



## City of Peabody Conservation Commission

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

### MINUTES

**MAY 8, 2019**  
**DEPARTMENT OF PUBLIC SERVICES**  
**50 FARM AVENUE**

#### **MEMBERS PRESENT**

Chairman Michael Rizzo  
Vice Chairman Bruce Comak  
Secretary Melissa Feld (arrived at 7:15pm)  
Stewart Lazares  
Travis Wojcik  
Michael Vivaldi (alt.)

#### **MEMBERS ABSENT**

Bryan Howcroft  
Craig Welton

**Also Present:**      **Brendan Callahan** Lucia DelNegro, Conservation

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

**PROPOSED NEXT MEETING DATES-** June 12 AND July 24, 2019  
**NO AUGUST MEETING**  
**DPS- 50 Farm Avenue**

**\*\*Please note meeting location has changed- The Commission will meet at the Department of Public Services located at 50 Farm Avenue, Peabody MA until further notice.**

Alternate Commissioner Michael Vivaldi was given voting rights in the absence of two commissioners.

Page 2 – 5.8.2019

Items 1 & 2 were discussed together

**VIOLATION ORDER**

**1. A continued Violation Order issued to Emmanuel Papanickolas for DEP File No. 55-822. The property location is 25 Farm Avenue. The alleged violation is adding fill and an crushed aggregate pad in the location of a proposed stormwater basin as approved by the commission under DEP file no. 55-822.**

Items 1 & 2 were discussed together

**CERTIFICATE OF COMPLIANCE**

**2. A request for a Certificate of Compliance made by Emmanuel Papanickolas on DEP file Numbers 55-822. The project was the construction of an asphalt pad, fencing and stormwater enhancements. The property is known as 25 Farm Avenue, Map 69, Lot 6, Peabody MA.**

**Present:** Crystal Papanickolas

MS PAPANICKOLAS: good evening I am Crystal Papanickolas on behalf of the Papanickolas family. I believe to my understating everything has been filed that was necessary and requested for the approval of a Certificate of Compliance for the JunkHaul lot. I have ben working in conjunction with MR. Mello, Mr. Karamas and Mr. Callahn for anything that needed to be addressed or tweaked. I have done so to the best of my ability. Any issued that Brendan has brought to my attention I think we addressed them. My attorney is not going to be able to be here tonight. He threw his back out so he asks that we respectfully keep it to the agenda items. I didn't know if Mr. Weiss and them were showing up. He said the parking lot (item 3 on agenda) because we don't have a prospective tenant we know that the commission wanted to hear Mr. Raymond's input for that lot. he said it would probably be more beneficial to move it to next month when Mr. Raymond and his party can be here for that part.

MR CALLAHAN: I made it to the site on Monday. There is definitely a discrepancy between the As Built and The Order of Conditions. I did meet John Karamas out on the site back in the winter when they started the work. the only changes we discussed at the time was the outfall at the sediment forebay. There is a large boulder at the back of the lot. He asked if he could tweak the location of the basin and the outfall, so he didn't have to move the boulder. I said that was fine. That was really the only change that we talked about. I went out there on Monday. The basin was not designed the way the spec is shown on the plan. I called Mello. He said he can't vouch for how it was constructed. He ultimately did say that it will function. That was his response to what was built and what was approved in the Order of conditions (OoC). Again, it is not built to the spec but there is a basin there. There is a sediment forebay. There is an overflow.

MR COMAK: Is it the same size?

**Discussion ensued.** The letter that Eastern Land Survey submitted to the commission states he basin was constructed smaller than shown on the approved plans. The commission stated they would not vote on a Certificate of Compliance request at this time due to the discrepancies of what was built and what was approved by the commission.

MR RIZZO: Part of the problem is that we have an As Built Plan with information accompanying the plan by via the letter. It clearly states that it is a different size, different elevation, the pipe sizes are different. I can't even compare what we have here to the design plan. Chris Mello

should have been here tonight with the original plan showing the differences between the two. Then we could make a conscience effort. This isn't my job. He should have been here to show this to us. To explain, first of all how it is different. This is quite a bit different than the original plan. There are no engineering calculations that show that the detention basin is going to function as the original design. This one looks like it is about a foot and a half higher than this here. It is not my job to be doing this.

