



## City of Peabody Conservation Commission

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

### MINUTES

**JUNE 15, 2022**

**YouTube link:** <https://www.youtube.com/watch?v=Mh9hmcR7yvY>

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 (left at 11:12 PM)  
Arthur Athas  
Amanda Green  
Bruce Comak  
Travis Wojcik  
Alt. Ritamarie Cavicchio (left at 9:30 PM)

### 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); Councillor Julie Daigle (Ward 4); Councillor Ann Manning-Martin (At Large); Beverly Griffin-Dunne School Committee Member

CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:05 PM

### TREES

- **67 Winona Street**- 5 trees. Property owner will replant using the list supplied by ConComm.
- **40 Gardner Street**- 1 tree
- **20 Chestnut Street**- 2 trees. Property owner will replant using the list supplied by ConComm.

Due to the length of the night's agenda the commission allowed the agent to review and approve the above tree removal requests without a discussion at a public hearing. All trees were deemed dangerous by the agent and the tree specialists. All trees have been removed by various tree companies that requested the appropriate permission beforehand. The Chairman thanked them for asking for permission before work commenced.

### Discussion item:

● **Revised Local Permit Fees**- The local permit fees have not been updated since 2003. The commission asked the agent to draft proposed fees more up to date with surrounding communities. The fees discussed will go into effect July 1, 2022. They can be found on the city's website.

**Motion** to approve as made by Mr. Athas. Seconded by Mr. Vivaldi. The motion passed 6-1 with Ms. Green voting no. She felt the fees were still too low.

Alternate Member RitaMarie was allowed voting rights for this item in the absence of Cmmr. Comak.

### ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

**1. A Public Hearing on an Abbreviated Notice of Resource Area Delineation submitted by LEC Environmental Consultants, Inc. (Richard Kirby) for Osborne Hills Realty Trust (Paul DiBiase-Trustee). 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 property known as 0 Sherwood Avenue, 7 Home Street and 47 Home Street, Map 110, Lot 2x; Map 104, Lot 1; Map 111, Lot 1, Peabody MA.**

**Summary:** Staff was unable to review the wetland flags in time for the hearing due to unforeseen issues.

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

Alternate Member RitaMarie was allowed voting rights for this item in the absence of Cmmr. Comak.

### NOTICES OF INTENT

**2. A Public Hearing on a Notice of Intent submitted by Hayes Engineering, Inc. (Anthony Capachietti) for Mills 58 II, LLC (Edward Greeley). The proposed work is paving over an existing gravel parking area with the installation of stormwater management and subsurface drainage. The property is known as 58R Pulaski Street, Map 53, Lot 87, Peabody MA.**

**Present:** Tony Capachietti (Hayes Engineering, Inc.)

**Summary:** The applicant has been in front of the commission for this project since October 2021. The project changed and the commission asked the applicant to file an NOI. The plans need to be revised slightly but the commission did not want to hold the project up any longer. They felt they could vote contingent on the minor plan changes.

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

**Motion** to issue a Standard Order of Conditions 1-50 adding the following special conditions: **51)** Erosion controls shall be inspected by ConComm staff before work can commence as stated in condition #27B (haybales are not allowed); **52)** All work to be done per the CPPPP as stated above; **53)** O&M Plan and LTPPP are in perpetuity. Maintenance reports shall be submitted annually on 10.31 via email to the commission once the treatment is online; **54)** Signs and fence shall be installed around the basin and along the pathway. The signs shall read similar wording "Environmentally Sensitive Area-No Snow Storage-No Dumping". The signs shall be made of reflective material and at least 12"x18" big. They shall be installed every 25 feet along the abutting pavement; **55)** The illicit discharge statement shall be provided to DPS/Engineering prior to the drainage system coming online; **56)** The applicant's Licensed Site Professional (LSP) shall sign off on the proposed stormwater design; **57)** A signed illicit discharge statement shall be provided to DPS/Engineering prior to the drainage system coming online to be held until a revised plan is submitted and approved as discussed and made by Mr. Wojcik. Seconded by Mr. Vivaldi. Adopted unanimously 7-0.

