



**Pembroke Conservation Commission
Minutes of the Meeting of
March 14, 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 7:04PM Chair Art Egerton opened the meeting, and stated, “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; Amy Kwesell, Town Counsel

ONGOING BUSINESS

Review and issuance of Order of Conditions – 98 Barker St/409 Washington St DEP 056-1102.

Administrative Agent, Wandell informed the commissioners that they had two documents before them; the standard Order of Conditions and a denial of the Order of Conditions prepared by Town Counsel Amy Kwesell and Wetland Scientist, John Zimmer, the Commission’s peer reviewer.

Town Counsel reminded the commissioners that the public hearing was closed for the Notice of Intent.

Town Counsel Kwesell explained to the Commission that there are significant issues with granting the order of conditions because there are questions regarding the 5,000 square feet of replication and that an order of conditions cannot be granted if the replication area in question is over the 5,000 square feet. In addition, the exemption being sought for the 5,000 square feet is still in question. Also the rip-rap proposed for stormwater on the berms which is considered fill which would count toward the 5,000 square feet.

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

Mr. Clarke asked about the forestry plan and how that plays a role in the denial. Town Counsel Kwesell stated that a forestry plan without an approved cutting plan does not qualify for the exemptions the applicant was seeking and that the case Attorney Brodsky cited included testimony from the state forester that supports the need for a cutting plan which the applicant did not provide. Mr. Clarke asked if the denial could be handed down due to lack of information. Town Counsel replied in the affirmative.

The denial was drafted with a standard denial with a procedural history and then the findings. The findings are broken into two parts, the first being inconsistent, incomplete information and the second the exemption. All of this has been listed in the denial.

Mr. Edgerton asked what kind of options Mr. Spath had. Attorney Kwesell explained the appeal process for a denial through a request for a superseding order of conditions with DEP and then an appeal of the denial in superior court. Once the request for a superseding order is filed, DEP will notify the commission of a DEP site visit and then DEP has 70 days to enter a decision.

Mrs. Pelletier asked how the denial would affect the restoration plan. Attorney Kwesell said the NOI and the restoration are two different issues and that the Enforcement Order is still in effect.

There was a brief discussion of the restoration plan and the changes that were discussed at the March 7th meeting. Town Counsel Kwesell reminded the commissioners that the public hearing for the restoration plan is closed, and discussion of the restoration plan is not on the agenda.

There was a discussion regarding conservation restrictions and surety bonds and performance bonds.

Attorney Kwesell explained how public hearings are continued and closed and how it relates to the closing of the public hearing for the NOI. All requests for continuation should be made in writing and in this case that was done until the last meeting where a request to close the public hearing was made by the applicant.

Mrs. Pelletier said she was uncomfortable issuing an Order of Conditions, Mr. Clarke concurred.

In addition to the above-mentioned reasons for denial, Kwesell pointed out that there was no application made for a limited project to allow a roadway to go through a wetland to access the upland on the property.

Kwesell referenced John Zimmer's responses to the plans presented for the NOI questioning the 5,000 square feet and other inconsistencies in the plan and that the applicant's responses did not resolve.

Amy Kwesell read for the commissioners the findings for the denial.

Mr. Fellini made a motion to accept the findings for denial of the Notice of Intent DEP number SE056-1102, seconded by Mr. Madden. The vote was taken by rollcall:

Rick Madden – Aye
Gino Fellini – Aye
Nicole Pelletier – Aye
Theresa Harling – Aye
Bob Clarke – Aye
Art Edgerton – Aye

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Motion passed.

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

Materials and Exhibits

ECR- Brad Holmes, Additional Information, Wetland Restoration Submittal dated February 28, 2024

Adam J. Brodsky letter to Chair, Art Egerton response to SRE review dated February 29, 2024

SRE-John Zimmer dated March 7, 2024, response to DTM letter of February 29, 2024

KP Law Amy Kwesell March 7, 2024 response to DTM letter of February 29, 2024

KP Law Amy Kwesell, Findings for denial of the Notice of Intent to be dated March 26, 2024

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