

**BROCKTON CONSERVATION COMMISSION
OCTOBER 19, 2022 - 6:30 PM MINUTES**

Approved for Posting December 21, 2022

The Chair, Joyce Voorhis called the October 19th, 2022 meeting of the Brockton Conservation Commission to order and read the following statement: “It being 6:30 PM, I call this meeting of the Brockton Conservation Commission to order. This meeting is being conducted remotely in accordance with the extension of the Governor’s Order suspending certain provisions of the Open Meeting Law, Mass 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. If you wish to comment during a public input portion of a hearing, please use the “raise your hand” function to be addressed at the appropriate time. For those of you joining by phone only, please press star (*) nine to raise your hand. A copy of this recording will be on the City’s web pages. All votes will be done via roll call to ensure count accuracy. Please note that discussion of all agenda items shall be limited to 15 minutes each to ensure timely progress through tonight’s agenda.”

The following members were confirmed to be in attendance: Joyce Voorhis, Chair, Laura Biechler, and Peggy Curtis. Conservation Agent Megan Shave, Director Rob May and Admin Rhode Germain were also in attendance.

The Chair Joyce Voorhis requested to change the order of a few items in the agenda. Pleasant Street - Blackledge will now be heard last.

- 1. Request for Certificate of Compliance (SE 118-0779)
Property: 149 Thatcher St (Lot 84)
Project: Single-family house
Applicant/Representative: Ricky DaSilva / ECR**

Per Representative Ricky DaSilva, after purchasing the above property which had an Order of Conditions attached to it, he did all the required conditions in the order and is now hoping to get a certificate of compliance issued.

Per the Agent, except for a few minor changes outlined in her report, the work has been done in compliance with the Order of Conditions therefore she is recommending that the Commission consider issuing a complete certificate of compliance with ongoing conditions E1 and E2 (no use of herbicides and pesticides) and also the permanent limited work markers which are already installed. She is also recommending that the Commission consider issuing a letter to the new homeowner due the Japanese knotweed on the site which can become a problem in the future.

A motion to grant a Certificate of Compliance with the conditions as outlined by the Agent’s report was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

The chair suggested working with the Assessors Office to send letters to new homeowners whose homes are within Wetlands purview. The Agent suggested the Commission revisit this suggestion at a future meeting in order to establish a procedure.

2. Extension Request – Order of Conditions (SE 118-0756)
Property: 34 Oakland St (Map 134-244)
Project: Single-family house
Applicant/Representative: Cecile Cazeau / ET Engineering

Per the Agent, there was an order issued in 2019 that is expiring in November 2022. The owner has had issues retaining reputable contractors to do the work but is still intending on moving forward with the construction and even pulled a building permit within the past month. The owner is now requesting an extension for three years to be able to do the work.

After visiting the site, the Agent is recommending clarifying a structure on the site which was confirmed by the engineer to be an existing private well. The Agent is also recommending, as a stipulation for an extension, that the erosion control barrier be restored and re-established because it's over 2 years old.

A motion to grant the extension request with the erosion condition recommended by the Agent was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

3. Enforcement Order Update: 1330 Pleasant Street

Per the Agent, there is an Enforcement Order for this property that has a requirement to submit a Notice of Intent by September 21st, however, the Commission extended the deadline to October 19th, which is today. The Agent received a draft Notice of Intent as well as a draft plan which addressed the Enforcement Order. However, it is an incomplete application under the Wetlands Protection Act as it's currently missing the certified abutters list. The Agent is expected to receive the complete filing by the filing deadline which would be October 26th for them to get on the November 16th agenda.

The Chair questioned if this case had 2 separate file numbers to which the Agent answered affirmatively.

A motion to continue to the November meeting was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

4. Enforcement Order Update: Map 181-042 Claremount Ave

Per the representative, this property is under an Enforcement Order that the Commission issued a while ago. However, they have addressed the Commission's concerns and expect to file a Notice of Intent in the next week. Their restoration plan includes pulling back any fill within the 25ft. Buffer Zone, preparing restoration planting, re-grading slope to elevation 126 ft, and constructing a Berm that will hold the water runoff.