**Revised plan** to show fence location/type, spacing of signs and sign detail.

**3. A continued 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 (Sr. Planner)

**Summary:** DPS has provided a memo to the commission. The plans have been revised to reflect Mr. Paultiz's comments. The applicant gave a brief update of the project and proposed changes. Revised plans can be reviewed by emailing city staff. The maintenance budget and glyphosate use were discussed. There were no members of the public that wished to speak.

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

**Motion** to issue standard Order of Conditions 1-50 adding special conditions: **51)** At the time of filing for a Certificate of Compliance an estimated annual maintenance budget should be submitted to the ConComm; **52)** O&M Plan in perpetuity. Maintenance Reports shall be submitted annually via email once the system is online; **53)** Glyphosate use should be limited as much as possible (spraying technique-shall not be done on windy days and only when absolutely necessary). The preferred use of glyphosate is stem injection. Stem injection shall be used as much as possible; **54)** The construction plans shall include the following: **a)** an outlet control structure (OS-02) detail for the wet swale (P-1), **b)** Spot grades indicating the wet swale (P-1) will overflow at the designated low point, **c)** Rain garden's (P-6) 4 inch outlet pipe being extended downslope of contour 69; **55)** Test pits shall be provided during the early phases of construction to confirm there is 24-inches of separation between the bottom of the stormwater systems and the estimated seasonal high groundwater table for the following systems: URC-1 (P-4), URC (P-

2), bioretention basin (P-3) and the central raingarden (P-6). The soil testing shall be conducted by a Massachusetts licensed soil evaluator AND witnessed by the Public Services Department; **56)** A bed bottom inspection of the stormwater system shall be conducted by a licensed soil evaluator and this DPS for the following systems: URC (P-4), URC-2 (P-2), bioretention basin (P-3), central raingarden (P-5) and the Perkins Street raingarden (P-6) as made by Mr. Rizzo. Seconded by Mr. Wojcik. Adopted unanimously 7-0.

**4. 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:** Devon Morse (Hancock Associates)

**Summary:** The applicant asked for a continuance. Work was done on site last week without informing the city or the commission. There was a stir in the neighborhood regarding digging near the wetlands. Members of the public wished to speak. Attorney Sam Vitali from Lynn was present and wanted his consultant's comments to go on record. His consultant Wayne Lozzi spoke.

**Richard DiFillipo, 41 Washington Street**

MR DIFILLIPO: I have lived here for about ten years. Next to the historical wetlands and in the summer, I have seen various animals. Including hearing frogs and peepers at night coming from the area of the wetland. Whenever it rained during summers or springs, heavy rains, water would overtop onto the parking lot at 40 Oak Street. It would recede in a few days. I believe there is an outlet somewhere in the wetland I think it drains into a brook or something into the Washington Street area. That is what I have been told. It is wetlands and for them to be making decisions like this it is frustrating.

MR LOZZI: I want to touch on MASSDEP's comments. They are very concerning to me as I am sure they are also with some of you on the commission. The emphasis I want to make one of his items it is not clear how the proposed project meets the definition of compensatory flood storage with unrestricted hydraulic connection. What that basically says is that he is not demonstrating (the engineer) and I know the commission is not all engineers. I am not an engineer. I worked for MASSDEP for thirty years in the wetlands program. I do not represent DEP in any way. As commission members I know you know it is your responsibility to ensure there will not be an adverse impact on the resource area. This is all within flood plain. I am somewhat astonished that they have not submitted this yet. Even a lay person can understand that they need to demonstrate that it meets that performance standard under 310CMR10.57(4). The performance standards require that they demonstrate at each incremental level of elevation that they are filling in; they have to show on the plan (inaudible) at each elevation. The building that they are proposing to remove and how much they have there at each foot. There are no exemptions. When they refer to below elevation, I forget the numbers. There is no waiver. Anything that they fill in should be counted as filling. Compensatory flood storage must be provided. They have not shown this yet. I am amazed at this continuance. If they come back in July and they don't show it. I think it would behoof this commission to ask for that. Say demonstrate what you are filling in. Show us. For example, the elevator, the handicapped walkway and the dumpster. That dumpster is not going to be removed every rainstorm. They have to provide compensatory flood storage for all of these permanent changes. Frankly they have not demonstrated it.

