



CITY OF BROCKTON

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Planning Board

Historical Commission

Conservation Commission

Robert F. Sullivan
Mayor

Robert May, CECD
Director

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BROCKTON CONSERVATION COMMISSION

November 18, 2020 at 6 PM

MINUTES

Stephanie Danielson introduced herself and called the November 18, 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.

Present were: Stephanie Danielson, Joanne Zygmunt & Bonnie Sparks; also present were agent Megan Shave and admin Pamela Gurley.

1. Request for Determination of Applicability

Property: MBTA Commuter Rail Right-of-Way

Project: Vegetation Management Plan

Applicant/Representative: Keolis Commuter Services / Fair Dermody Consulting Engineers

Matt Donovan said the commuter rail is responsible for a 5-year vegetation management plan; he said various methods are used to remove the vegetation along the tracks: physical, chemical and mechanical methods are used. He said they always attempt to limit the use of chemicals for vegetation management; this is the same map as approved by con-com in 2016; he said they are again seeking a Positive 2A and a Negative 5 determination; he explained that chemical removal is done by a spray truck applicator and they are accompanied by environmental monitor; yellow zones are no spray zones (except for track area), blue zones are limited spray (every two years) and said that both yellow and blue is a majority of more physical removal methods.

Megan Shave said she has reviewed the maps and would suggest a Positive 2A for BVW only and would not recommend the Negative 5. She said she assumes the "National Wetlands" layer corresponds to BVW; there are other resource areas besides BVW in the vicinity of the ROW. She said the exemption they are referring to is for public utilities only (public utility ROW is specific and does not include railway ROWS); the public utility exemption does not work for railways. Stephanie Danielson said they received a letter from MACC & MSCP and their conclusions match the agent's.

Joanne Zygmunt said that the scale of the map is small; Bonnie Sparks asked what are the factors that would necessitate use of chemicals instead of physical removal. Matt Donovan said that there are two chemical applications per year for track structure; pre emergent and post emergent; he said mechanical methods are outside the track structure and are constantly evaluated by the environmental engineer.

Stephanie Danielson said she is not a proponent of chemical applications and finds it hard to believe that movement of trains would not keep vegetation off the tracks. She said she agreed with the agent's recommendations that they could issue a Positive 2a. The agent said the Positive 2a should say for BVW only and suggested they not grant the Negative 5.

(No public.)

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a Positive 2a for BVW only.

2. Request for Determination of Applicability

Property: 223/261 Thatcher Street

Project: Thatcher St Housing Development

Applicant/Representative: POUA Holdings / Horsley Witten Group

Present were Amy Ball, J. Kroll, Jim Grogan and Attorney J. Burke

Amy Ball said the property is 223/261 Thatcher St: she said the applicants are proposing a 175 unit mixed use development within the approved TSDGOD (40R). She said that the project is just outside the 100' BZ of vegetation wetlands and that they are seeking a Negative determination.

Megan Shave said the BVW is at the southern boundary; she said it was flagged and verified by both her and BETA (flag #24 needs replacement) and the boundary is accurately delineated; she said the LOW is outside 100' BZ and is recommending a Negative 4 determination.

(No public.)

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a Negative 4 determination.

3. Request for Determination of Applicability

Property: 82 Ames Street

Applicant/Representative: Robert Toukhamanian / River Hawk Environmental

Present were Bob Reggo & Robert Toukhamanian

Bob Reggo said he submitted this RDA after they were told to stop working on the site by the agent. He said the plan shows a non jurisdictional drainage channel and that a portion of the site is located in FEMA Flood Zone A (eastern portion of site). There is no work proposed in that area and if something were to be proposed they are aware they will need to file with the Commission. At this time there is no project proposed, they are just looking to clear the vegetation and clean up the site.

Megan Shave said that she sent the property owner an enforcement correspondence letter and said she thought that site warranted an RDA; as she had a question on the potential resource areas and felt this was the best way to handle it.

