



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

**February 17, 2021 at 6 PM**

### **Minutes**

Stephanie Danielson introduced herself and called the February 17, 2021 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 and Bonnie Sparks; also present were Agent Megan Shave and Admin Pamela Gurley, new proposed member Joyce Voorhis was also present.

#### 1. Request for Determination of Applicability

Property: 56 Hall Street

Project: In-ground swimming pool

Applicant/Representative: Benjamin Greenberg / Peter DeFusco

Peter DeFusco said he was representing Ben Greenberg; he said the proposal is for a 16x34 in ground pool in an area maintained as lawn now; all work is outside the 50' BZ; they will be installing erosion control around the 25' BZ and that will serve as the limit of work; he said they are requesting a negative determination.

The chair said that the agent is recommending a negative 3 with conditions.

Bonnie Sparks about the storage of the soil during construction and where chemicals will be stored; the chair said that there can be a condition that all storage is in the outer 50' of the BZ.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to grant a negative 3 with the conditions contained in the agents report as well as the condition there there is to be no storage of materials or chemicals within the 50' BZ.

#### 2. Request for Determination of Applicability

Property: 138 Wilder Street

Project: Rail tarping station replacement

Applicant/Representative: Champion City Recovery / Green Seal Environmental

Jack O'Leary said that the property is the existing transfer station...specifically the tarping station...the railroad cars are covered with tarp to prevent debris from blowing about. He said that the existing tarping station need replacement (outer 50' of BZ) and is located on a paved area; there will be 3 7x7 concrete pad foundations; they will be installing siltation as shown; proposing a concrete washing area and are asking for a negative 3 determination. Stephanie Danielson said that the agent has recommended a negative 3 could be issued.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to grant a negative 3.

### 3. Request for Determination of Applicability

Property: 863 Belmont Street

Project: Razing existing building and repurposing site for auto sales facility

Applicant/Representative: SNE Sunoco / JK Holmgren Engineering

Scott Faria said at the December meeting they were asked to address some outstanding comments; he said they have done that and increased the siltation around the back of property and note on the plan has been eliminated as requested.

Stephanie Danielson said that the outstanding comments have been addressed and the agent is recommending a negative 4 determination.

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

### 4. 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 revised the drainage design to handle the flow from the low areas; the breaks in the curbing have been repaired and what is left is the seeding which will be done in warmer weather. He said they are seeking a partial COC as the bank will accept that.

The chair said she does not like to issue a partial COC, but if the commission issues a partial that stabilization should be ongoing and an ongoing condition of the COC.

Joanne Zygmunt agreed with the chair, Bonnie Sparks said she understands the time line concerns of the applicant.

Stephanie Danielson asked how the erosion being controlled and if the site was level. Scott Faria said some seeding was done; the siltation is still in place and said it is a small area and they could spread some hay to stabilize it. He said that the curbing is up against it so there is not a great risk of erosion. Bonnie Sparks asked that he identify the specific area on the plan. Scott Faria said this is holding up financing with the bank (construction loan); he said this situation is different as the property is not being sold.

After some further discussion it was agreed to continue the request to the May 19th meeting with the hope that the seeding will be completed and the site has been stabilized.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the May 19, 2021 meeting.

### 5. Request for Certificate of Compliance

Property: 25 Pearl Way

Project: Construction Equipment Sales

Applicant/Representative: Philip Saba / Pilling Engineering

The agent said this is an older OOC; she said she went back through file and found a previous request in 2011 was denied pending a superseding order for the adjacent lot and details of compliance with the

buffer zone restoration work; she said that the SOC was issued, she said there is no record of restoration planting details; she said the 25' area is a mix of invasives and lawn area; she said there is yard debris in the wetland area, she also said there is a small drainage pipe on the property which is not on any plan.

The chair said that if the commission votes to deny this request that it be accompanied with a letter from the agent requesting the details of the restoration, an explanation of the pipe, and that they remove the yard debris.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to deny the request for a COC and that the agent forward a letter to the homeowner requesting with the details of the restoration, an explanation of of the pipe, and that they remove the yard debris.

