



Robert F. Sullivan
Mayor

CITY OF BROCKTON

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Planning Board

Historical Commission

Conservation Commission

Robert May, CEcD
Director

BROCKTON CONSERVATION COMMISSION

October 21, 2020 at 6 PM

Meeting Minutes

Stephanie Danielson introduced herself and called the October 21, 2020 meeting of the Brockton Conservation Commission to order and read the following statement: This meeting is being recorded in accordance with the government order suspending certain provisions of the Open Meeting Law General Law chapter 38 section 20. Real time public participation and comment can be addressed to the conservation commission utilizing the zoom virtual meeting software for remote access; this application will allow users to view the meeting and send a comment or question to the chair via the question and answer function; submitted text comments will be read into the record. For those of you joining by phone press star nine. If you want to ask a question please raise your hand. All votes will be done via roll call to ensure count accuracy.

There were three voting members of the commission in attendance constituting a quorum (Danielson, Zygmunt & Sparks). Also in attendance were conservation agent Megan Shave and administrative assistant Pamela Gurley.

1. Request for Certificate of Compliance
Property: 738 N Cary Street, Lot 1
Project: Single-Family House
Representative: JK Holmgren Engineering

The chair stated that the only outstanding item was the finalization of the three year warranty to be provided by Mr. Morrissey to new owners of this home which will allow him to monitor the restoration; she said he has provided copies of the signed warranties and that the agent sent the document to the law department and after reviewing it had no issues. She said the discussion will be on the two lots, but separate votes will be taken.

The agent said that she believes that they now have sufficient information to issue partials COC to both properties. She said she was notified that the wetland scientist is starting the plantings.

Joanne Zygmunt asked if there would be any ongoing conditions with the partials. The agent suggested a condition that the property remain in compliance with the monitoring plan and that the restoration work is completed. Jim Morrissey said that the plantings have been completed and the chair asked that the agent do an inspection of the plantings.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a partial COC with the ongoing condition that property remain in compliance with monitoring plans and the restoration work is completed.

2. Request for Certificate of Compliance

Property: 738 N Cary Street, Lot 3
Project: Single-Family House
Representative: JK Holmgren Engineering

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a partial COC with the ongoing condition that property remain in compliance with monitoring plans and the restoration work is completed.

3. Request for Certificate of Compliance - Postponed to November 18, 2020

Property: 1020 W Chestnut St
Project: Tortelleria Mi Nina - Warehouse
Representative: JK Holmgren Engineering

The agent said that she had received a request to continue this to the November meeting. Scott Faria said they have some outstanding issues to take care of from the agent's report; he said he has spoken with the building owner and contractor and intend to take care of the issues before the next meeting.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to postpone to the November meeting.

4. Request for Certificate of Compliance - Postponed to November 18,2020

Property: 196 Manley St
Project: Equipment East - Construction Equipment Sales
Representative: JK Holmgren Engineering

The agent said that her review shows several deviations that are in violation of OOC; she said as a result she asked Beta to conduct a review; she said Beta has said they need revised as built and calcs for the deviations in the design. She said that the crushed stone driveway was installed, the brush line was cut back, they are missing the curbing that would have blocked off the access to the "stone driveway"; she said that they need to restore the shrub line and the gravel drive area needs to be restored to grass.

Scott Faria said he met with the building owner yesterday and he is getting in touch with the contractor and they will be restoring the property; although he is asking to continue to the November meeting, they may need more time.

The chair said this work was done in blatant violation of the OOC and suggested that the commission may want to issue an enforcement order. She asked if they were taking immediate action to restore the area and Scott Faria said he was told they will be getting in touch with the contractor. It was agreed that if by the time of the next meeting the gravel driveway area has been restored and replanted the commission could hold off on issuing an enforcement order.

The agent said that the commission needs to consider what will be planted in the current grass area to restore the shrub layer; she said there are two separate issues: restoring the gravel back to grass and the grass back to shrub plantings. The chair asked the agent if she thought it was too late in the planting season and was told it is weather permitting...this week was 60-70 degrees. Bonnie Sparks said now is the time now to plant native seed. Scott Faria said they will contact Brad Holmes and ask him to get in touch with the agent.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the November meeting.