**Discussion ensued.** Mr. Lozzi does not believe they meet the performance standards presently. If they do not meet them the ConComm can deny the project. Just stating they are removing the building does not mean they are meeting the performance standards. They should show it in a cut

and fill summary click chart. The commission mentioned this in past hearings. To date no revised paperwork has been submitted for review. The MASSDEP comments state it is uncertain if the project meets the standards for flood plain. Vice Chairman Rizzo stated he echoed the comments of the Mr. Lozzi and would like further documentation for the flood plain.

MR RIZZO: I echo the information that this gentleman just brought up. It has been discussed many times through past hearings. This project in my opinion is severe over build of a site that should not have homes or people living there. They do need to demonstrate that. I would also like to see at the next meeting an explanation about that pipe. That has been a question for so long. I understand that the pipe does exist.

**Discussion ensued** about the pipe and if there is a hydraulic connection.

MR ATHAS: If the DEP has these issues and the applicant hasn't addressed the issues why should we have a meeting in July when we are probably going to come back and say you haven't addressed the issues that the DEP has brought up? If we are going to continue this, I would like to make it more open ended. Make it contingent on the applicant having satisfied the comments from MASSDEP.

**Discussion ensued.** The commission asked for paperwork confirming the performance standards have been met. Further **discussion ensued** regarding the pipe and water flow. Ms. Morse said she would relay the comments to her team.

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

**5. A Public Hearing on a Notice of Intent submitted by Wetlands & Land Management, Inc. (William Manuell) for 91 Lynnfield Street Peabody, LLC (Charles Holden-Owner). The proposed work is the demolition of an existing propane filling shed and the construction of a new garage building. The property is known as 99 Lynnfield Street, Map 101, Lot 24, Peabody MA.**

**Present:** William Manuell (Wetlands & Land Management, Inc.) and Charles Holden (owner/applicant)

**Summary:** The project is being filed under the local ordinance only. It is redevelopment of a commercial property. **Discussion ensued.** There were no comments from the public.

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

**Motion** to issue standard Orders of Conditions adding the following special conditions: **51)** As Built plan is needed for a partial or full certificate of compliance request. Reminding the applicant about condition #25 of this OOC "Prior to requesting an Occupancy Permit from the Building Inspector, the applicant shall obtain a Partial or Final Certificate of Compliance from this Order"; **52)** O&M Plan is in perpetuity. **DPS COMMENTS:** **53)** New Water and sewer lines should be run from the new building to the city water and sewer mains in Lynnfield St; **54)** The water and sewer lines that will be installed (outside plumbing department purview) must be inspected by a representative of this department before the trench is closed; **55)** The applicant's water line shall be chlorinated, and pressure tested. All testing shall be submitted to and approved by this department prior to activating new section; **56)** The new sewer lateral will be tested and confirmed to hold tight by the applicant's contractor after installation. Testing will be approved by this department prior to activating; **57)** The applicant needs to determine its water usage from the new building and therefore its sewer loading. The applicant will be required to remove 200% of the additional flows through either inflow/infiltration (I/I) project assigned by the city or through

monetary payment into the I/I removal fund; **58**) The applicant shall supply a full set of As Built Plans to the engineering department upon completion of the improvements and before the application for Certification of Completion as made by Mr. Rizzo Seconded by Mr. Athas. Adopted unanimously 7-0.

**6. A Public Hearing on a Notice of Intent submitted by Hancock Associates. The property owner is John Babiarz and the applicant is Pioneer Charter School of Science II. The proposed work is the redevelopment of the site into an elementary and middle school. The property is known as 67 Pulaski Street and 0 Margin St, Map 42, Lots 1&2, Peabody MA.**

**Present:** Deb Colbert (Hancock Associates-engineer) and Devon Morse (Hancock Associates)

**Summary:** The applicant also filed a NOI in Danvers. The consultant went over the wetland areas and the proposed plan layout. The stormwater will eventually discharge into Waters River. It is a redevelopment project in Danvers and Peabody. **Discussion ensued.** They plan to have under five hundred students. It will be K-eighth grade. It will not include a high school.