#### 6. Request for Certificate of Compliance

Property: Lot 1-A (Lot 4) Briarcliff Road

Project: Single Family House

Applicant/Representative: Global Property Services / Grady Consulting

Nicholas Leing said he was representing the homeowner The chair said that the agent's report said that LOW markers needed to be installed. The agent said that she went out today and verified installation and said that the as-built matches plan of record and recommends issuing a full COC with the ongoing conditions in Section E of the OOC.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue a full COC with the ongoing conditions contained in Section E.

#### 7. Request for Certificate of Compliance

Property: 74 (Plot 13) Melrose Ave

Project: Single Family House

Applicant/Representative: Absolute Builders / Curley & Hansen Surveyors

The agent said that the as built plan matches plan of record; she said she had asked for verification of the roof drain system and received a revised as built but that the permanent limit of work markers still need to be installed; she said that there was a fence and shed installed in the outer BZ and she said it could be considered a minor activity.

Bill Self said that he spoke with the agent today about spacing and location of the markers; he said that the rest of the property was mostly woods and asked for a continuance to the next meeting to allow for the installation of the markers.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the March 17, 2021 meeting.

#### 8. Request for Certificate of Compliance

Property: 86 (Lot 3) Melrose Ave

Project: Single Family House

Applicant/Representative: Absolute Builders / Curley & Hansen Surveyors

Bill Self said this is the second lot; he said that the roof drain locations have been verified.

Megan Shave said there was also a fence installed on this property, but the rear of the property is in BLSF; she said the location of the fence in the BZ would be considered a minor activity; she asked if the commission would accept a fence in BLSF as a minor change; she suggested that they square off the corner of the fence to move out of the 25' BZ. She said the markers also need to be installed on this property.

Stephanie Danielson asked if the fence impedes any wildlife movement.

Bill Self said that the original OOC allowed for removal of the shed from the BLSF and re-grading; he said that the fence was installed by the owners not the builder; he said that area was already existing lawn; he said that the owners were not aware they were in violation of the existing OOC. He said he wants to confirm the locations of the markers with the agent.

Megan Shave said she still recommends that the corner of the fence be moved out of the 25'; she said it is a standard white vinyl fence; she said that wildlife will continue to use the trail system and the utility easement on the abutting parcels.

Joanne Zygmunt said that this is a tough situation; she said that the commission has been consistent on no work in the 25' no touch; she said she is also inclined to request that the fence be removed from the 25' area; Bonnie Sparks also agreed.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the March 17, 2021 meeting.

#### 9. Request for Amended Order of Conditions & Extension of Order of Conditions

Property: Oak Hill Way (Map 119-005, Plot 10)

Project: Industrial Development (Recycling Facility)

Applicant/Representative: LJDE, LLC / Strong Point Engineering

Eric Dias said at the time they requested an extension in October the Commission felt that it would be easier to come back after the new proposed phasing plan was approved by the planning board and both items would be discussed at the same hearing. He said that phase 1a will be construction of the road and two of stormwater management basins.

Stephanie Danielson asked what the original expiration date for the OOC was without the extension and was told it was set to expire October 12, 2020. She questioned if the OOC was still valid. The agent said that the request was made before the original expiration and the applicant was asked to hold off as the state of emergency was not going away any time soon, and to get approval of the phasing from the planning board; she said she does not believe that the commission would have asked that if they thought that it would expire.

Stephanie Danielson said there are some recommended conditions in the letter from the agent and that she is recommending that the changes can be accepted as an amended order.

Joanne Zygmunt asked what was proposed under the phasing. Eric Dias said that they are changing the scope of phase one; the original OOC was for the entire project.

Joanne Zygmunt asked if the extension and amendment voted separately and was told yes.

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

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to issue an amendment to the order with the conditions contained in the agents report.

#### 10. Request for Amended Order of Conditions

Property: 196 Manley Street

Project: Construction Equipment Sales

Applicant/Representative: Equipment East / JK Holmgren Engineering

Scott Faria said on behalf of his client he is requesting an amendment to the current OOC; he said that the current tenant (applicant) sells heavy equipment; there were two areas where work was done within the 25'BZ; there is 1300 SF of gravel that connects to the gravel drive and also along the southern side of building the grass was ripped out and replaced with stone; he said that the purpose of project remained the same; he said they are now proposing 2400 sf of enhancement area...along the existing drainage ditch area and the grass area; he said that there was previously no stormwater management; he said that as part of the OOC two drainage areas were installed and two SW management systems; substantial work was done to make the situation better.