**Discussion ensued** regarding denying the request for a Certificate of Compliance (CC). The detention basin that was built is at a different elevation and size than what the commission originally approved. Since the engineer was not present and no calculations were submitted to show that the basin meets the standards, the commission would not vote on the CC request. The commission needs someone to attend the next meeting to explain why the project was constructed this way. They also need someone to explain that they will function the same way with calculations to support that finding. Mr. Callahan only received a verbal response from Chris Mello quoting "it will function." The commission does not feel that the project is complete. Ms. Papanickolas stated the grading was complete. Chairman Rizzo did not agree and stated it was only rough graded. The are still needs to be loamed and seeded before a CC can be issued. The commission stated perhaps a partial CC could be issued but not at this meeting.

MR RIZZO: The project is not quite complete yet. No one is here to explain why it is different. No one is here to assure of the calculations and that it functions the way it is supposed to. And why the grades are higher? At one of the previous meetings a few months ago. I saw that the overflow structure had ben installed late last fall. It looked high to me. I brought that up at a meeting. If you look at the minutes from a few months ago I said I just hope I don't come back when this is done, and this thing is way up in the air compared to what the plans have shown. I didn't expect there to be any more filling or increase in elevation on this site. If that is the case then we need to have a good reason why it. That way we can either support it or not support it.

**Discussion ensued.**

MR RIZZO: One of the problems is that we don't seem to have the right people here every month to explain the project to us. Your engineer should be here and the design team. You need to convince us that everything is right. It seems like you are always here by yourself and we don't have the right people here. It is not our job to design it.

MS PAPANICKOLAS: I have done my best. My mother fell and cracked her head open six weeks ago. I have been in and out of Mass General. I have had my hands full and I have tried to do the best I can. I have been talking to Brendan, Karamas and Mello. I trusted that the contractor and the engineer were doing what they are supposed to do. I don't read these types of maps. It is not my wheelhouse. I am doing the best I can.

**Discussion ensued.** The commission requested the design team to appear at the next meeting to explain why the work was different from the approved engineered plan.

MR CALLAHAN: I think Karamas needs to explain why it is different. When I asked Mello why it was different he said, "you need to talk to Karamas".

MR COMAK: I think Karamas and Mello need to be here. The contractor can't just change things and say, "yeah that will work." it was an engineered plan.

**Discussion ensued.** The commission asked for revised calculations to prove that the system As Built will function properly. A revised As Built Plan must have an engineer's stamp. The commission also wants to have a site visit in the future before CC approval. The commission

briefly discussed fining the property owner since the Violation Order has been dragged on for a year with no completion in sight. However, the commission did not wish to make any motions for fines this evening.

MR RIZZO: In our previous meetings it was very clear in the minutes that we had asked for a rebuttal from the petitioner's attorney to rebut the letters submitted. That has not happened either.

MR COMAK: When is JD Raymond coming?

MR RIZZO: He is not going to come.

**Discussion ensued.** Mr. Callahan stated he would explain why JD Raymond will not appear at any future meetings when item #3 is discussed. **Discussion ensued** regarding the engineer and attorney not being in attendance. The chairman stated they would continue the item for one more month. There were no comments from the public.

Motion to continue made by Ms. Feld. Seconded by Mr. Lazares. Adopted unanimously.

### **NOTICE OF INTENT**

**3. A continued Public Hearing on a Notice of Intent submitted by Emmanuel Papanickolas. This is an "after the fact" filing. The property owner is requesting the commission to allow existing filled pad to remain in buffer zone. No stormwater components are proposed at this time. The property is known as 25 Farm Avenue, Map 69, Lot 6, Peabody MA. (DEP File No. 55-860)**

**Present:** Crystal Papanickolas

MR CALLAHAN: They submitted revised plans for the site, new stormwater calcs and new stormwater BMPs. I think for the most part you could approve the plan. They submitted it about a month ago. You should have it. We haven't really talked about it because we have been hung up on the Certificate of Compliance. Crystal and Attorney Harding know, and they are still working on getting us the "use" of the site plan. They are in the process of developing that. With regards to JD Raymond, they are not coming before the commission tonight. They intend to have a plan ready to submit to City Council for a Special Permit for the JD Raymond operations. I am not sure how that process is going to go. If the council will issue them a Special Permit and then bounce them here for an Order of Conditions.

**Discussion ensued.**

MR CALLAHAN: Jack Keilty's email stated they (JD Raymond) would go to the council first. They have Ann Marton as the wetland scientist. His attorney is Jack Keilty. They hired an engineering firm GZA. They are in the process of completing the site survey. I guess they did a flyover. They are now doing the ground survey. They have met with Jason Panos and Michael Weiss. The email stated they are working to address any of the negative impacts that have occurred on Weiss's property. I think JD Raymond still questions some of those impacts, but the letter stated they are working to address all those issues. JD Raymond is still trying to get their ducks in a row. It sounds like they will be ready in June for the council. That does not necessarily mean they will be here. They do intend to submit a permit for city council.