**Discussion ensued** regarding the pavers (if they will be just pavers or actual permeable pavers). The project will go out to peer review to ensure stormwater compliance. There will be a joint **site visit** with Danvers and Peabody ConComm on **Wednesday June 22 at 5 pm.**

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

Items 7 & 8 were discussed together.

**7. 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.**

**Present:** Thor Akerley (W&S) and Attorney John Keilty (legal counsel)

**Summary:** Mr. Akerley gave a quick overview as the item has been continued for a few months pending compensatory storage documentation. The engineer of record has since submitted a cut and fill tick summary confirming both projects meet the performance standards per 310CMR10.57. Mr. Akerley went over how the project is meeting the performance standards for BLSF and riverfront. The project is under 4 units and does not require stormwater compliance. Street trees are proposed and most of the pavement currently on site will be grassy lawn area. The proposed fill in BLSF would be the I-beams and the stairs. Mr. Akerley went over the cut and fill chart and explained the engineer's math showing the project meets the performance standards for 310CMR10.57. Attorney Keilty drafted a preamble that will tie the two separate orders together for flood storage. **Discussion ensued** about trees and shrubs being planted. This segued into the fact that the site was historically contaminated. Fruit trees and gardens should not be allowed on site. The attorney stated that there is an AUL on the property, but residences are allowed. According to the attorney the RTNs have been closed and the property is in compliance with MCP. The AUL will be recorded, and new owners will be aware of property restraints. The item was open to members of the public. Hollie Gillette an abutter located at the Walnut Street Condominiums is very supportive of this project. The neighborhood welcomes the development.

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

**Motion** to issue Standard Order of Conditions 1-50 adding the following preamble and special conditions: **PREAMBLE:** The project proposal is the construction of a residential duplex condominium structure on the lots known as 10 Munroe Street (DEP File No. 55-902) and at 12

Munroe Street (DEP File No. 55-906) for a total of four (4) units (2 duplex buildings). Each of the DEP files mentioned above are separate but the compensatory flood storage is dependent on the two parcels being constructed simultaneously. To reiterate the projects are separate yet dependent on each other for compensatory flood storage. An easement will be created and recorded specifically for #12 Munroe requires an easement over #10 Munroe to allow drainage from #12 MUNROE to be collected on #10 Munroe St. and similarly #10 Munroe St. Requires an easement over #12 to allow future owners of #10 Munroe to have access and maintain and repairs rights on and over #12 Munroe St. Both properties are subject to the AUL and easement to be recorded at the South Essex Registry of Deeds and conditions: **51)** As Built Plan is needed for Partial or Full Certificate of Compliance request reminding the applicant that at a minimum a partial CC should be issued by the ConComm BEFORE they request an Occupancy Permit from the building department; **52)** DEP File No. 55-902 and DEP File No. 55-906 as mentioned in the preamble are separate files, but the compensatory flood storage is dependent on the two parcels being constructed simultaneously. The projects are separate yet dependent on each other for compensatory flood storage to be met; **SPECIAL CONDITIONS: Checklist K – Projects Which Alter Bordering Land Subject to Flooding (BLSF)** 1. The compensatory flood storage area shall be constructed prior to any filling of land subject to flooding; DPS/Engineering Conditions: **1)** Water and Sewer Lines should be depicted on the plans and installed as directed to the applicant's engineer. Separation of Water and sewer lines shall be 10 ft; **2)** The Water and Sewer lines that will be installed (outside of the plumbing departments purview) must be inspected by a representative of this department before the trench is closed; **3)** The applicant's water lines shall be chlorinated, and pressure tested. All testing shall be submitted to and approved by this department prior to activating the new section; **4)** The new sewer lines shall be tested for tightness in the presence of this department; **5)** Fencing shall be removed along Munroe and Hardy Street; **6)** A sidewalk shall be installed along Munroe and Hardy Street and if this is constructed on the Applicant's property, an easement shall be obtained by the applicant and conveyed to the city prior to an Occupancy Permit being issued; **7)** The applicant shall supply a full set of as-built drawings to the engineering department of DPS upon completion of the improvements and before application of Certificate of Completion as made by Mr. Wojcik. Seconded by Mr. Rizzo. Adopted unanimously 7-0.