5. Notice of Intent

Property: Plots 41-4 and 41, Lot B - 496 N Cary St

Project: Single Family Home

Representative: JK Holmgren Engineering

Scott Faria said this is a single family home on N Cary St. He said he has submitted a revised plan that addressed the agenda concerns about lack of elevations and Brad Holmes has submitted an invasive control plan; he said she has also requested that they extend the siltation controls.

Megan Shave said they proposed two types of invasive removal and she she suggests they go with mechanical removal; she said the knotweed goes beyond the property line but can only be removed up to property line; she said having them remove the knotweed that far could potentially cause more disturbance and suggests that they stop at the LOW. Bonnie Sparks said she agrees with the agent.

Stephanie Danielson said that the vernal pool is located on the westerly side of the property (off property) and there is only 68' between the VP and proposed house; she asked if they could shift the dwelling so it has SE/NW orientation and providing greater protection to the VP and move the limit of work and permanent markers accordingly.

Scott Faria said that would not be a problem, but asked if they could approve the OOC tonight contingent on a revised plan so that he could start building. The commission said that historically they do not issue contingent approvals. Pam Gurley said that the lot has not been released by the planning board.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a continuance to the November meeting.

6. Notice of Intent

Property: Map 142 Plot 383 Quincy Street

Project: Apartment Building

Representative: ET Engineering

Azu Etoniru said they submitted a revised plan too late for the last meeting so to give everyone time to review it, they continued the hearing to tonight. He said they adjusted the recharge system per Beta's comments and feel that at this time they have addressed all comments from Beta and the agent and would like to close the hearing.

Megan Shave said she spoke with Phil Paradis from Beta today and confirmed that the map of the BMP's and the revised calcs address their concerns; she said that the additional information on the flood plain boundary confirms that are outside the floodplain. She said she has been asking since her May report for an alternatives analysis for paving the 25' BZ and the only response she received was that this is a redevelopment project, that stormwater improvements are proposed, and that the 25' BZ is a previously disturbed area. She said she is concerned about the location of the retaining wall and new paving/regrading in 25' BZ. She said that the regrading and retaining wall propose a significant probability of encroachment. She said she has proposed conditions to help mitigate this possible encroachment and conditions for the replication area; she said Beta has also suggested that the excavated soils be witnessed before the installation of the basin.

Joanne Zygmunt said she understands that the 25' buffer is disturbed; she said the proposal is to pave over a significant part of the 25' buffer; a smaller development would not require as much paving.

Bonnie Sparks said she has similar concerns and asked how the existing paving was allowed; Megan Shave said that it is an historically filled site; the parking lot was there in the 1960's and pre-dates the wetland protection act.

The chair said she told them previously that work should have been done to restore the BZ; she asked if it was necessary to have two entrances; she suggested shifting it a little; she said that this project is $\frac{1}{3}$ building and $\frac{2}{3}$ pavement. Joanne Zygmunt asked if this would be for over 55 and was told yes and also for Massasoit. She said there is 0 green space; she said that her issue is a significant part of the 25' buffer is proposed to be paved.

Mike Mather Sr. said he only wanted 18 apartments, he said he never wanted that many units; he said that the city told him to put in more units; when asked who the city was he responded (Councilor) Anne Beaugrade, the mayor (Sullivan) and Rob May.

John McCluskey said they met with the mayor and planning and they are in favor of the project; he said it is not fair to ask Mike to change it this late; he said Mike was enticed to spend all this money at the direction of the city.

Joanne Zygmunt asked if his original plan for 18 units extended into the 25' BZ; Mike Mather said at that time he did not have any plans; did not speak with Azu until he settled on 38 units. Azu said that the number of units has nothing to do with the layout; the property precedes the Act; he said that the project addresses water quality; right now sheet flow runs into the wetland untreated; he said that the retaining wall serves as a physical barrier to the wetland.