Bonnie Sparks said she is not comfortable with the clearing of an area with no project.

Robert Toukhamanian (owner) said before doing any work they approached a building inspector and asked if they could clear the land and were given approval to cut and clear the property and clear the mounds of garbage off the site; he said once notified by the agent, work stopped and erosion control was put up. He said he wants to clean up the site and make the lot presentable.

Stephanie Danielson said because of the floodplain the Commission is between a rock and a hard place here otherwise it would receive a Negative determination.

Megan Shave said this all began with the clearing work at the drainage channel; she said that following the review of the RDA she does not think that the channel can be considered a stream; she said her concern about issuing a Negative 1 determination is the floodplain; Flood Zone A is an area subject to jurisdiction (Bordering Land Subject to Flooding). The chair asked if she believed that the Commission should issue a Positive 1 and have the applicant file for the clean up work; the agent said that because no project is proposed with the RDA they can not issue any of the Negative determinations that refer to work.

Bob Rego said a large portion of the site is outside the jurisdiction and the applicant does not need permission to work outside the Commission's jurisdiction; the chair asked if they know where jurisdiction is; the owner said he knows where that area is and it is flagged and paved; the agent said that most of the site is paved and you can see it on the plans; the property owner said he has no intention of clearing in that area and will not be going into that area; Bob Rego said they can mark it by survey; the chair noted that the Zone A portion abuts Ames St. The property owner said this is one large lot and the drainage conveyance splits it.

After discussion it was recommended that any work within BLSF will require a filing and that either the Commission could issue a Positive 1 determination then include a stipulation that the channel that is not jurisdictional or in the alternative a Positive 2A for the BLSF agreeing that the BLSF boundary would be binding.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a Positive 2a for BLSF.

4. Abbreviated Notice of Resource Area Delineation

Property: Map 128 Lot 29 Salisbury Street

Applicant/Representative: Scott McDuffy / Farland Corp

Steve Carvalho said that the wetlands were delineated by Brad Holmes in March. He said this is a vacant piece of property; he said that at some point in time the river was altered by a stone wall; he said the actual property line is the dashed line; they have highlighted the resource areas and greyed out the areas not on their property; there is an existing sewer easement that goes through the property and they are hoping to get the line approved.

Stephanie Danielson asked if Salisbury St. was constructed and was told it was not.

Megan Shave said she reviewed the inland Bank and BVW and agrees with the flagging in general; she said there are breaks in the slope that indicate the Bank and BVW boundaries. She said the entire site is in a FEMA Flood Zone AE.

Proof of abutter notification was received.

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) and unanimously passed by a roll call vote to grant the ANRAD as per the agents recommendation.

5. Request for Certificate of Compliance

Property: 68 Twelfth Ave

Project: Single Family House Addition

Applicant/Representative: Franky August / JK Holmgren Engineering

Scott Faria said the COC is for a prior addition to an existing home; the BVW is beyond the chain link fence in the backyard; he said that the property owner has added a shed on blocks within the 25' BZ which is not on the plan; he said the property owner is in the process of moving the shed outside the 25' area. He said he is hoping to just move it outside the 25 BZ and said if they have to move it to the 50' buffer it is in the front yard.

The chair said it is only a minor project if it is outside the 50' bz; she asked that they install permanent markers and said that they will need to amend the OOC if the owner wants to leave it within the 50'.

Scott Faria asked for a continuance to the December meeting.

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

6. Request for Certificate of Compliance

Property: 1020 W Chestnut St

Project: Tortelleria Mi Nina - Warehouse

Applicant/Representative: New England Tortilla / JK Holmgren Engineering

Scott Faria said they have worked with BETA, the contractor, and the agent since the last meeting. He said that the paving is pitching the wrong way to direct runoff to the stormceptor; he said they are fixing the curbing to close the curb cuts; installing structures along the gutter connecting to the stormceptor and into leaching area; received a letter from BETA Monday agreeing with the change; the pile of debris was already removed; and removal of the sediment in the brook at the outfall will be done with work.