Items 7 & 8 were discussed together.

**8. 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.**

**Present:** Thor Akerley (W&S) and Attorney John Keilty (legal counsel)

**Summary:** See above.

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

**Motion** to issue Standard Order of Conditions 1-50 adding the following preamble and special conditions: **PREAMBLE:** The project proposal is the construction of a residential duplex condominium structure on the lots known as 10 Munroe Street (DEP File No. 55-902) and at 12 Munroe Street (DEP File No. 55-906) for a total of four (4) units (2 duplex buildings). Each of the DEP files mentioned above are separate but the compensatory flood storage is dependent on the two parcels being constructed simultaneously. To reiterate the projects are separate yet dependent on each other for compensatory flood storage. An easement will be created and recorded specifically for #12 Munroe requires an easement over #10 Munroe to allow drainage from #12 MUNROE to be collected on #10 Munroe St. and similarly #10 Munroe St. Requires an easement over #12 to allow future owners of #10 Munroe to have access and maintain and

repairs rights on and over #12 Munroe St. Both properties are subject to the AUL and easement to be recorded at the South Essex Registry of Deeds and conditions: **51)** As Built Plan is needed for Partial or Full Certificate of Compliance request reminding the applicant that at a minimum a partial CC should be issued by the ConComm BEFORE they request an Occupancy Permit from the building department; **52)** DEP File No. 55-902 and DEP File No. 55-906 as mentioned in the preamble are separate files, but the compensatory flood storage is dependent on the two parcels being constructed simultaneously. The projects are separate yet dependent on each other for compensatory flood storage to be met; **SPECIAL CONDITIONS: Checklist K – Projects Which Alter Bordering Land Subject to Flooding (BLSF) 1.** The compensatory flood storage area shall be constructed prior to any filling of land subject to flooding; **DPS/Engineering Conditions:** **1)** Water and Sewer Lines should be depicted on the plans and installed as directed to the applicant's engineer. Separation of Water and sewer lines shall be 10 ft; **2)** The Water and Sewer lines that will be installed (outside of the plumbing departments purview) must be inspected by a representative of this department before the trench is closed; **3)** The applicant's water lines shall be chlorinated, and pressure tested. All testing shall be submitted to and approved by this department prior to activating the new section; **4)** The new sewer lines shall be tested for tightness in the presence of this department; **5)** Fencing shall be removed along Munroe and Hardy Street; **6)** A sidewalk shall be installed along Munroe and Hardy Street and if this is constructed on the Applicant's property, an easement shall be obtained by the applicant and conveyed to the city prior to an Occupancy Permit being issued; **7)** The applicant shall supply a full set of as-built drawings to the engineering department of DPS upon completion of the improvements and before application of Certificate of Completion as made by Mr. Wojcik. Seconded by Mr. Rizzo. Adopted unanimously 7-0.

**9. 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.**

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

**10. A Public Hearing on a Notice of Intent submitted by Weston & Sampson Engineers, Inc. (Mel Higgins) for the Salem Country Club (Peter Fischl). The proposed work is a temporary pipe to convey water from an irrigation well into an irrigation pond at the golf course. The property is known as 133 Forest Street, Map 59, Lot 081X, 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), Peter Fischl (Salem Country Club)

**Summary:** Mel Higgins gave a brief overview of the proposed project. **Discussion ensued** about well permits etc. There were no members of the public that wished to speak for or against the project.

**Motion** to close the hearing as made by Mr. Rizzo. Seconded by Mr. Wojcik. The motion passed 6-1 with Ms. Green voting NO.

**Motion** to issue a standard Order of Conditions 1-50 adding the following special conditions: **51)** Conservation staff must be notified in writing (email preferred) once the pipe is installed and about to go online; **52)** The temporary pipe must be removed by October 1, 2022. If it is needed longer, they must contact the commission for permission. Once the pipe is removed the

commission must be notified in writing (email preferred) as made by Mr. Rizzo. Seconded by Mr. Wojcik. The item passed 6-1 with Ms. Green voting NO.

