



**Pembroke Conservation Commission
Minutes of the Meeting of
August 17, 2023
Veterans Memorial Hall, Pembroke Town Hall**

Disclosure: These minutes are not verbatim – they are the administrative agent’s interpretation of what took place at the meeting.

Open Meeting Law, G.L.c. 30A § 22.

All materials presented during this meeting are available in the Pembroke Conservation Commission office.

Members present: Arthur Egerton, Chair; Teresa Harling, vice chair; James Campbell, member; Robert Clarke, Sr., member, and Agent.

Members Not Present: Gino Fellini, member; Rick Madden, member; Nicole Pelletier, member.

At 7:00PM, Mr. Egerton, chair, opened the meeting then stated that the proceedings would be made available to the public at future dates and that all comments made in the open session would be recorded.

ADMINISTRATIVE BUSINESS

Minutes – The Chair asked for a motion to accept the minutes of August 3, 2023. The motion was made by Ms. Harling and seconded by Mr. Campbell. Motion passed unanimously.

Town Manager Update – Bill Chenard updated the Commission on two upcoming projects that required an NOI. The Congress Street culvert is waiting for the precast concrete culverts and the pre-construction meeting along with inspection of the erosion control should occur within the next couple of weeks. The Herring Run Culvert project has had its pre-construction meeting and erosion control inspection. It too is waiting on the precast concrete culverts. Stream flow diversion to construct the project will be done in the next couple of weeks. Again, holding up both projects are the wait times, 8-10 weeks, for the precast concrete culverts. Once the culverts are in place both projects should be completed within 2 to 4 weeks.

Materials or other exhibits used by the public body in an open meeting are available to the public, within 10 days, upon request.

Mr. Chenard also discussed upcoming CPC requests for funding of beach and boat ramp replacement and repair at Town Landing, Furnace Pond, Little Sandy Pond, and Stetson Pond beach areas. Funding is being sought for boat docks, additional parking, and drainage repair. A handicapped accessible kayak launch is planned for the Town Landing. NOI's will be submitted as each project is initiated. The snack bar at the Town Landing was open this summer but staffing has been a challenge for all the beach areas and at times there was not enough coverage of lifeguards.

Hearings:

Enforcement Order – 98 Barker St. & 409 Washington St.

Chair Art Egerton opened the hearing by reading the Enforcement Order and the possible penalties that may be enforced due to non-compliance.

Mr. Spath's attorney, Mr. Brodsky reported that a progress print of the delineation of the wetlands was provided that identified all the wetland lines in the disturbed area at the July 6th meeting and it was his expectation that the peer review of the wetland's delineation could proceed. He further mentioned that the delineation could not be finalized until the Commission's peer review wetlands scientist, Mr. Zimmer confirms the lines and that if any of the flags were changed that they would need to be surveyed into the plan. Attorney Brodsky then reviewed the completed delineation plan that he submitted to the Commission at this meeting. Attorney Brodsky pointed out that all the flags have been identified and that Mr. Zimmer could review the plan at any time. Attorney Brodsky also insisted that his client has not been holding up the process and that all efforts have been made in a timely fashion and that there was a delay in getting Mr. Zimmer on board to review the flagging.

Mr. Clarke made a motion to have Mr. Zimmer review the full wetlands delineation provided at this meeting and to report back to the Commission within a two-week period. Mr. Campbell seconded, and the motion passed unanimously.

Attorney Brodsky also reported that he had contacted the Administrative Agent, Mr. Wandell on August 1st to ask if Mr. Spath could plant the tree stock, he had purchased prior to all the wetland's issues arising. The plan is to plant the trees in the upland area at the back of the site. He has been storing the trees off site as per the Enforcement Order. A planting plan was submitted on August 1 and he has not heard back. He asked if this was something the Commission would entertain. He also said that at the last meeting the issue of trucks entering and dumping material at the site was brought up and that Attorney Rider who represents Mr. Spath on the zoning appeal had taken that up with Town Counsel Mr. Weisheit. Attorney Brodsky went on to say that that issue is not covered by the Enforcement Order because the materials were left near the gate to the entrance of the site and that area is located more than 100 feet from the closest wetland flag and that they had not violated the Enforcement Order because no materials were left in the buffer zone or in the resource area which are the only areas covered by the cease and desist order in the Enforcement Order.

Town Manager Bill Chenard asked to approach the Commissioners and pointed out that typically when a wetlands delineation is performed it also is presented with a memo explaining the delineation plan and the methodology and findings. He also asked if Attorney Brodsky had that memo, it would be helpful to have a copy. Mr. Chenard also said that the tree planting plan was presented to him and that since the Commissioners were not meeting until this date his answer to the plan was no and that he forwarded the plan to Attorney Weisheit.

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Discussion about the timeline and process continued with Attorney Brodsky reminding the Commission that Mr. Spath and the trust have not appealed the Enforcement Order. He also said that he has the report that goes with the delineation plan and that he would submit it to Mr. Wandell.

Discussion about the planting of trees at the site continued. Attorney Brodsky reviewed the tree planting plan with the commissioners. Ms. Harling asked if travelling on the gravel drive through the wetland area would be a violation of the cease and desist. Attorney Brodsky replied that the cease and desist was being handled by Attorney Rider and Town Counsel. Attorney Brodsky explained that the trees were dying, and that Mr. Spath would temporarily use the gravel drive to bring the trees to the planting area at the rear of the site outside of the buffer zone. Mr. Spath explained that he had over 100 Christmas trees and over 100 arborvitae trees as well as over a dozen fruit trees. Mr. Clarke said that he was afraid of setting a precedent by allowing the trees to be planted. Attorney Brodsky said he would be happy to prepare a legal document to the effect that the planting would not set a precedent. Ms. Harling expressed reservations about the planting because so much has already been disturbed and that Mr. Spath has already proceeded with work on the site without executing the required filings. Attorney Brodsky reviewed Mr. Spath's forestry plan and its relation to the site. Mr. Egerton asked if the Forestry Management plan had been approved by government agencies. Mr. Spath said the plan was approved by the state and submitted to the town and has been on file since December 29, 2022. Mr. Chenard said that it was filed with the Assessors office but never filed with the Conservation Commission. A discussion about the validity of the forestry plan continued. Mr. Egerton suggested that Mr. Spath plant the trees on other property that he owns if he was concerned with the trees dying. Mr. Campbell asked town counsel Weisheit about drafting an agreement related to the planting of the trees. Mr. Weisheit expressed concerns about vehicles using the access road and any other conditions to be considered.

Mr. Egerton made a motion to allow the planting of the trees with conditions to be written, Mr. Campbell seconded the motion. The motion failed due to a tie vote. Mr. Campbell and Mr. Clarke yes. Mr. Egerton and Ms. Harling no.

A motion was made to continue the public hearing to September 7 at 7:15PM by Ms. Harling, seconded by Mr. Campbell. Motion passed unanimously.

Ongoing Business:

As there was no ongoing business to discuss, Ms. Harling made a motion to adjourn the meeting at approximately 7:50PM, the motion was seconded by Mr. Campbell and passed unanimously.

Materials and Exhibits

Minutes of the August 3 meeting of the Conservation Commission
Enforcement Order – 98 Barker Street & 409 Washington Street
Wetlands Delineation plan – 98 Barker Street & 409 Washington Street

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