Megan Shave said that in addition to the housekeeping issues from her previous report, the main issue was the curb cuts that bypass the pre-treatment units; the proposed work should direct runoff back to the units. She requested that before they do any work they reinstall erosion controls just past CCB.

The chair asked that the agent inspect the re-installation of the erosion control.

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

7. Request for Certificate of Compliance

Property: 196 Manley St

Project: Construction Equipment Sales

Applicant/Representative: Equipment East / JK Holmgren Engineering

Scott Faria said this is a similar situation as the prior matter; he said there are deviations from the approved plan. He said his client has been unable to get his contractor out to rectify the situation (patch of gravel and replanting of grass). The chair said it is not a "patch of gravel" - it is a crushed stone driveway. She said at the last meeting we gave your client a month to take action to rectify the situation...no action taken at all.

Bonnie Sparks said the Commission had already discussed enforcement at the last meeting but agreed to allow the applicant a month to correct the issues.

Megan Shave said she would agree that the Commission should issue an Enforcement Order; she also said she has no final report from BETA, for they need a revised as-built plan showing accurate existing conditions.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue an Enforcement Order per the agent's recommendations as well as require that the Commission is provided with an accurate as-built plan that accurately depicts the conditions of the site.

8. Notice of Intent

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

Project: Single Family Home

Applicant/Representative: CLM Development / JK Holmgren Engineering

Scott Faria said that at last meeting the Commission had asked that the house be shifted away from the vernal pool; he said the revised plan now shows the home is 88' from VP; he said they also relocated siltation according to the agent's suggestions.

Megan Shave said her recommendations remain the same as in her prior report - same additional special conditions; the chair asked if the location change was confirmed and the agent said the original plan showed the home at 68'.

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) and unanimously passed by a roll call vote to issue an OOC with the additional Special Conditions recommended by the agent.

Additional Special Conditions:

- All Japanese knotweed within the work area defined by the location of the erosion control barrier shown on the Plan of Record shall be removed using the mechanical methods described in the Invasive Plant Control Memo.

- o The erosion control barrier shall be installed prior the start of excavation of the knotweed root mass.

- o Excavation of the knotweed root mass shall be completed, and stockpiling of plant materials initiated, prior to Commission approval of a building permit.

- The Wetland Scientist or overseeing specialist shall monitor the knotweed mitigation work and provide a written report to the Commission following the initial knotweed removal/excavation and at the end of each growing season for three years following the issuance of the OOC.

- The Commission reserves the right to request additional treatment or changes in methodology in coordination with the Wetland Scientist or overseeing specialist.

- No herbicides or pesticides are to be used at this site. This condition shall be made part of any and all subsequent deeds conveying the subject parcel.

- No road salt, sodium chloride, or other de-icing chemicals with the exception of calcium chlorides shall be used on paved surfaces. This condition shall be made part of any and all subsequent deeds conveying the subject parcel.

Permanent "Brockton Conservation Commission – Limit of Work – Do Not Remove" markers shall be installed every 25 ft along the approved Limit of Work / Erosion Control Barrier boundary as shown on the Plan of Record.

9. Notice of Intent - **Continued to January 20, 2021**

Property: Plot 2 Belgravia Ave

Project: Single Family Homes and Roadway

Applicant/Representative: Buskull Properties / Silva Engineering

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue the matter to the January 2021 meeting on the third Wednesday in January.

10. Notice of Intent

Property: 53 Baker Street

Project: Single Family House

Applicant/Representative: Kenneth Mousette / ET Engineering

Abutter notification was received.

Azu Etoniru said that the hearing was not formally opened but he has been speaking with the agent; he said he was not originally involved with the project 18 year ago; he said that the applicant used to own property that is now owned by COB and there is still an enforcement action pending on that property; he said they are hoping to move forward with this NOI and will be asking for a continuance to prepare a restoration plan for the sewer easement installed previously by the applicant as well as remove the fill within the 25 BZ. He said that hopefully this will be acceptable to the Commission; he would like to leave the enforcement order open and address it through restoration on this property.

