

**Pembroke Conservation Commission  
Minutes of the Meeting of  
December 14, 2015**

*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; Richard B. Madden; Bob Clarke; Scott Glauben; Andrew Stevenson; and Patti DeVore  
**Staff:** Bob Clarke, agent; and Mary Guiney, administrative agent  
**Location:** Town Hall, Room 4 (Planning Board Office)  
**Opened:** 7:30 p.m.

Acting chairperson Art Egerton opens meeting and states that he is recording the meeting.

**Discussion: Correspondence from Town Administrator Ed Thorne re: Actions and Minutes of Conservation Commission**

Acting chairperson Art Egerton wants to record Agent Bob Clarke's thoughts on the letter that each member of the commission received from Mr. Thorne. Mr. Clarke is unsure what questions town counsel was answering by stating the conservation commission does not have the authority to place deed restrictions on a property without a two-thirds vote of town meeting. Town counsel may be confusing a conservation restriction (which under certain circumstances does need a vote of town meeting) with a deed restriction. The conservation commission imposes deed restrictions all the time on properties as part of the wetlands protection act. A deed restriction imposed by the conservation commission does not need a vote of town meeting to be legal.

With respect to legal research performed by town counsel regarding conservation commission minutes of October 19, 2015. (regarding comments about the Kiwanis building lease at Herring Run Park negotiated by the Selectboard), Mr. Clarke stated that the wrong language may have been used in the meeting minutes. The Town of Pembroke seems to be spending enormous amounts of money on unnecessary legal research. The suggestion of a lease agreement originated with the conservation commission to ensure that the Kiwanis had rights to spend money on the building. As reflected in the meeting minutes of October 19th, the conservation commission did not indicate under any circumstances that they would not honor the lease agreement. As further reflected in the meeting minutes of October 19th, the conservation commission made it clear that they fully supported the work of the Kiwanis and wanted to work with them.

Overall, Mr. Clarke is confident that the conservation commission is working within the law and abiding by all regulations.

The commission determines that Mr. Thorne's letter did not call for a response.

**Unscheduled Discussion: Wild Parsnip (Giant Hogweed) at Herring Run Park**

Member Rick Madden provides copies of internet research and photos of the effects of Wild Parsnip on humans. Mr. Madden has been working with member and Assistant DPW Director Scott Glauben to address the infestation before the dispersion of seeds next year.

The commission wants this item placed on the agenda under ongoing business for continued discussion.

**Cont. NOI – 234 Valley Street – DelPrete (DEP file number: SE56-948); and 242 Valley Street (DEP file number: SE56-949)**

Hearing opened at 7:45 p.m.

Attending: Steve Kotowski, Webby Engineering, representing applicant Peter DelPrete (not present)

Mr. Kotowski submits a revised plan which combines both filings for a single family house to be located on the lot 27 portion of the site and a reserve septic system on the lot 26 portion of the site. The new proposal provides for the house to be placed at 30 feet from the b.v.w. so as to maintain a 40 foot roadway setback as required by the Zoning Board of Appeals (ZBA).

Chairperson Art Egerton asks why the proposal does not include a 50 foot setback from the b.v.w. Mr. Kotowski stated that it is hard to overcome ZBA regulations. Dr. DeVore wanted verification whether a ZBA variance had been requested. Mr. Kotowski maintains that his client has paid taxes on these properties since they were subdivided in 1977 and, as a result, were buildable under a grandfather clause. Agent Bob Clarke wondered why a 40 foot ZBA setback was considered more important than maintaining a 50 foot setback from the b.v.w.

Mr. Clarke and Dr. DeVore also questioned the validity of the new lots without a Form A application to the Planning Board. Mr. Kotowski stated that he does not need to go to the Planning Board to combine the two lots and that this particular project has been advertised for over a year.

Mr. Kotowski is asked about abutter notification. He responds that he is surprised that none are in attendance. The commission reminded Mr. Kotowski that he said that he was going to request a withdrawal of the applications at this meeting. Mr. Clarke further states that the commission has been working with Webby Engineering to allow construction on the other two lots and that the commission had been told that these two applications would be withdrawn. Mr. Kotowski avers that he has never alluded to a withdrawal and that he would not need a separate meeting to file a withdrawal.