The Agent recommends that the Commission keep the Enforcement Order open until they receive the Notice of Intent so they can review it both for compliance with the Wetlands Protection Act and MassDEP Stormwater Management standards.

A motion to keep the Enforcement Order open and continue to the November 16th, 2022 meeting was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

5. **Request for Determination of Applicability**
Property: Map 181, Lots 42,44,53,54,162 Howard Street
Project: Sports complex
Applicant / Representative: New Heights Builders / Grady Consulting

Per the representative Mr. Grady, the project is a sports complex which consists of four soccer fields, a concession area, roadwats, and parking lot.

The RDA is requesting a Negative Determination since the project is outside the 100 ft. Buffer Zone and outside the Commission's Jurisdiction.

Per the Agent, based on what's being presented for the RDA, the Commission can consider issuing the Negative 4 Determination because the work described in the request is not within an area subject to protection under the Act including the 100-ft Buffer Zone. Therefore work done within this area does not require a Notice of Intent filing which is what a Negative 4 Determination shows.

The Agent also recommends addressing the existing berm and any additional work on map 181-042 through the current Enforcement Order which was already voted on.

Peggy Curtis questioned if the driveway that was removed from the site plan will be replaced by another to which the Agent replied that it was removed as requested.

Peggy Curtis also questioned when the expected start date would be, however the representative was not able to provide a specific start date.

Public Comments

Councilor Lally

Councilor Lally mentioned his approval with the fact that the Commission kept the Enforcement Order on the last item. He also recommends that the Commission make sure that the sports complex will not negatively displace any water to any surrounding properties.

A motion to issue a Negative 4 Determination for the Howard Street Sports Complex was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

6. **Notice of Intent**
Property: Map 021-054,055,056 & 059 W Chestnut St & Map 021-007 & 058 Knapp Ctr
Project: Towing facility
Applicant / Representative: Lynch's Towing / JK Holmgren Engineering

Per representative Scott Faria, the project was reviewed 2 weeks ago by the Commission and they only had one issue left which was the submission of the Buffer Zone restoration plan and it was submitted.

Per the Agent, the 25 ft Buffer Zone restoration plan prepared by LEC was received and contained both comments on the fill removal, and a planting and seeding plan as well as monitoring notes. The Agent also mentioned talking to BETA group and they've recommended some special conditions to address the stormwater. Per the Agent's latest report dated October 14th, she is recommending some special conditions in addition to the standard special conditions. The Agent is recommending that a partial certificate of compliance be issued prior to the issuance of the certificate of occupancy for the building, she's also recommending as a condition that the Commission receive all the final and approved applications that are submitted to MassDEP for review. In the event any additional documentation changes the scope of what is reviewed in tonight's meeting, the applicant would be required to come back with a request for an amended Order of Conditions.

A motion to close the hearing was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

A motion to issue an Order of Conditions with the special conditions as outlined in the Agent's report was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

7. Notice of Intent

Property: Map 003-049 Pleasant Street

Project: 40B apartment complex with stormwater infrastructure in Brockton

Applicant / Representative: Blackledge, LLC / Coneco

Per the representative from Coneco, Michael Toohill, they were just waiting for the peer review from BETA, and they received the peer review which agrees with the design that was performed for the site.

Per the Agent, BETA has indeed reaffirmed their confirmation of the compliance of the project with the MASSDEP stormwater management standards.