*Brendan Callahan is the Acting Agent on this item*

**11. 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.**

**Present:** Dan Nitzsche (GZA), Nicholas Papanickolas (owner's representative)

**Summary:** The item is going to peer review. Horsley Witten Group will conduct the review for the city and the commission. Recently the fire department has reached out to the owner requiring them to install a fence. The commission would like the plans revised to show the location of the fence. It can be approved under this NOI.

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

#### **REQUESTS FOR DETERMINATIONS OF APPLICABILITY**

*Brendan Callahan is the Acting Agent on this Item*

**12. A Public Hearing on a Request for Determination of Applicability submitted by Baker, Braverman & Barbadoro, PC (Kimberly Kroha, Esquire) for JD Raymond, Inc (abutter). The property owner is The Residences at Farm Avenue, LLC. The proposed work is a 6-story 40B apartment building with 116 residential units and parking on the ground floor. The property is known as 27R Farm Avenue, Map 69, Lots 005A and 12, Peabody MA.**

**Present:** Attorney Kimberly Kroha (legal counsel for abutter at 25 Farm Ave-JD Raymond /applicant), Tony Capachietti (Hayes Engineering), Jason Panos (legal counsel for property owner)

**Summary:** The abutter located at 25 Farm Avenue submitted this RDA on behalf of the owner (The Residences at Farm Ave LLC). The property has received approval from the city to be a 40B housing project. The abutter (JD Raymond) and their attorney believe that the project needs permission from the ConComm before the property can be developed. The ConComm received several last-minute submittals from the owner and the applicant. Given the late submissions the commission felt the item should be continued so everyone has time to digest the new material. They did want a brief overview before the motion was made. A site visit will also be necessary.

ATTY KROHA: I represent JD Raymond Transport which is an abutter to the property for which we filed the RDA. We filed the RDA for the proposed apartment complex that was approved under Chapter 40B. The 40B decision did waive all local wetlands regulations and by-laws. The RDA is filed under the state's Wetlands Protection Act (WPA). Our primary argument is that the work being proposed requires an application under the WPA. It requires a Notice of Intent. The issue came up during the 40B process. The applicant responded "*we don't need to do anything, we have a prior NOI we are relying on the wetlands delineation that are in there. Now that we have the local wetlands being waived there is no impact or wetlands jurisdiction that we need to worry about.*" There are two problems with that argument. The first one is that the wetland delineation in a NOI, that is a way to set the wetlands, but it is only good for three years. The three years expired about a month before they ever filed their 40B application. At the time they were making that assertion the delineations had expired and could no longer be used as the standard to determine that they did not need to do anything further. The second issue with that position is that the DEP file from that earlier 2017 Order of Conditions (OOC) included a lot of

material. In there was a consulting letter you will see in the package that I submitted on June 6. That 2015 consulting letter describes some of the wetland areas that are on the site as being actual state jurisdictional or likely state jurisdictional. That is a section that is noted as isolated vegetated wetlands (IVW) on their plans. The consultant notes it as BVW in their letter that predates the earlier NOI that was filed. There is another area that is in between my client's property and theirs. The consultant noted to be likely ILSF. Our application which gets a little bit confusing because they are going on at the same time. The NOI that was previously discussed we use the same descriptions that were on the plans for our purposes. They don't change the performance standards as we are bound by the local and the state wetlands jurisdiction. We didn't go back and determine exactly what was what an update those particular things. There is a reference made in some of the materials as to how we agreed with that. The reason that happened is that it really didn't matter. You will see in the Hayes Engineering response submitted a couple days after my letter that the 2015 Pinebrook Consulting letter is discounted as simply being one expert's opinion. Basically, don't worry about that. Well, when you look at the NOI and the plans that they filed in 2016 they take their wetlands delineations from the same consultant who wrote that letter. The same person with Pinebrook Consulting. It is something that needs to be looked at. The Comprehensive Permit waives a lot of local requirements. It does not and cannot waive state law. They should be required to file an NOI with all the wetlands issues that are going on out there. Thank you.

