



**Pembroke Conservation Commission
Minutes of the Meeting of
February 5, 2024**

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 Chair 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.”

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

Members not present: James Campbell, member.

Also present: Administrative Agent, Andrew Wandell

ADMINISTRATIVE BUSINESS

Mr. Fellini made a motion to accept the minutes of the January 4 meeting; Mr. Clarke seconded, and the motion passed unanimously.

Mr. Clarke mentioned that the Christmas lights were still up at the Veteran’s Forest and should be taken down. It was suggested that the Tree Lighting committee take over the task of putting them up and taking them down.

Hearings:

Enforcement Order and Notice of Intent – 98 Barker St. & 409 Washington St., (Enforcement Order continued from January 4, 2024, DEP number 056-1102 has been provided for the Notice of Intent)

Chair, Art Egerton opened the public hearing at 7:15PM.

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Mr. Spath's attorney Adam Brodsky and Mr. Spath were in attendance. Brad Holmes and Joe Webby were also in attendance along with John Zimmer, the commissioner's peer reviewer and Town Counsel Amy Kwesell.

Attorney Brodsky reminded the Commission of the letter he sent to the chair reviewing the history of the uses at the site sent January 18, the ECR letter and exhibits sent January 22 regarding the restoration plan and the letter and exhibits provided by ECR regarding the Notice of Intent also sent on January 22. Also provided was Webby Engineering site plan revised January 18 and the letter from Webby regarding the stormwater drainage report and calculations on January 19. Attorney Brodsky also explained that Mr. Holmes received the peer review from Mr. Zimmer late this afternoon and respectfully asks for some more time to review it.

Brad Holmes addressed the commission and said that the wetland restoration explained previously has not changed in the scope of the limits from wetland to wetland all the material is to be removed and areas to be restored. There is a gravel driveway, and all that material will come out limit to limit. Items of detail in the narrative and Mr. Zimmer's comments have been included. The wetlands replication has been adjusted as per the Notice of Intent. All the materials in the restoration area, including the well, will be removed. Mr. Egerton asked about how the well will be removed. Mr. Spath indicated that it will be removed with a strap. Mr. Fellini asked about the stone drainage sump material. Mr. Holmes said that it will come out.

Mr. Fellini asked about the replication area. Mr. Holmes said a test pit will be dug in the area to get to the hydric soil level and from there will work up.

Ms. Harling asked how deep the road is and how much material needs to be removed. Mr. Holmes said it could be a few feet, but he will not really know until the removal gets started. Mr. Fellini asked what other hydrology could be used to span the wetlands for the proposed access road. Mr. Holmes replied that box culverts would be used to cross a stream but in this case the grates used will provide open connectivity so animal life can get from side to side. Mrs. Pelletier asked if all the plant life under the grates counts toward the calculation of total square feet. Mr. Holmes replied yes. Mrs. Pelletier asked about the plantings proposed for the edge of the access way indicated as "loam and seed" on Webby's plan. Mr. Holmes explained that wetland soils and plant seeds will be used. Mrs. Pelletier also asked about the plants in section 3 table 1 and if disease resistant native plants be used to avoid ongoing problems with American Elms and Dutch Elm disease. She also asked if the natural debris on the site will be used as part of the restoration. Other issues discussed included allowed replication square footage, ongoing maintenance of the grates, using the existing road as an access for the restoration, the mechanics of the grading system used to get down to wetland soils, depth of the support system for the grates and the weight capacity of the grate system for the proposed use.

John Zimmer addressed the commission and spoke to chapter 61 allowed uses for the property and reviewed the exhibits provided by Attorney Brodsky regarding the historic use of the property. He consulted with the state forester at DCR, James Rassmussen to understand the differences between a forestry plan and a cutting plan. Forestry activities come under the Massachusetts Forest Cutting Practices Act. Mr. Zimmer asked Mr. Rassmussen about the status of the roadway as it relates to a forestry plan and an approved cutting plan. The Mass Forestry BMP manual indicates that there is no provision under a forest cutting plan that allows for the installation of a permanent access road. Temporary skid roads can be incorporated into a forestry plan under approval of the Conservation Commission that would be removed at the end of activities and restoration of disturbed areas performed. Mr. Zimmer advised that the restoration plan should encompass the entire area of fill to the limit of jurisdiction. He also asked Mr.

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Rassmussen that if a permanent access road was proposed what would be the process. Mr. Rassmussen advised that the process would be the same as for a subdivision road. It would be a new project that has nothing to do with agriculture and that any approved road would need to come out of chapter 61.

Mr. Zimmer then reviewed the restoration plan briefly before addressing the Notice of Intent. Mr. Zimmer advised that by not considering the historical use area that the replication square footage would be far more than the 5,000 square feet requiring a Limited Project Provision and that was not indicated in the NOI filing.

Mrs. Pelletier asked Town Counsel Kwesell if it would be possible to move forward with the restoration and attend a site visit. Attorney Kwesell advised that the commission not close the public hearing for the Enforcement Order until Mr. Zimmer's concerns were resolved by Mr. Holmes. Once the restoration is under way, we could approach the applicant about site visits to mark progress. As for the NOI, more information is needed from the applicant to proceed. A discussion about a site visit and monitoring of progress for a restoration plan continued.

Attorney Brodsky said that he could arrange another site visit. He also addressed Mr. Zimmer's comments and said that the land is in agricultural use not only presently but for decades with existing access ways and the applicant is entitled to maintain those access ways for agricultural use and that's why they did not include that gravel in the calculation for restoration and replication. The only new square footage being added is in the approximately 4,000 square feet of replication proposed. It is not a new site with new work being performed. The site has been historically used for forestry and we maintain that we are allowed to continue that activity. The maintenance is simply the application of gravel to create a surface so we can drive vehicles over that once all that material is removed. Attorney Brodsky said that this is a regulatory disagreement as to how to proceed.

Mr. Zimmer addressed the use of the property and the arial photos provided from 1988 that do not show the access from where the current access is and if the work back then was done under a cutting plan that restoration of any disturbed areas would have to be done at the end of that activity and the accessway would have been temporary.

Mr. Fellini asked about the presence of vernal pools on the property. The discussion about vernal pools continued. Mr. Zimmer pointed out that under the Wetlands Protection Act unless a vernal pool is certified it does not have the protections.

Attorney Brodsky said the best evidence of alteration to the site is the 1988 photograph that was provided overlayed with the current plan. Mr. Spath continued along the existing accessway and that the whole area was altered prior to the adoption of the Wetlands Protection Act in 1972 and there are deed references dating back to the 1940's referring to woodlands.

Mrs. Pelletier requested a single view of the land with overlays of the various images. Attorney Brodsky pointed out that the 1988 image is not a GIS.

A site visit was discussed. The site visit was set for Monday, February 12 at 11AM.

Mr. Fellini made a motion to continue the public hearing for the Enforcement Order and the Notice of Intent for 98 Barker Street/409 Washington Street until March 7, 2024 at 7:15 PM, the motion was seconded by Mr. Madden. Motion passed unanimously.

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Mr. Fellini made a motion to adjourn the meeting, seconded by Ms. Harling. Motion passed unanimously.

The meeting adjourned at 7:53 PM.

Materials and Exhibits

NOI_RevisedPlanSetStormwater_1-22-24

RevisedNOIsubmittal1-22-24

RevisedRestorationSubmittal1-22-24

Adam J. Brodsky letter to Chair, Art Egerton with Exhibits dated January 18, 2024

Third-Party Review – Wetland Restoration Plan & Notice of Intent 98 Barker Street/409 Washington Street

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