Stephanie Danielson said this is a significant site development and said she finds it hard to believe that a smaller development would not have allowed for less impact; she said that considerations could be made on the site.

Joanne Zygmunt said she understands that this is an improvement over the current conditions; she said that the number of units dictates the amount of parking spaces; fewer units would have fewer spaces; in ideal world she would like to see fewer units; she said she would like to see some considerations and see if there are any alternatives.

Azu Etoniru said the wetlands in the area of the proposed project is not a functioning wetlands; he said the 25' no touch is not a regulatory requirement and said that even with less units the site elevation will still need to be raised.

Bonnie Sparks asked where the snow storage was and Azu Etoniru said it's on sheet C-3, but if there is a lot of snow it will be hauled off site. Joanne Zygmunt said she has looked at all the sheets and does not see it on the plans. He said it will be outside the BVW in the green space area.

Joanne Zygmunt asked the agent if she felt that the area being paved over serves any ecological function: the agent said there is a pretty steep fill slope; she said again she has asked for an alternatives analysis bringing the limit of work to the top of the slope; she said currently the 25' BZ is mostly pavement and the fill slope; the tree canopy layer has native species such as red maple, but the shrub layer is dominated by invasives; she said it still has ecological functions, but they are functions of a human-disturbed ecosystem. Joanne Zygmunt asked if they could discuss wetland mitigation opportunities or requirements for tree planting. The chair asked if she was looking onsite or off site and was told either. The chair said that they are also altering the wetland resource area; she said if we looked at this project the way the engineer wanted them to see it, then we would just let everything be developed; she said she would like to see more mitigation on site. She asked the applicant how he wished to proceed

and Mike Mather said he wants to get it passed tonight ...that he was making it better. Attorney McCluskey said that they have come a long way on the project and asked that the hearing be closed; he said it is not wise to go back.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to close the hearing.

The chair asked if someone wanted to make a motion. Joanne Zygmunt said she does not like the project for all reasons expressed this evening; but because of the proposed improvement to stormwater and the agent's suggestions for mitigating special conditions she will make a motion.

A motion was properly made (Zygmunt) and seconded (Sparks) to issue an OOC with additional special conditions as outlined by the agent:

- An Environmental Monitor shall be employed by the Owner or Applicant and approved by the Commission to oversee all work within the 100-ft Buffer Zone to BVW, including but not limited to supervision of the maintenance and replacement of all erosion controls. The name, contact information, and confirmation of service for the Environmental Monitor shall be provided prior to the start of work on the Site and prior to Commission approval of a building permit.
- The Environmental Monitor shall inspect slopes and erosion controls daily during retaining wall installation and grading activities within the 25-ft Buffer Zone to BVW.
- At no time during or after construction shall fill or other materials be placed at, slump into, or fall beyond the limit-of-work and erosion control barrier as shown on the approved plan. The Environmental Monitor shall be responsible for inspecting and maintaining all slopes and shall immediately notify the Brockton Conservation Commission if slumping, erosion, or encroachment occurs.
- The Environmental Monitor shall have the authority to modify existing controls or require additional controls if he or she deems it necessary. The Environmental Monitor shall immediately control any erosion problems that occur on the site and shall immediately notify the Brockton Conservation Commission if any discharges to a wetland resource area occur.
- The Environmental Monitor shall report in writing to the Brockton Conservation Commission once per month while activity is underway within the 100-ft Buffer Zone to BVW to confirm that all activities are in compliance with the conditions of this OOC. The status report shall at minimum include a description of any erosion control problems, progress on construction and grading, changes in construction schedule, actions taken to address problems and any other recommendations for site management.
- A Wetland Scientist shall be employed by the Owner or Applicant and approved by the Commission to oversee the Wetland Replication Area work. The name, contact information, and confirmation of service for the Environmental Monitor shall be provided prior to the start of work on the Site.
- Excavation and backfill for the Wetland Disturbance Area and Wetland Replication Area outlined in the Mitigation & Monitoring Plan shall precede new construction on the Site. The Wetland Scientist shall submit a monitoring report on the excavation activities prior to Commission approval of a building permit.
- The Wetland Scientist shall submit a monitoring report on the Wetland Replication Area to the Commission at the end of each growing season for three years following issuance of this Order of Conditions or until a Complete Certificate of Compliance is issued. If the replication area has not achieved 75% coverage by wetland indicator species by this time, additional plantings and monitoring events may be necessary.
- A representative of the Commission shall observe the excavated soils to confirm design assumptions prior to installation of the infiltration system.