**Discussion ensued.** There was confusion since the RDA was filed by the abutter and not the owner. Mr. Callahan stated it is allowed in the WPA. The item was open to members of the public for discussion.

MR CAPACHIETTI: They do have the right to file an RDA for our property. Brendan has asked for a site walk. We would seek to allow a site walk. We just want to limit the amount of parties from the abutter. Someone from JD Raymond, their engineer, and their attorney. They don't need to bring numbers of people. We would be willing to grant that permission.

**Discussion ensued.**

ATTNY PANOS: The only thing I would add is perhaps tonight we can schedule the site visit with the ConComm? We are available at any time you are.

**Discussion ensued.** A site visit date will be set via email or a doodle poll.

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

*Mr. Comak recused himself and Mr. Vivaldi left during the discussion for item 13.*

**13. A continued 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.**

**Present:** Michael Rostkowski Jr. (North Coast Environmental Inc.)

**Summary:** The consultant gave a presentation for the proposed truck washing area in riverfront. The water from truck washing would be directed via sheet flow to the rear of the property near the railroad bed. The consultant touched on the thought that this was a canal and not a river as defined by the Regs. This is an incorrect statement and has been confirmed in earlier filings as riverfront with riverfront protection. A commissioner reminded the applicant that property is surrounded by Goldthwaite Brook on three sides. He stated he wanted to focus on the activity

and not canal vs brook definition. The application was vague about the truck washing location specifics and instead focused on the definition of a canal. The commission did not agree that Goldthwaite Brook is a canal. Mr. Athas asked why he filed an RDA instead of an NOI. Mr. Rostkowski stated he felt it was a minor activity and did not warrant an NOI. It was mentioned again that the property is surrounded by the river on three sides and any work would most likely trigger an NOI. **Discussion ensued.** The frequency of the truck washing could be four (4) trucks once a week for each truck. The property owner filed this application in response to a Violation Order for illegally washing truck beds and dumping the water directly into the brook. The consultant stated he has since stopped. Going forward he will not wash his beds only the windows, panels etc. The commission felt they could not trust him without more information in the application. The application touched more on the river being a canal and didn't give much information about the actual truck washing and stormwater compliance. The trucks carry asphalt, soil and other materials depending on the job (wood and debris etc.). The application did not show any containment except for the location of a grassy area and sheet flow of water. **Discussion ensued** about other enforcement on this site and abutting lots. The court was involved during illegal paving on the abutting site. The commission asked for a diagram of the truck washing facilities. The consultant kept saying that it was clean wash water and the commission disagreed. The commission did not receive enough information about the location and the treatment for the truck washing area. The consultant stated he would do it on grassy area then said it would go on the stone areas. The proposed work area was not confirmed by the current application. The RDA was missing critical information for the commission to vote favorably. Goldthwaite Brook is a brook and not a canal. The local stormwater ordinance does not allow commercial vehicles to be washed in riverfront. An NOI would be needed. **Discussion ensued.** Treatment would be required for this type of activity to continue in riverfront. The proposed work is applicable to the WPA, and an NOI should be filed demonstrating the work meets the performance standards for riverfront and stormwater standards for commercial properties. **Discussion ensued** about the illegal work that took place many years ago in the industrial complex. The Chairman stated he needed a diagram showing the proposed wash station and how the water would be controlled, and contaminants removed before entering the brook. Other commissioners agreed that a diagram and more information was needed before a vote could be made. There were no members of the public that wished to speak this evening. However, an abutter did submit a written statement vehemently against the work being allowed as presently filed under an RDA application. The property owner/applicant has been dishonest to the agent on numerous occasions regarding the work that has been done on the site in the past.

**Motion** to close the public hearing as made by Mr. Wojcik. Seconded by Ms. Green. The motion passed 4-1 with Mr. Rizzo voting NO. (Mr. Vivaldi and Mr. Comak not voting).

**Motion** to issue a Positive Determination stating the work requires an NOI as made by Mr. Wojcik. Seconded by Ms. Green. The motion passed 4-1 with Mr. Rizzo voting NO. (Mr. Vivaldi and Mr. Comak not voting).