Megan Shave said the sewer easement was installed through several abutting properties that were owned by the applicant; in 2002 all but this parcel were taken by COB for taxes; 2000s enforcement was on multiple parcels. She said that the 2001 restoration plan showed all the parcels that were impacted by the sewer. The chair asked if those were relevant to what is before us now; the agent said that the sewer line is a linear disturbance; she said she would like to see restoration of the equivalent disturbed area and said they need to look at connectivity if restoration will be proposed on one parcel only. She said there was an after-the-fact NOI in 2001 that was tabled and no OOC was ever issued for the restoration plan; she said the question is if proposed restoration work on 53 Baker would meet the sq footage previously proposed to address what happened in the 1990s - early 2000s.

Stephanie Danielson said they need to consider the 2001 restoration plan to see if it is possible/feasible if not they need to look at connectivity.

Azu Etoniru said he is not sure about a mechanism that allows for work on abutting land; the chair asked if the property was still owned by COB and was told it was; she said then the city could grant a construction easement for the work. She asked the applicant how long a continuance he was looking for. He said he would like to set up a meeting with the agent and Brad Holmes to come up with a reasonable restoration plan before returning to the Commission; he said they can immediately remove the fill in the 25' buffer. He said a continuance to December and if he needs longer he will notify the agent.

The agent said that the historical fill pile should be incorporated into an OOC - she believes that is filled wetland; she said they can remove the cleared vegetation and debris piled beyond the erosion control barrier in the 25-ft Buffer Zone, but there should be no removal of historical BVW fill without an OOC.

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

11. Notice of Intent

Property: 955 Belmont Street

Project: Convenience Store & Gas Station

Applicant/Representative: Colbea Enterprises / Ayoub Engineering

Abutter notification was received.

Attorney Dufault introduced her team; Eric Simpson said that Colbea is a family run business; he said they are looking to rebrand the convenience store to their Season's Corner Market brand. He said that the site is located at the entrance to Brockton; he said they will be relocating the tanks and removing site items that are currently within the 25' BZ.

Atty. Dufault said they are looking to raise and rebuild 4,600 sf building with drive through, redoing the drive through and bypass lane; they will be relocating the trash location; new canopy and pumps; 4 UST's will be removed and relocated outside the 100' buffer; snow storage will be removed from 50 bz and relocated on the north side of of the property; there is currently no stormwater management on the site; she said that BETA has six special conditions and they have received the agent conditions are all acceptable to them; she said they are willing to address the BETA comments.

Megan Shave said that most of the comments from the previous report were addressed; she said she has no additional comments beside proposed additional special conditions for the OOC. In terms of BETA's stormwater review, BETA communicated to her that comment SW14 could be resolved without adding an additional oil/grit separator and emergency shut off if the grading can be revised on plan to show that CB#1 is not downgradient in case of a spill. Attorney Dufault said that the remaining comments they can address within a week.

The chair said it is the Commission's policy not to close a hearing pending receipt of additional information. The agent said that BETA does want to see the revised grading. The chair asked if there were any prior releases on this site. Eric Simpson said there were a few releases when the prior owner had the property; some soil removal was done by Shell; there is some residual in the soil and that residual will be removed; he said they are expecting that there will be some residual clean up issues.

Stephanie Danielson said she would like to see an additional condition that any contamination found during the building process is to be properly disposed of. She said she appreciates the amount of proposed landscaping but would like to see more native plants used. Bonnie Sparks said she will always support the use of native plants. Joanne Zygmunt said she is looking at google earth imagery of the site and asked if the spaces they are removing are on the wetland side; she was told all the spaces along the westerly side will be removed. She then asked if there was any risk of disturbance of the 25'; Rich DeFusco said there is no disturbance of the 25' buffer except for the relocation of the trash enclosure and that area will be re-seeded with a conservation mix.

