

**Pembroke Conservation Commission
Minutes of the Meeting of
May 9, 2016**



*Disclosure: These minutes are not verbatim – they are the administrative agent's interpretation of what took place at the meeting.
All materials presented during this meeting are available in the Conservation Office.*

Open Meeting Law, G.L.c. 30A § 22.

Agenda – May include topics not reasonably anticipated by the Chair at time of posting of the meeting.

Open Meeting Law, G.L.c. 30A § 20.

Attending: Art Egerton, acting chairperson (audiotaping); Richard B. Madden (audio and videotaping); Bob Clarke; Sharon Tuells; Scott Glauben; and Andrew Stevenson
Absent: Patti DeVore
Staff: Bob Clarke, agent; and Mary Guiney, administrative agent
Location: Town Hall, Veteran's Hall
Opened: 7:30 p.m.

Acting Chairperson states that the meeting is being recorded by PACTV and others. Resident Mark Ames informs the chair that he is audio recording the meeting.

Resident Greg Walsh is in attendance. He is interested in becoming involved with the conservation commission.

Discussion: Wild Parsnip

Member Rick Madden states that there are still problems along the edge of the road at Herring Run Park. He wants the Town of Pembroke to make the effort to remove the plants and he would like to organize a group of volunteers to do the work. Acting Chair Art Egerton states that the DPW volunteered to do the work, but it has not been done. Member and Assistant DPW Director Scott Glauben will discuss the issue with Mr. Madden and will contact the contractor tomorrow.

Mr. Madden provides a visual presentation of the problem consisting of a bagged Wild Parsnip plant and photos of the effects of Wild Parsnip. He stresses that the infestation is manageable, but needs to be managed now.

Discussion: Mattakeesett Ball Fields

Acting Chairperson Art Egerton requests that agent Bob Clarke provide an update on the status of this property. Member and Assistant DPW Director Scott Glauben reports that the DPW has blocked the fire road on-site. Mr. Clarke and Mr. Glauben will discuss the installation of another gate with Recreation Director Sue Roche during the upcoming week.

Discussion: Request to use Herring Run Park by Emerald Yoga Studio on Sunday, July 10, 2016 from 11:30 a.m. to 1:00 p.m. to hold a single yoga class to raise awareness for cancer patients

If needed, the applicant must contact the commission office to arrange for electricity.

Motion to allow the submitted request: Andy Stevenson
Second: Rick Madden
All in favor

Discussion: Request to amend meeting minutes of March 29, 2016 per request from Town

Administrator E. Thorne

Motion to allow the request: Andy Stevenson

Second: Rick Madden

Agent Bob Clarke would like a discussion on the request to amend conservation commission minutes such as: what evidence do we have as to what was said; does another board have the authority to revise our minutes after approval; and does the requested change alter anything within the document? It was also pointed out that the approved minutes contain the disclosure: *"These minutes are not verbatim – they are the administrative agent's interpretation of what took place at the meeting. [MGLc 30A, s.22]"*

Acting chairperson Art Egerton wants to check his audio recording of the meeting. Issue tabled.

RDA – 33 Adams Avenue - Tuptynski

Hearing opened at 7:40 p.m.

Present: Marek Tuptynski, applicant and owner

Mr. Tuptynski explains that he has been a resident of this address for several years and recently had a baby. Because of safety concerns, he would like to cover the retaining wall located at the edge of Oldham Pond with a deck having posts in the ground (no work within the resource area and no overhang over the water). The free standing deck size will be approximately 5.5 feet by 50 feet. Agent Bob Clarke carefully questions Mr. Tuptynski's plans for the deck as to whether the existing retaining wall is stable (yes) and reminds him that under a RDA filing, he cannot do any work within the resource area as the installation of a bottom supported deck/dock is not allowed. Mr. Clarke further states that although the commission does have enough information to issue a determination, the building department is will require a more detailed schematic drawing and at that time, he would like Mr. Tuptynski to submit a copy of the plan to the commission.