#### **CERTIFICATES OF COMPLIANCE**

**14. 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.**

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**Motion** to deny the Certificate request for **55-312** as made by Rizzo. Seconded by Ms. Green. The motion passed 5-1 with Mr. Comak not voting. Mr. Vivaldi was no longer present to vote.

**15. 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 it's appurtenances to accommodate commercial building. The address is known as 13 Corwin Street, Map 92, Lot 6, Peabody MA.**

**Motion** to deny the Certificate request for **55-323** as made by Rizzo. Seconded by Ms. Green. The motion passed 5-1 with Mr. Comak not voting. Mr. Vivaldi was no longer present to vote.

**16. 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.**

Continued until October 2022 hearing at a previous meeting- **NO MOTION NEEDED**

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

**17. 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); Dan Mayer (Mayer Tree)

**Summary:** The commission discussed the status of hiring a peer review and the pending restoration plan. Mr. Higgins asked for guidance on what the commission would accept for a restoration plan (RP).

MR LAZARES: If we make the assumption that all two hundred and thirty-three (233) trees were twelve (12) inch trees we would like to see three (3) trees of four (4) inch diameter to replace them.

**Discussion ensued.** There were large mature trees removed from the property. The commission did not feel that they were being unreasonable with their request. Mr. Athas did not feel tonight was the time to start talking about negotiating what would be allowed under the RP. He felt it would be advantageous to wait for the commission's consultant to be hired and part of that discussion in the future. The commission wanted to hear from Dan Mayer first. Presently he is not in compliance with his EO. He has not submitted the invoices as requested and he was not present at the hearing at the time they requested him to speak. Both were action items made part of the EO. Further RP discussion ensued. The commission stated they want the club to replant 4 x 233 trees on the property in areas where they were removed not on a separate parcel owned by the club. Discussion ensued about the tree calipers. Mr. Fischl said he will submit the plan whenever the commission wants it submitted. No date was decided. The plantings will most likely not take place until Spring/Summer of 2023 or later. Attorney Fogel stated they will work with the arborist and wildlife specialist to come up with a plan. They will start to develop said plan over the next few weeks. Mr. Mayer eventually appeared in the audience and was promoted to a panelist for discussion. He does not think his financial statements should be made public. **Discussion ensued** about what happened to the trees when they were removed from the property. He stated

he did not make any money off them and that there is an expense associated with processing them. He chipped every log he removed on site. The logs were not sold. There was no value for the urban wood. However, Mr. Mayer does own a company in Plaistow NH that processes tree lumber into bark mulch that is sold. **Discussion ensued** about what happened to the tree lumber after they were removed from the property. He would have preferred to give it away instead of trucking it to NH. He was insistent there is no value in the wood chips or logs. The vice chairman did not want to belabor the discussion about the tree products and by-products created. A few commissioners continued on the discussion of the by-product and what happened to the trees after they left the property in Peabody. Mayer Tree chipped the trees in the parking lot at the club and shipped the woodchips to his company in Plaistow NH. They are presently in a pile in NH and eventually the product will be sold. Mayer Tree argued that he has a cost associated with the resale. Vice Chairman Rizzo interrupted the conversation as the question was answered. Mayer Tree will sell the by-product of the removed trees at a location in NH. The discussion went back to the restoration of the site. Ms. Green reminded the commission that the newspaper article talks about the club increasing their course by yardage in certain areas. It is her opinion that this expansion took place because of the tree removal. The discussion ensued regarding Mayer Tree. The commission still wants to see the invoices and work orders. Mr. Mayer stated the project was a lump sum project. He said someone needs to identify the areas of the trees in question and he would create a document.

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

**18. 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.**

**Motion** to continue as made by Mr. Rizzo. Seconded by Mr. Wojcik. Motion passed 5-1 with Mr. Comak and Mr. Vivaldi no longer present.

#### **OTHER ITEMS**

- **MINUTES- NONE**

- **Adjournment**

**Motion** to adjourn as made by Ms. Green. Seconded by Mr. Wojcik. Adopted unanimously 5-1 with Mr. Vivaldi and Mr. Comak no longer present).

The meeting adjourned at 12:10 AM.

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

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**Chairman Stewart Lazares**