



**Pembroke Conservation Commission  
Minutes of the Meeting of  
September 19, 2023  
ZOOM MEETING ONLY: NO IN PERSON ATTENDANCE**

*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.

**At 7:00PM Chairman Art Egerton opened the meeting and stated, “Please note that this meeting is being made available to the public through a video and audio broadcast on Comcast Government Access channel for broadcast at future dates. Comments made in open session will be recorded.”**

**All parties are participating via remote participation in accordance with the requirements of 940 CMR 29.10 via audio and video conferencing software. All votes during this meeting will be made via roll call.”**

**The meeting was conducted via zoom.**

**Members present:** Arthur Egerton, Chair; Teresa Harling, vice chair; James Campbell, member; Gino Fellini, member, Rick Madden, member; Nicole Pelletier, member; Robert Clarke, Sr., member, and Agent.

Also present: Amy Kwesell, Town Counsel, Administrative Agent, Andrew Wandell

**ADMINISTRATIVE BUSINESS**

**Certificate of Compliance – 55 Deerfield Lane – SE056-1083**

Mr. Fellini made a motion to issue a certificate of compliance for 55 Deerfield Lane, the motion was seconded by Mr. Madden. Motion passed unanimously by roll call vote.

A motion was made to approve the meeting minutes from August 17<sup>th</sup> by Ms. Harling, seconded by Mr. Madden. Motion passed unanimously by roll call vote.

**DMF buoy in Silver Lake**

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Mr. Clarke had inquired about the DMF buoy in Silver Lake. The Administrative Agent reported that he had spoken with Brad Chase at DMF and was told that DMF is performing an eel potting. The objectives of the sampling are to develop a fishery-independent relative abundance index for American eel in the Jones River watershed, and to document eel population demographics in the watershed, including changes in eel density and population structure in relation to restoration projects.

The Administrative Agent also reported that an Administrative Review application is forthcoming from DMF to replace the fish ladder at Gorham Mill Pond.

It was also reported that a vegetation and tree restoration plan was being prepared by Brad Holmes on behalf of the owners of 101 Elmer Street.

Agent Bob Clarke mentioned that the availability of trees for planting may be in short supply. The Commission will need to find suppliers for trees to be planted as part of its regular tree planting program.

### **Hearings:**

#### **Enforcement Order – 98 Barker St. & 409 Washington St., (continued from September 7, 2023).**

Chair, Art Egerton opened the public hearing at 7:15PM. Andrew Spath, Attorney Brodsky, Brad Holmes and John Zimmer were in attendance. Brad Holmes, wetland engineer for the applicant reported that the wetland delineation was complete after a field visit with the Commissions peer review wetlands scientist, John Zimmer and a few of the flags were repositioned. The revised flag locations were provided to Webby Engineering and recorded on the site plan. Mr. Zimmer reported that the wetland boundaries now appear to be accurate. He also mentioned that the areas where the access road crosses the wetland made the two areas on either side of the road difficult to ascertain the soils due to the hardpack of the materials used to construct the access road. Attorney Brodsky mentioned the site visit made weeks ago and the submission of the Webby revised site plan with the up-to-date delineation on September 7. He also mentioned the public records request and that they confirm that the prior owner was brought before the Conservation Commission in November 1984 where he was instructed to file a Notice of Intent and ordered a cease and desist. Attorney Brodsky also noted that the town has not been able to produce the Notice of Intent nor the cease-and-desist order and that it was also noted in the minutes of that meeting that a rough engineering survey had been performed by a Mr. McQueen on behalf of Dr. Roberts and that the town could not produce that report as well. Attorney Brodsky stated that Dr. Roberts had bulldozed the property after he purchased it with the intent of planting Christmas trees.

Brad Holmes presented and reviewed with the Commission the revised site plan and wetlands delineation submitted on September 7. Mr. Zimmer concurred with Mr. Holmes' assessment and reviewed the changes made in the field as revised on the plan. Mr. Madden asked about the trees planted recently on the site and where they were in relation to the well recently installed. Mr. Holmes said they were located just west of the well in a bump-out section just south of the roadway. Mr. Fellini asked if the trees were planted after the cease-and-desist order. Attorney Brodsky confirmed with Mr. Spath that the trees were planted prior to the cease-and-desist. Mr. Madden asked about specifics of the well. Mr. Spath said it is 17 feet deep with a pump in the bottom dug with an excavator. Ms. Pelletier mentioned a drainage area she saw at the site visit and any storm water management at the site and the stream. Attorney Brodsky said there is no regulatory stream at the site and deferred the question to Mr. Holmes. Mr. Holmes said that there is no stream under the roadway and that there is a channel drawing water toward the well but no stream. Mr. Madden said he observed running water on the site and asked what could be done further to explain it. Attorney Brodsky said he has a respectful disagreement with Mr. Madden on this issue. Mr. Zimmer also mentioned the man-made channel cut south of the well to direct flow toward it. He also