In favor: Sparks, Zygmunt
Opposed: Danielson

7. Notice of Intent - **Postponed to November 18, 2020**

Property: 53 Baker Street
Project: Single Family House
Representative: ET Engineering

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to postpone to the November meeting.

8. Request for Amended Order of Conditions - SE 118-0693

Property: Plot 16 & 23 Hammond Street
Project: Hammond Street Cemetery and Crematory
Representative: Jacobs Driscoll Engineering

Greg Driscoll said they revised the plans show the developers intent for the project; he said the applicant has also submitted a letter outlining his proposal for the property. He said his intent to have a cemetery like Sharon Memorial/Norwood Cemetery/Bourne National with flat stones, trees, rolling terrain they don't want raised headstones. He said in order to prepare land for burials the whole area needs to be cleared and excavated down 5-6 feet and cleared of rocks/debris; he said it is more of an earth work type of project; after the that earth work is done the detention basins will be constructed and area will be seeded.

The agent asked them to confirm what work if any is proposed for phase 2 because the revised site plans show no work in phase 2; she asked if the proposed 10' natural buffer around BVW is to satisfy special condition #D1 and was told it was; she asked how the trees in the 100' BZ will be saved; she said she would like to see a timeframe (special condition) for the seeding and stabilizing of 1A and said she is also suggesting a condition that there is a pre construction meeting to revisit the missing wetlands flags and confirm that the limit of work is staked outside the 25' non disturbance zone.

Attorney Burke said there is no work proposed in phase 2 right now; he said the proposal is no longer on the horizon; he said they would be happy to come back to the commission if something changes in the future. He said it is the intent of the developer is to create a berm buffer...to clean, grade, stabilize and execute a landscape design; he said they would be happy to modify the landscape design if necessary.

Greg Driscoll said they have no issue with meeting on site; they will reset the missing flags and re adjust the flags in question. Attorney Burke said that they will agree to the pre construction meeting.

Stephanie Danielson asked if they needed any other permits and was told they have received all permits. Attorney Burke said they received approval from the Board of Health and City Council. She asked what the time frame for beginning work was and was told mid November and that the work to site 1A will take approximately 6 months. She said that construction in winter presents a challenge for keeping the site stabilized and that any planting won't occur until mid-late spring; she asked how big the site was. Greg Driscoll said 30 acres including the road that has been discontinued. She said that winter proposes a much higher challenge for maintaining erosion control; Megan Shave said that there will be many acres of unstabilized land and the greatest run-off issues may be in spring. The chair asked for a detailed plan as to how the site will be cleared and kept stabilized and a contingency plan for weather conditions. Attorney Burke said they are willing to submit that plan but would like the commission to take

action tonight. The chair said she would like a special condition that no work commenced until the plan is in place.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to close the hearing.

A motion was properly made (Zygmunt) seconded (Sparks) to issue an amended OOC with special conditions as recommended by the agent.

On the motion: Motion amended as follows: Motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue an amended OOC with the amendments and special conditions as recommended by the agent, as well as the special condition recommended by the chair to include development of an erosion, management and contingency plan to address weather-related and unforeseen runoff issues, to be submitted and approved by commission and agent prior to any work commencing.

Amendments recommended by the agent:

- Add the *Hammond Site Development Plans – Hope Gardens Cemetery Site Plan* (18 Sheets), last revised October 02, 2020, as the Plan of Record.
- Addition of a Pre-Construction Special Condition stating that, as part of the Pre-Construction Meeting process, a representative of the Commission shall inspect the erosion control barrier/limit of work prior to any Site clearing or ground disturbance to locate the limit-of-work and ensure that no alteration will occur within the 25-ft Buffer Zone to BVW. No work shall be conducted prior this inspection beyond hand trimming of up-gradient vegetation as needed to install the erosion control barrier.