Motion to issue a Negative 3 Determination with the requirement that the applicant submit building plans: Bob Clarke

Second: Scott Glauben

All in favor

RDA – Luddam's Ford/Tucker Preserve - Glauben

Hearing opened at 7:50 p.m.

Eagle Scout Jeremy Glauben is not present. He provided the commission with an overview of the proposed project at a previous meeting. The proposal consists of replacing an existing bridge over a possible non-jurisdictional intermittent stream on existing trails located on the property line between land under the care and protection of the conservation commission and Wildlands Trust.

Motion to issue a Negative 3 Determination: Andy Stevenson

Second: Rick Madden

Vote: 5 – 0 – 1 (for-against-abstain) Scott Glauben abstains from vote as applicant is his son.

Discussion: 234 and 242 Valley Street (DEP file nos: SE56-948 and SE56-949)

No activity.

Request to Amend Orders of Conditions (OOC) for Water Wheel at Herring Run Park – Boulter (DEP file no.: SE56-928)

Hearing opened at 8:00 p.m.

Present: Willard Boulter, Applicant and Selectboard member
Ed Thorne, Town Administrator
Michelle Burt, Selectboard member
Lewis Stone, Selectboard member
Mark Ames, resident
Michael Kirby, resident
and others

Applicant and selectboard member Willard Boulter starts by stating he wants to review issues that he previously discussed with the commission at an informal meeting. The proposed amendment refers to the temporary location at the location that was determined by the commission. He recounts that on April 22, 2013, the conservation commission issued an Order of Conditions (OOC) that he thought was too strict. The OOC was appealed to MassDEP and now he would like the commission to amend the OOC. Mr. Boulter reviews special conditions contained in the issued OOC (the special conditions are contained below in italicized print with Mr. Boulter's comments bolded following each item):

1. *The proposed project must be built in accordance with the plan entitled 'Barker Street', with a date stamp received by the Conservation Commission of April 8, 2013. These plans include hand drawn revisions. **Mr. Boulter agrees with the condition, but he notes that on the original plan the shaft size is larger than the original.***
2. *The water wheel may not be placed in the water until the following items have been completed:*
 - A. *A stamped, engineered plan must be submitted to the Conservation Commission which includes location and placement of the water wheel in the sluiceway. Engineered plan to include an Operation and Maintenance Plan, as well as the method proposed to lift the wheel out of the water when necessary. **He has already provided stamped engineered plans – but the 'method employed to lift wheel' was determined to weaken the wheel by FST. FST recommended putting in boards and to make changes to the permanent location to make that stronger.***
 - B. *A letter listing the person or persons who are responsible for lifting the water wheel shall be submitted to the Conservation Commission. The letter is to include the contact information for person(s) listed. This letter is to be submitted annually, or whenever there is a change in person(s) who are responsible. **Herring Fisheries is to monitor the site. His telephone phone number and the telephone number of the Selectboard Office have already been provided.***
 - C. *The weir shall be returned to its original condition. Rocks which have been placed to direct water towards the inner sluiceway shall be removed from the stream and returned to their original location. This work shall be done under the supervision of the Conservation Agent or his appointee. This does not include removal of the iron-work.*

Mr. Boulter notes that no one from the 300th Committee did that. He has offered to remove the brackets after the Water Wheel is moved to the permanent location.