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investigated bed and bank which would indicate a stream but found none at the site. Mr. Zimmer cautioned Attorney Brodsky that the entire site has not been investigated for regulatory streams, only the areas of disturbance and that there is the potential of a stream being present on the property. Attorney Brodsky qualified his statement by stating that there was no stream in the vicinity of the disturbed area. Mr. Egerton mentioned his concern that the site plan only shows what is happening in the disturbed area and not showing what could be affecting the systems around it. Attorney Brodsky said as part of the restoration plan there will be a proposed conditions plan that would show the bordering wetlands. Mr. Madden asked about the vernal pool on the property and mentioned that he observed water running from the rip rap and asked where it was coming from. Ms. Pelletier asked Mr. Zimmer if he had any analysis of the hydrology at the site. Mr. Zimmer said that the site was augured for the presence of hydric soils. Mr. Madden pointed out that the sampling was only done at the sides of the roadway. Mr. Zimmer confirmed that the road was too impacted for any soil to be accessed beneath it. Mr. Madden asked that the soil under the roadway be investigated. Ms. Pelletier asked if the proposed conditions plan would include a plan to remove the materials making up the road. Mr. Holmes confirmed that removal of materials would be part of the restoration plan. Attorney Brodsky said there is no need to test under the roadway as it has been confirmed by Mr. Holmes and Mr. Zimmer that the wetlands area is accurate closely around it. Mr. Holmes addressed Mr. Madden's concerns about running water. Mr. Holmes observed groundwater pooling and channeling in areas but no stream and that areas of alteration will have groundwater movement. Mr. Madden said he witnessed a flow, not a weep of groundwater. Mr. Egerton mentioned the neighboring residents having water issues on their property. Mr. Holmes offered that the restoration plan include a discussion of the hydrology and re-establishment of the hydrology of the areas and that should address the concerns of the Commissioners. He also said the restoration would include removal of the materials that make up the road in the wetlands area.

Ms. Harling asked about an area of the site with large boulders and debris covering it up that she observed at the site. Mr. Zimmer responded that he did not observe any flow in that area. Ms. Harling said she observed large reeds growing in the area. Mr. Zimmer said an invasive species management plan be included with the restoration plan. Mr. Holmes said that native species already established at the site would be used to repopulate vegetation as part of the restoration plan. Mr. Fellini asked if all the rip rap would need to be removed from the bvw. Mr. Holmes replied that it needs to be determined based on the scope of the restoration plan required. Attorney Brodsky said that a restoration plan would be prepared and that they do not have the details of that plan yet.

Mr. Egerton asked for a timeline for the restoration plan. Attorney Brodsky said that it will take a month to prepare and submit the plan.

Mr. Egerton asked if members of the public would like to ask questions. Lauren Cushing asked if a permit for the well was pulled from the Board of Health. Attorney Brodsky said he was not familiar with the requirements in Pembroke and that it was an irrigation well. Mr. Fellini said that it was in the wetlands. Attorney Brodsky acknowledged that no Orders of Conditions were filed for installation of the well. Further discussion regarding the well and its power source being a gas fueled generator. Mr. Madden expressed concern about fuel spillage and hydraulic fluids as well as concerns about the materials brought on to the site to build the road. Attorney Brodsky contended that none of the materials brought onto the site could be considered hazardous material and said any oils or fuels spilled would be removed and do not make up an amount enough for a reportable spill.

The timeline for submission of the restoration plan was discussed.

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Town Counsel Amy Kwesell pointed out the timeline of the events to date and asked that at the meeting on October 5 there be an update on the progress of the restoration plan. She addressed the need for review by Mr. Zimmer and the Commission. She also pointed out that this is an egregious violation of the Wetlands Protection Act and that much time had already passed for restoration. She suggested setting a firm deadline for submission of the restoration plan before the November 2 meeting of the Commissioners.

Town Counsel Kwesell pressed Attorney Brodsky on committing to a deadline. A discussion of the timeline to date and other issues related to the violation continued and Attorney Brodsky committed to the date of October 19<sup>th</sup> for submittal of the restoration plan to the Conservation Commission.

Mr. Fellini made a motion to continue the public hearing to October 5 at 7:15PM for a quick update on the progress of the restoration plan with the restoration plan due to the town on October 19. It is anticipated that the October 5 hearing will be continued to November 2 for a complete review of the restoration plan by the commission. Ms. Harling seconded the motion, and it was passed unanimously by roll call vote.

At 8:08PM The Chair asked if there was a need for the Commission to go into Executive Session. The Administrative Agent replied in the affirmative and Ms. Harling made the following motion:

“I move to enter executive session under MGL c.30A, §21(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares regarding 98 Barker Street and 409 Washington Street Enforcement Order”.

Chair Egerton replied “I so declare. The Commission will not return to open session at the conclusion of executive session.”

The motion was seconded by Ms. Pelletier and passed unanimously by roll call vote.

#### Materials and Exhibits

Certificate of Compliance – 55 Deerfield Lane

Enforcement Order – 98 Barker Street & 409 Washington Street

Wetlands Delineation plan – 98 Barker Street & 409 Washington Street

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