The agent said that the enhancement area is not a 1:1 replication; she said there will be compensation but not a 1:1 in area or function based on the work that was done; she said they have received an updated as built to better reflect what has been done out there; she said that the Commission may want Beta to continue the review to make sure that what has been actually installed matches to what was approved; she said they also need a more substantial planting and monitoring plan and said that the new strip of lawn by the gravel driveway should also be replanted.

Joanne Zygmunt said that she agrees that the lawn area should be replanted; she asked about the gravel and Scott Faria said it will not compact hard like the area in back...more like crushed stone; she asked if the area was stable and if there was any slope.

The agent said there is a bit of slope as it was graded to put the gravel in and loam the lawn area....she said it is a loose crushed stone...she said she doesn't know how much it would shift. Joanne Zygmunt asked if a shrub layer would be more protective; Scott Faria said it is on a stable base....the stone will migrate some and said they look at installing a small earth berm; Joanne Zygmunt said she would like to see a physical barrier installed there but said that the bigger concern is stormwater; the agent said that the commission had asked Beta to review the original as-built, but it did not match on-site conditions; and they asked for revised as-built. Scott Faria said that the drainage system was installed as approved; only changes to the as built were to correct drafting mistakes.

Stephanie Danielson said that the commission was clear about wanting to keep that area undisturbed and said that the client went ahead and did the work anyway and is now coming back with proposed mitigation; why did he not offer this originally; it looks like it just wasn't important....Scott Faria said that if the area was restored and the crushed stone was removed it will be a grassed area that will be mowed.

Joanne Zygmunt asked what the options were; what is within the powers of the commission to have them restore; she said they spent a lot of time discussing this project when it was filed; she said the applicant is clearly asking for forgiveness. The chair said she is inclined to deny and request a new NOI; she said that the commission is in a hard place; being presented with something palatable but only after the applicant did what he wanted to do against the wishes of the commission. Bonnie Sparks asked if a new NOI would have the same information. Stephanie Danielson said that they can request additional compensation; a minimum of 1:1...this is not a replacement of function. Joanne Zygmunt asked if this request is denied would BETA be doing a complete review; she was told yes at the applicant's expense. The chair explained that this is not a denial; it would be a vote that the change is sufficient enough to require a new NOI.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote that the change to the plan is so significant as to require the filing of a new NOI.

16. Notice of Intent  
Property: 1014 Pearl Street  
Project: Commercial Site Improvements (JM Pet Resort)

Applicant/Representative: Jengeo, LLC / JK Holmgren Engineering

Scott Faria said they are hoping to amend the current order of conditions; he said that the applicant wants to make a couple of changes to the site; she installed a wall with crushed stone area for a doggy potty area and there is an additional area for kennels. He said they have some issues to still address in the agent's report: an alternatives analysis for the locations, pollution mitigation and maintenance details.

Stephanie Danielson asked if the potty area was on the brook side or upland side....and will the wall prevent washout. Scott Faria said on the brook side and the three sided retaining wall and crushed stone was necessary to make it a walkable area when walking the dogs; he said it will prevent washout; the OM plan will contain a bag dispensary area for waste; the second area is for a "holding area" for dogs.

Stephanie Danielson asked where the original potty area was and said she would like to see this area moved and put in a more appropriate area; Scott Faria said they could add a split rail fence along the brook to stop people from walking dogs there and said he will bring the issue of moving the potty area to the attention of the client.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the March 17, 2021 meeting.

11. Notice of Intent – **Request to continue to April 21st meeting**

Property: Plot 2 Belgravia Ave

Project: Single Family Homes & Roadway

Applicant/Representative: Buskull Properties / Silva Engineering, Curley & Hansen

12. Notice of Intent

Property: 30 Intervale Street

Project: Residential Apartment Building

Applicant/Representative: 30 Intervale Brockton MA, LLC / Jacobs Driscoll Engineering

Greg Driscoll said there is a new owner for the property; he said the previous applicant had proposed two stories with 10 units total; he said they had begun tech review and were scheduled for conservation. They received comments from Beta but the hearing was not open due to the checks not clearing. He said the original owner then went back before the ZBA for an additional floor and 5 more units which was granted. This proposal is for a 15 unit residential building with 20 parking spaces. He said that the existing site is 100% paved; they are proposing to remove some pavement and will be introducing stormwater management and adding greenspace.