**Discussion ensued.** The mulch has been migrating onto Weiss's property. JD Raymond has installed erosion controls in the hope that this will stop any mulch from reaching property lines and Mr. Weiss's property. Chairman Rizzo reminded Ms. Papanickolas that 25 Farm Avenue is

technically one piece of property with numerous uses. Ms. Papanickolas stated that her family actually own numerous lots on Farm Avenue. **Discussion ensued.** The commission ask that their attorney clarify how many parcels they own and what use is on each piece.

MR LAZARES: Through the chair, we had asked for a plan of a general layout. Not a full survey just a general layout of locations and uses of various portions of the property. Can I request in line with that the general plan show the entire property of 25 Farm Avenue; with some sort of indicator of what the segments are, the parcel numbers and what businesses are currently operating.

MR CALLAHAN: I think that is what they are working on. That is exactly what they are working on. They have not provided anything yet.

**Discussion ensued.**

MS PAPANICKOLAS: We are currently in the process of putting together a map that has the current tenants. I will have to talk to my attorney. I will tell him what you are looking for. I will leave that in his hands.

MR RIZZO: It would be a big help if we had that at the next meeting.

MR LAZARES: I am not necessarily looking for accuracy. I am looking for information. Just give me the general layout. The real concern for the commission is what is going on at the property and how could it effect the wetlands?

**Discussion ensued.** There were no members of the public that wished to speak.

Motion to continue as made by Mr. Wojcik. Seconded by Ms. Feld. Adopted unanimously.

### **EXTENSION REQUESTS**

*Commissioner Melissa Feld recused herself from discussion and voting on items 4&5*

**4. A Request for an Extension Permit on DEP File No. 55-785. The request is being made by Brendan Callahan for the City of Peabody. The project is the demolition of a commercial building located at 70 Endicott Street (map 74, Lot 65). The Order expires on 6/25/2019. The applicant is asking for a one-year extension.**

Motion to extend **DEP File No. 55- 785** until 6/25/2020 as made by Mr. Lazares. Seconded by Mr. Wojcik. Adopted unanimously. (5-0 with Ms. Feld recusing herself.)

*Commissioner Melissa Feld recused herself from discussion and voting on items 4&5*

**5. A Request for an Extension Permit on DEP File No. 55-795. The request is being made by Brendan Callahan for the city of Peabody. The proposed work is the construction of an 8-unit townhouse development. The property is known as 70 Endicot Street, Map 74, Lot 65. The Order expires on 9/18/2019. The applicant is asking for a one-year extension.**

Motion to extend **DEP File No. 55-795** until 9/18/2020 as made by Mr. Lazares. Seconded by Mr. Wojcik. Adopted unanimously. (5-0 with Ms. Feld recusing herself.)

**6. A Request for an Extension Permit on DEP File No. 55-793. The request is being made by Attorney Mihos on behalf of 160 Main Street Peabody Realty LLC (Nikolay Polinovskiy. The proposed work consists of the redevelopment of a previously degraded site for commercial and residential use. The property is known as 166 Main Street, Map 86, Lot 150B. The Order expires on 4/15/2019. The applicant is asking for a one-year extension.**

Motion to extend **DEP File No. 55-793** until 4/15/2020 as made by Mr. Lazares. Seconded by Mr. Wojcik. Adopted unanimously.

**7. A Request for an Extension Permit on DEP File No. 55-801. The request is being made by Attorney Keilty on behalf of AGA Foster LLC. The proposed work consists of the redevelopment of a previously degraded site for commercial use. The property is known as 47 Tremont Street, Map 75, Lot 164. The Order expires on 8/20/2019. The applicant is asking for a one-year extension.**

Motion to extend **DEP File no. 55-801** until 8/20/2020 as made by Mr. Wojcik. Seconded by Mr. Lazares. Adopted unanimously.

**8. A Request for an Extension Permit on DEP file No. 55-829. The request is being made by Kara Sliwoski on behalf of Cedar Pond Village condominium. The project is an aquatic management program. The property is known as 1200 Salem Street, Lynnfield/Peabody, Map 98, Lot 500T. the Order expires on 5/12/2019. The applicant is asking for a one-year extension.**

Motion to extend **DEP file No. 55- 829** until 5/12/2020 as made by Mr. Lazares. Seconded by Mr. Wojcik. Adopted unanimously.