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8:00 p.m. to 8:15 p.m. meeting suspended for attendance at advisory meeting by Chairperson Art Egerton, Agent Bob Clarke and Administrative Agent Mary Guiney

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The discussion on the subject application resumes with the return of Mr. Egerton, Mr. Clarke and Ms. Guiney. Mr. Clarke states that the conservation commission must use commonsense in the review and permitting of applications. Experience has shown that people purchasing homes with restrictions close to wetland resource areas are not happy and the conservation commission must constantly address resultant violations of the Wetlands Protection Act. Within a couple of years the homeowner wants a backyard, a lawn, a swimming pool, sheds, etc. Mr. Clarke appreciates the work performed by Mr. Kotowski but the subject proposal does not allow for any future development on the lot. Mr. Kotowski reiterates that the applicant Mr. Koplovsky has been paying taxes on these lots as if they were buildable since 1977. They were buildable when they were created in 1977 and do not have to comply with current guidelines. Members of the commission question why they were not developed when Mr. Koplovsky built and sold all of the other lots on Valley Street and questioned whether they were actually buildable at that time.

The commission discussed and recommended possible actions by Mr. Kotowski to redesign/modify the application to mitigate and minimize impacts to the resource area. Mr. Kotowski was not amenable to making any amendments to the application.

Motion to close: Bob Clarke  
Second: Scott Glauben  
All in favor

Motion to deny: Bob Clarke  
Second: Andy Stevenson  
All in favor

**Discussion: High School Drainage Basin**

Agent Bob Clarke informs the commission that a Request for Determination of Applicability has been filed for this project.

**Unscheduled Discussion: 590 Washington Street**

Agent Bob Clarke informs the commission that a Notice of Intent for a residential development to be constructed on a formerly commercial property located behind the Dairy Twist has been received. He recommends that the commission visit the site.

**Unscheduled Discussion: Herring Run Park**

Chairperson Art Egerton wants to discuss a meeting of the Herring Fisheries Committee which was held last Wednesday night, especially the issue of the Water Wheel. He feels that the conservation commission stood in the way of the project.

Agent Clarke states that he was not against the wheel. He wanted strong reasoning and justification supported by engineering data to support the placement of the wheel. It does not appear that there was any thought or planning put into the decision to build/place the wheel in the park.

Mr. Clarke provides a brief history of the water wheel at Herring Park and a proposal to rebuild the historic wheel that existed in the 1950s. Although the commission met with the project proponents at the park and advised them that the proposal needed paperwork and permitting, none was filed. The water wheel that was presented as part of the 300<sup>th</sup> anniversary celebration was not a replication of the promised historical wheel and it was installed without a permit. The commission subsequently requested its removal while the herring were running. The paperwork that was eventually filed was minimal. Nonetheless, the conservation commission issued an Order of Conditions (OOC) to the selectboard who appealed the commission's decision to MassDEP. As reasons wherefore, the selectboard did not understand the conditions.

Mr. Egerton would like to arrange a meeting to restart the project and would like to have selectboard member Bill Boulter to come to a meeting for this purpose. Mr. Egerton was advised that since Mr. Boulter appealed the Order of Conditions to MassDEP, he needs to provide the information to them.

**Unscheduled Discussion: 6 Park Street**

Member Rick Madden apprises the commission of situation of a felled Red Maple on Park Street. The tree was removed and the culvert repaired. Agent Bob Clarke reminds the commission that a permit for the repair of the retaining wall was recently issued. Mr. Madden states that the homeowner did a great job and should be commended for his work.

**Discussion: Conservation Commission meeting scheduled for Monday, December 21, 2015**

Motion to cancel meeting of December 21, 2015: Bob Clarke

Second: Rick Madden

All in favor

**Minutes: November 30, 2015**

Motion to accept minutes: Andy Stevenson

Second: Rick Madden

All in favor.

**Documents Signed**

- Bay Circuit Alliance Annual Dues
- W.B. Mason bill
- Gatehouse Media bill
- Order of Conditions for 256 Valley Street (DEP file no.: SE56-950)

**Adjournment**

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