Greg Driscoll said they were also requesting an extension to the OOC and asked if it could be voted on tonight. Megan Shave said that the request was received after the agenda was set and posted; the chair noted that the request must be made 30 days prior to expiration of the OOC and was willing to hear it.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to grant a three year extension.

9. Notice of Intent - **Postponed to 11-18-20**

Property: 955 Belmont Street

Project: Convenience Store & Gas Station

Representative: Ayoub Engineering

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to postpone the hearing to the November meeting.

10. Request for Extension of Order of Conditions - SE 118-0724

Property: Plots 10 & 11-1 Oak Hill Way

Project: Industrial Development - EOMS Recycling

Representative: Strongpoint Engineering

Eric Dias said that the OOC was issued in 2017 and would have expired on the 12th of October; he said that although permits do not expire during state of emergency they were looking to get the extension. He said they are in the process of site review for phase 1 the driveway and

utilities; he said that phase 1 is slightly different and they want to get through planning and then will return for an amendment.

Megan Shave said that she sees no issue with the extension being issued on existing OOC and thinks that the variations will not be significant enough to require a new NOI, but that they should be accepted as the plan of record in an Amended OOC to capture any deviations.

Stephanie Danielson said she does not see the emergency order being lifted at any time soon and suggested that they wait and do the extension and amendment at the same time. Eric Diaz said he will update the commission in December.

A motion is properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue the request for an extension to the December meeting.

Other Business/On-going Projects/Minutes/Discussion/Up-Dates

Enforcement Order - 219 Bellevue Ave

The agent said that during the N Cary inspection she noticed what she thought was work on the Bellevue Ave. property. She when she return to the office she pulled out the plans; she said there has been a significant amount of backyard and accessory structures added; she said that the property has a LOW when built; there has been substantial yard expansion that may have encroached on the abutting property; she said she issued enforcement requiring mitigation and restoration and has not heard from the property owner (she did receive the return receipt).

A motion was properly made (Zygmunt) seconded (Sparks) and passed by a unanimous vote to ratify the enforcement order.

Enforcement Correspondence - 82 Ames St

The agent said she received a complaint from an abutter regarding work close to a stream. She went out to the property and found a drainage channel at rear of property that is potentially jurisdictional; the property owner told her that he previously met with a building inspector and was told the site could be cleared; she said the property owner has now installed erosion control and was told that there needs to be some determination for the channel.

Robert Toukmanian said Frank Gazzero gave them OK to clear property; he said he had an environmental report done by Bob Rego and will have him file an RDA...they did 21E...does not appear to be jurisdictional, appears that it is a drainage conveyance. Megan Shave said that it may feed into a culverted portion of Trout Brook.

Enforcement Correspondence - Map 010-164 Pearl St

She said this was a result of abutter complaints; she said it looks this this work has been going on for quite a while; she said it looks like some additional clearing and moving of fill has come within 100' of stream and as a result of the site visit sent C&D; she said he has crossed into 100' but has not altered an area yet. She said that the owner has contacted her and told her that he is planning to build a house on the property.

Sandy & Bill Dunphy (57 Windsor St.) said they are glad to see this is being looked at; he said they were concerned about where the fill the owner was bringing in was from and were able to determine it came from the new Irving Oil site on Pleasant St.

Megan Shave said she will follow up with the owner and get a progress report; if no progress is taken by the next meeting, she suggested that they take more formal action.

Acceptance of Meeting Minutes: 7-15-2020, 9-16-2020

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to accept the minus from 7-15-20 and 9-16-20 (change “environmental monitor” lower case).

The members spoke about the need to have some additional members; if all members are not attending it puts a burden on those remaining members. The chair said she has spoken with the Mayor about this. It was agreed that they would do promotions via podcast or BCA.

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

As you are aware the Commonwealth of Massachusetts and the City of Brockton are currently in a “State of Emergency” during the COVID 19 pandemic.