3. *The following is to be incorporated into the Operation and Maintenance Plan and are also part of this Order of Conditions: "The water wheel shall be lifted out of the water each year from April 1 through June 30th as well as September 1st through November 15th or as directed by the Conservation Agent. These dates coincide with the annual migration of the herring. Each time the wheel is lowered into or lifted from the water, the stream shall be inspected by the applicant or his appointee to insure the stream is in its original condition. The applicant or his designee shall notify the Conservation Agent when the wheel has been lowered into or lifted from the water and that the stream has been inspected and is in its original condition. It is the responsibility of the applicant or his designee to insure the stream and its banks are not altered in any way beyond that of placing the water wheel. Any work or issues associated with the wheel being in the park shall be the responsibility of the applicant or his designee. He also states that FST submitted a letter with a stamp. Mr. Boulter further states that other items were discussed at previous meetings so he will not discuss them again. He received a letter of support from Herring Superintendent Mark Amorello regarding maintenance. Mr. Boulter also indicated that he did not have any issue with the recommendations made by Brad Chase of the Division of Marine Fisheries (DMF) in correspondence that was received by the conservation office. Mr. Boulter states that the DMR has been in Pembroke a lot lately and that they (DMF) are in agreement with the water wheel. Mr. Boulter feels that the time of year (TOY) restrictions are the biggest problem. As previously noted, the water wheel was not designed to be removed from the water as it will weaken the structure. Mr. Boulter would like condition number 3 to be amended to read: "The Operation and Maintenance Plan regarding the water wheel shall come under the Massachusetts Division of Marine Fisheries and the Pembroke Herring Fisheries Commission (and he will allow the Pembroke Conservation Commission to be also involved although he thinks that it belongs under fisheries). Both the State and Pembroke Town laws give authority to these organizations to regulate the Herring Fisheries brooks and streams located in this area." He is okay with conservation commission involvement.*
4. *"This Order of Conditions is limited to the placement of the water wheel in its temporary location. The issuance of this Order of Conditions is contingent upon the Applicant or his designee seeking and obtaining the necessary permits to move the water wheel to its proposed permanent location. Okay.*
5. *Fencing shall not be placed any closer to the water than ten feet. Any dirt or rocks not being put back into the fence holes shall be moved 100 feet away from the stream. Mr. Boulter feels that the 10 foot restriction is a problem. People cannot get close enough to look at the fish. He would like it to be located at an arms length away to allow people to walk up along side the stream. The fence will be similar in design to the current fence at the park.*
6. *Any signs connected to this Order of Conditions must be approved by the Building Inspector and be secured so as not to interfere with the flow of the water. The applicant or his designee shall inspect the sign annually and send a letter to the Conservation Commission stating that the sign is secure and the date the inspection took place. Mr. Boulter states that the Building Department is in charge of signs and not the conservation commission. He*

would like a sign approximately 8 ½ inches by 11 inches in size to acknowledge the maker and the donor.

7. *A copy of this Order of Conditions must be attached to the plans submitted to all contractors or other persons doing the work. Agree.*
8. *The Pembroke Conservation Commission reserves the right to amend this Order of Conditions should any conditions develop during construction that are different than presented to the Commission or were unforeseen when the Notice of Intent was filed. Agree.*
9. *Any proposed or executed changes in the plans approved under this Order of Conditions shall require the applicant to file a new Notice of Intent or to inquire of the Pembroke Conservation Commission in writing whether the change or changes are substantial enough to require a new filing. Any error in the plan or information submitted by the applicant shall be considered changes and the above procedures shall be followed. Agree.*
10. *By the time this permit is due to expire, the applicant or his representative must submit a written statement that all requirements set forth by the Pembroke Conservation Commission has been met. Agree.*
11. *When the work is complete, the applicant shall request a Certificate of Compliance be issued by the Conservation Commission. Agree.*
12. *This Order of Conditions is only for the conditioned approval of the plans being submitted to the Pembroke Conservation Commission and does not reflect any conditions or permits that may be necessary by any other Authority. **The subject Amended Order of Conditions is under appeal to MassDEP. Mr. Boulter states, that he will withdraw his appeal at MassDEP with a favorable decision by the conservation commission. Mr. Boulter states that it looks better that the town is working together.***
13. *Any revised plans must be submitted to the Conservation Commission.*
14. *This Order of Conditions will expire on April 22, 2016. Any application for extension must be filed by March 22, 2016. **Mr. Boulter wants to extend the OOC for two years.***