#### **CERTIFICATE OF COMPLIANCE**

**9. A continued request for a Certificate of Compliance made by Frederic King on DEP file Numbers 55-788 and 796. The project was the construction of Higgins Middle School and athletic fields (with irrigation system), Maps 83 & 84, Lots 090, 214 & 215, Peabody MA.**

Motion to issue a Full Certificate of Compliance for **DEP file No. 55- 788** with ongoing conditions: O&M Plan is in perpetuity. LTPPP with revision date of 4/17/2019 is in perpetuity. All ongoing maintenance is in perpetuity as made by Mr. Lazares. Seconded by Mr. Wojcik. Adopted unanimously.

Motion to issue a Full Certificate of Compliance for **DEP File No. 55-796** with ongoing condition #49 the School Department/Park Department must conduct annual testing of the water for water quality purposes. The annual schedule must be submitted and approved by the commission prior to irrigation use. A report must be submitted once a year as made by Mr. Wojcik. Seconded by Mr. Lazares. Adopted unanimously.

**10. A continued request for a PARTIAL Certificate of Compliance made by Joseph Orzel (Wetlands Preservation, Inc.) on DEP file No. 55-800. The property is known as 252 Andover Street, Map 39, Lot 25C, Peabody MA.**

**Summary:** The item has been on the agenda since 2018. There have been numerous issues with the As Built Plan submitted. The commission asked staff to reach out to the engineer. The commission is expecting a representative to appear at the June meeting. If no one is in attendance from Group 1 the commission will discuss fines.

Motion to continue as made by Mr. Wojcik. Seconded by Mr. Comak. Adopted unanimously.

**NOTICE OF INTENT CONTINUED**

**11. A continued public hearing on a Notice of Intent submitted by Elizabeth Wallis & Peter Ogren (Hayes Engineering) for Seven Dearborn Limited Partnership c/o Joe O'Donnell (owner). The applicant proposes to construct a parking lot with associated drainage and stormwater systems as part of site redevelopment for a new apartment building. The property is known as 7 Dearborn Avenue, Map 78, Lot 19, Peabody MA.**

Motion to continue as made Mr. Lazares. Seconded by Mr. Wojcik. Adopted unanimously.

**APPROVAL OF MINUTES**

**12. MINUTES- April 10, 2019**

Motion to accept the minutes as made by Mr. Lazares. Seconded by Mr. Vivaldi. Adopted unanimously.

**OTHER**

**•17 Gallant Road-Jared Masella- The commission approved the following work:**

- 1- Plant fourteen (14) highbush blueberries along the wetland flag line. The bushes shall be five feet apart. Two varieties shall be planted to encourage pollination.
- 2- Rake the stones around the area between the dilapidated fence and the proposed blueberry plantings. Once the stones have been raked into a thin layer they can add loam to slightly level the area. Once it is loamed grass seed shall be planted. No excess fill is allowed in the buffer zone.
- 3- Erect a privacy fence along the property boundary as discussed at the meeting.
- 4- Remove the dilapidated remains of the fence (posts and foundation).
- 5- If property owner plans on removing or reconstructing the patio, they must contact conservation staff or approval. The commission highly recommends pervious pavers if any work is desired in this location or any expansion of said patio.
- 6- The property owner shall flag all trees they are proposing to remove or trim. Vice Chairman Comak and Ms. DeINegro will meet on site for a discussion and approval.
- 7- No machines are allowed in the buffer zone. All work must be done by hand with a wheel barrel etc.

All work as discussed above was approved by the commission.

**Temple Shirat Hyam- Anna Hathaway and Mr. McKenna (groundskeeper)**

**Summary:** The commission has become aware of fill being in placed in a buffer zone possibly inches from the resource area. It is undetermined if wetlands have been filled. The fill needs to be removed from the buffer. They are required to hire a wetland scientist AND a surveyor/engineer. A wetlands mitigation plan must be drafted and submitted to the commission for approval. At this time the commission did not feel the issuance of an enforcement Order was necessary. The temple is willing to work with the commission to right the wrong.

**SUBCOMMITTEE REPORTS**

- **Land Acquisition Committee- Chairman Rizzo**                      **NONE**

**NOMINATIONS**

**Chairman**

**Vice Chairman**

**Secretary**

**To be discussed and voted on.**

To be continued until June 2019.

- **Adjournment**

Motion to close the public hearing as made by Ms. Feld. Seconded by Mr. Wojcik. Adopted unanimously.

Motion to adjourn as made by Ms. Feld Seconded by Mr. Wojcik.

**The meeting adjourned at 9:30pm**

Respectfully submitted-

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Chairman Michael Rizzo