed in to remind the

commission that this is the third Enforcement Order issued since 2006. In the past they have done illegal work and asked for permission. The commission has been reasonable during all these enforcement issues. It is typical for them to conduct illegal work and ask for forgiveness. The club should not be orchestrating what the commission will approve and allow as a restoration. It should be up to the commission and their peer review consultant. **Discussion ensued** regarding the drainage in the bunkers. The agent asked for more information on the bunker work and the drainage system. There was no response about the drainage and where the systems flow. The discussion went back to tree replacement and the club will not agree to plant large numbers of tree along the course. They prefer to contribute money to a fund or plant trees on another property they own. They will not agree to plant large number of trees on the course. Mr. Fischl stated he was terribly sorry for the mistake the club made.

MR WOJCIK: I think when one of the largest landowners in the city of Peabody is a repeat violator that sets a terrible precedent. To be frank it makes a mockery of this commission. I think that if the country club didn't want to replant trees in the buffer zone, they shouldn't have cut down trees in the buffer zone. I think the country club needs to grapple with the fact that they are going to have to restore it. Not mitigate it.

**Discussion ensued.** The Agent asked if the commission wanted to issue an EO to the Landscape Architect. The landscape architect was Eric Iverson Renaissance Golf Design. There was not a motion to issue and EO to the architect. There was a brief discussion about the bunker work. No members of the public wished to speak.

**Motion** to continue to June as made by Mr. Rizzo. Seconded by Mr. Athas. The motion passed 6-1 with Mr. Wojcik abstaining.

In closing the commission asked the club and people in the audience to treat city employees with respect going forward when they are emailing or calling about the EO. The agent has received numerous bizarre and aggressive emails and phone calls over the last few weeks. All emails have been documented.

**15. A continued Enforcement Order issued to Pedro Polini for work located at 60 Warren Street Extension. The property owner has done various projects in riverfront without a permit from the commission. The most egregious issue is the failing retaining wall, and the stormwater drainage pipes into Proctor Brook.**

**Discussion ensued.** The agent will work on this with PMLP, the city solicitor and DPS.

#### **OTHER ITEMS**

- **MINUTES- NONE**
- **Adjournment**

**Motion** to adjourn as made by Mr. Wojcik. Seconded by Mr. Rizzo. Adopted unanimously 7-0. The meeting adjourned at 10:52 PM

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

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**Chairman Stewart Lazares**