Discussion items: Timeline for permanent location – Mr. Boulter states that an engineer will contact the commission shortly. The commission needs to decide where they want it – and he also discusses handicap accessibility for the Herring Run Park. He has \$100,000.00 to perform the work and states that any overrun costs are eligible for Community Preservation Commission funds. The DMF will help reroute the fish to go around the wheel. Fish Counts: Mr. Boulter apprises the commission of current fish counts. Comments from attendee Mark Ames: Mr. Ames inquires about the current status of the Superceding Order of Conditions and whether MassDEP ever approved the appeal. Acting Chairperson Art Egerton says no. Comments from attendee Michael Kirby, former conservation commission member: Mr. Kirby would like the current commission to know that the former board was never against the water wheel. Mr. Egerton stops Mr. Kirby and states that his comments are not relevant. Mr. Kirby also states that Mr. Boulter installed the water wheel without any permits. Mr. Egerton cuts off further discussion from attendees.

Member Scott Glauben has no comments and will not be voting on this matter.

Member Andy Stevenson states that DMF has had a change of opinion. He would like to make a motion to amend the OOC with the requested changes.

Second: Rick Madden

Vote: 4-0-2 (for-against-abstain) Agent Bob Clarke and member Scott Glauben abstain.

Agent Bob Clarke has questions. What is the wording of the document - as written and presented previously? Mr. Madden feels that Mr. Boulter was articulate and feels that the submitted information is sufficient for the commission to write an OOC. Mr. Stevenson says that the proposed changes were read at a previous meeting. Mr. Clarke advised the commission that the OOC should be definitive. Town Administrator Ed Thorne offers to prepare an OOC for vote. Mr. Boulter states that the information was previously submitted. Mr. Thorne will work with the administrative agent to write a new OOC. Mr. Boulter reiterates that he has no objection to including the conservation commission to the revised special condition number 3. Attendee Mark Ames questions what actions have occurred – has the meeting been continued or closed? Acting Chairperson Art Egerton informs Mr. Ames that the public has had two chances to discuss this.

Motion to close: Andy Stevenson

Second: Rick Madden

Vote: 4-0-2 (for-against-abstain) Agent Bob Clarke and member Scott Glauben abstain.

Discussion: Mail Folder

Member Scott Glauben wants to discuss recent correspondence from Acting Chairperson Art Egerton which stated that the conservation commission was taking actions to remove the administrative agent from her position and that Mr. Egerton would like her to resign. Mr. Glauben is angry that Mr. Egerton is using his position inappropriately. He would like Mr. Egerton removed from the board. After a heated discussion, Agent Bob Clarke recommends that the commission discuss Mr. Egerton's behavior in executive session at the next meeting.

Motion to enter executive session at the next meeting: Bob Clarke

Second: Andy Stevenson

All in favor.

Discussion: Erosion at Little Sandy Pond

Acting Chairperson Art Egerton does not want the commission to put more sand, he thinks it needs more work from the DPW. Member and Assistant DPW Director Scott Glauben reminds Mr. Egerton, that there are no funds available until the next fiscal year – that it may need to be put on the warrant for the fall annual town meeting.

Discussion: Minutes

Acting Chairperson Art Egerton states he wants the meeting minutes to be verbatim. Members disagree. Attendee Mark Ames reminds Mr. Egerton that meeting minutes do not have to be verbatim. Mr. Egerton was also referred to the heading of each set of minutes which states:

"These minutes are not verbatim – they are the administrative agent's interpretation of what took place at the meeting. [MGLc 30A, s.22]"

Minutes of Meeting: March 21, 2016, April 25, 2016 and May 2, 2016

Acting Chairperson does not want to review the prepared minutes this evening.

Minutes of Meeting: April 19, 2016

Agent Bob Clarke asks Acting Chairperson Art Egerton about the status of the minutes of this meeting. He advises Mr. Egerton that as he called for and posted this meeting on his own without notice or assistance of the conservation commission staff, it is his responsibility to ensure that the minutes are prepared. Mr. Egerton agrees to prepare the minutes.

Documents Signed

- Agent payroll
- Payment voucher administrative agent hours
- Determination of Applicability re: Luddam's Ford/Tucker Preserve
- Gatehouse Media bill

Adjournment

A motion was made by Bob Clarke to adjourn the meeting at 9:00 p.m. Second by Andy Stevenson All in favor.