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

For the record, Attorney Dufault said she is willing to discuss the use of native species.

12. Notice of Intent

Property: Whitman Sewer Force Main Easement (Alger St - Thatcher St - Southfield Dr)

Project: 20-in Sewer Force Main Replacement

Applicant/Representative: Town of Whitman / Environmental Partners

Alysa Longo said the application is for replacement of 16,000 linear feet of sewer forcemain owned by the Town of Whitman; she said in 2016 and again in 2017 the main experienced a break. She said they were hired by the town to investigate the forcemain. She said they cleared most of the easement under an Emergency Certification and that clearing is reflected in this NOI; she said they found highly corrosive soils and their recommendation is to replace entire force main; she said they are proposing to use plastic pipe, will be using an open cut excavation except method except for the Beaver Brook area where they are proposing to use trenchless technology. She said they have submitted an NOI to Whitman and filed with the US Army Corp and MEPA; she said there is no Ch 91 or 401 Water Quality Certification being required by DEP.

Megan Shave said that the ENF has been submitted to MEPA and the consultation session is this coming Monday; she said she has walked the site three times as best she could; it is a very wet site; there will be 100,000 sf of alteration to BVW; 45 sf to Land under Water; 17,000 to BLSF. She said as this is a utility project it can be considered a limited project if it meets the performance standards; she said she has concerns about standards 2 and 3 in particular: how will vegetation be restored; there is no vegetation management beside re-seeding; she would suggest a condition that the OOC permit clearing for the sewer replacement only; she asked why 30' would need to be permanently cleared; she is also concerned about erosion control/site stabilization and how the site will be stabilized during flooded conditions; she said the site on either side of Beaver Brook floods with over a foot of water; she said she has walked through water flowing through the easement; she wants to know how the site be de-watered and stabilized during those conditions; she said she is also recommending that they carry over some special conditions from the Emergency Certification.

Stephanie Danielson said that her recommendation is that they continue until December to prepare a response. She asked if BETA was reviewing the Stormwater Report and was told by the agent that they are not as the municipality paid no fee; she said there is no change in contours being proposed, no increase in impervious surface; she said her biggest concern is site stabilization and that she needs a more substantial dewatering and stabilization plan.

The chair said again she would like to see a written response.

Ziad Kary said that they put in five groundwater monitoring wells and can measure the wells; the agent said that two of three times she was on site portions of the easement were under standing water and portions of the erosion control were being bypassed by the water; she said on Monday water was flowing over a foot deep north to south across the easement and over the erosion control barriers west of Beaver Brook.

Ziad Kary said they would like a continuance to December and will submit an answer in a memo format.

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

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

Enforcement Order Update - 219 Bellevue Ave

Attorney Scott Rubin & Scott Faria said they represent the owner Marcia Dosreis.

Megan Shave said this is a follow up to an Enforcement Order; she said there was an original OOC for a single family house with a limit of work; she said they received a COC in 2017. She said during a recent inspection of an abutting property she noticed an expanded lawn and two new accessory structures; she said that work on the western side of the property extends into the Rocky Mountain Spring property.

Scott Faria said they consulted with Brad Holmes and will be flagging the wetlands; he said they will be doing an existing conditions survey and he will be working with Brad and the agent to come up with a plan. He said they would like to continue this to the January meeting and will be staying in communication with Megan. Stephanie Danielson asked if they will need an after the fact NOI and was told yes to properly permit the work that was done and most likely some mitigation.

Enforcement Correspondence Update - Map 010-164 Pearl St

Megan Shave said she spoke with Azu Etoniru today and asked for a progress report in writing; she said they are working on the preparation of an NOI; she said that the wetlands were flagged and he anticipates the filing of the NOI on 11/30.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to acceptance of the minutes of 10-21-2020.