Bonnie Sparks asked about landscaping and Greg Driscoll said they included a plant legend.

The agent said the initial review was in 2019; she said that BETA has reviewed the new plans and are satisfied; she said she does have some additional special conditions related to the stormwater units and foundation flood openings.

Joanne Zygmunt said she sees that there is proposed fencing around the 25' area and asked if that corner along the bottom left could be pulled out from the brook to protect the brook; she said it looks like a logical place for a dog waste area (around the electric box). Stephanie Danielson said they can condition the OOC that there needs to be a dog area with signage away from the brook area; she said it would be nice to also have open space for the tenants. Joanne Zygmunt said maybe benches and plantings to dissuade people from walking their dogs in that area. Stephanie Danielson said it would be nice to see additional plantings; she said they should be using native species for plantings and trees and would like to see with the plantings, lawn furniture and pet pottying area.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the March 17, 2021 meeting.

13. Notice of Intent

Property: 53 Baker Street  
Project: Single Family House  
Applicant: Kenneth Mousette

The agent said that they received notification that ET Engineering is no longer representing the applicant and there was no communication from the applicant requesting a continuance.

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

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to deny the application and request for an order of condition.

14. Notice of Intent

Property: Map 010-164 Pearl Street  
Project: Single Family House  
Applicant/Representative: James Victorine / ET Engineering

Megan Shave said this application was the result of an enforcement issue due to unpermitted clearing and filling. As a result of the enforcement order the applicant filed an NOI for a single family house. She said she had asked for additional notations on the plan regarding removal of unpermitted fill which have been added and that the erosion control barrier currently along the limit of disturbance within 25 ft BZ and is marked as the limit of work. She said she is still recommending that plans show 2 erosion control barriers - she wants the second barrier to mark that the final limit of work is outside of 25 ft BZ. She said that she is also requesting a restoration plan for the area between the two erosion control barriers and have those details shown on plans.

Azu Etoniru said he reviewed comments and has no issue with the second erosion control being installed; his concern is with the sequence to make sure that the fill in the 25' BZ is able to be removed and the area restored. The agent said that the restoration plan can address sequencing: specify placement of 2nd erosion control barrier after removal of fill and planting. She said she has recommended additional special conditions for an OOC regarding the fill removal, but wants to see the recommended plan changes before discussion of an OOC.

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to continue to the March 17, 2021 meeting.

15. Notice of Intent – **Request to continue to March 17th meeting**

Property: 634/648 Summer Street  
Project: Solar power-generating facility  
Applicant/Representative: 648 Summer Street, LLC / SITEC

17. Notice of Intent – **Request to continue to March 17th meeting**

Property: 940 Belmont Street (VA Hospital) -  
Project: Roadway improvements (McGauley Way / Cape Cod Road)  
Applicant/Representative: Monument Construction / JK Holmgren Engineering

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

Vote to approve use of electronic signatures

A motion was properly made (Sparks) seconded (Zygmunt) and unanimously passed by a roll call vote to recognize and accept the provisions of M.G.L. c. 110G regarding electronic signatures, and that the Commission will henceforth execute documents either with electronic signatures or with wet ink signatures, and that both will carry the same legal weight and effect

Update: MBTA Determination Appeal & Superseding Determination

The agent said that the commission had issued a positive 2a; approving the wetland boundaries but stating that an NOI must be filed for any alteration to resource areas or buffer zones. She said that the MBTA appealed; Mass DEP issued a superseding order with a positive 2b and positive 3 and 4 requiring a NOI for several proposed activities and a negative 5 only for Riverfront Area. She said that the MBTA filed appeal for an adjudicatory hearing.

Acceptance of Meeting Minutes: 12-16-2020

A motion was properly made (Zygmunt) seconded (Sparks) and unanimously passed by a roll call vote to accept the minutes from the January meeting.

Meeting adjourned.

**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. Should you have any questions relative to this agenda, please email the Planning Department at: [planning@cobma.us](mailto:planning@cobma.us).**