Per Gary James from BETA, he disagrees with the conclusions from the documentation provided by Dr. Mobile and Scott Horsely. He said the applicant did test pits on multiple dates; when you compare the water levels from the different pit tests and the well utilized by Dr. Mobile, they do not correlate, when there should be some really significant differences. Per Gary James, in regards to the system in Brockton, the mottles were at 166 ft, but the system is at 172 ft, thus as designed it has a 2 ft. cushion in terms of meeting the 4 ft. of separation between the bottom of the system and the groundwater. Per Gary James, if the Commission is not comfortable with the extra 2 ft, there's a possibility to raise the system another 12 to 18 inches. He believes that the site was modified and that there's a subsurface structure in the middle of the lot. Gary James is

concerned that something is manipulating the water table in the middle so that it's being maintained higher in association with the rainfall, so it's not acting like a normal site.

The representative questioned what the required separation distance between the bottom of the system and groundwater elevations to which Gary James replied if it's less than 4 ft., a mounding analysis would be required..

Per the Agent, her comments have been addressed in terms of the ongoing stormwater management. Therefore defer to the BETA's judgment for stormwater engineering.

The Chair questioned where the leaching facilities were located in relation to the stormwater retention basin and raised concern about the water flowing towards the Wetlands and towards the South. The chair also questioned if the area will be more spongy than it would have been otherwise.

Per Gary James, there's a mound change of about tenth of a foot and therefore higher groundwater going in that area and the result is that it will keep that Wetland wetter and bigger but won't negatively affect the Wetland system.

The Chair questioned if Brockton's Wetlands won't be compromised as a result of the project.

Per Gary James, the MassDEP is also attempting to answer this question by looking under the groundwater discharge permit for the soil absorption system.

Public Comments

Elizabeth Pyle

Per Elizabeth Pyle, additional monitoring needs to be done to determine seasonal high groundwater in the area in order to get clarity on the issue particularly where the site has been disturbed.

Michael Mobile

Per Michael Mobile, the applicant analysis did not account for any sort of groundwater mounding effect as it stands.

Scott Horsley

Per Scott Horsley, MassDEP is not evaluating the impacts on Dorchester Brook. He also believes that any modification should be made prior to plan approval rather than as a condition.

Councilor Minichiello

Per Councilor Minichiello, the Brockton residents are going to feel the repercussions of the project when their yards and basement are flooded. The Councilor believes the data and testing should be done accurately to make sure that the project is not going to negatively affect the Brockton residents.

The Chair questioned the type of fencing that will be used around the boundaries, to which Damien Dmitruk from Coneco replied that it will be a post rail to prevent snow from being pushed over that area. The chair also questioned if there will be fencing all around the property along the Wetlands, and according to Damien, there's fencing on top of the retaining walls.

A motion to continue to the November meeting was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

8. Notice of Intent

Property: Map 174 Lots 394, 406-410 & Map 177 Lots 34-38 (Heritage Court)

Project: Residential subdivision

Applicant / Representative: QS Lending Trust / Civil & Environmental Consultants

Per the representative, this is a request to obtain a new Order of Conditions for a previously started and partially completed residential subdivision: the Woodland Park project. A request was made in the last meeting to take another look at detention Pond number 3 and find out if there was any soil or groundwater testing completed in this area. According to the representative, Silver Engineering did some tests which determined a seasonal high groundwater level. After a site visit, the representative noticed that the pond was dry and stable and some staining on the outlet structure which is a concrete retaining wall with a v-notch cut. Therefore he believes that the basin is functioning as originally intended. As requested in the last meeting, the applicant removed the limit of work away from the resource area and therefore believed to have addressed all issues raised in the previous hearing.

Per the Agent, the main outstanding item from the last meeting was to determine if there was a potential groundwater issue with basin 3 and based on the inspection letter reviewed by Phil Paradis from BETA group, the only requirement would be that the bottom of the basin be higher than the main annual high groundwater. Based on the test pit, the groundwater level is around 152, and based on the roadway as-built, the bottom of the basin is at 155, which is higher. Therefore there shouldn't be any issue. However, the Agent noticed some discrepancies in the grading that would need to be addressed under this Order of Conditions. The Agent is recommending additional special conditions in addition to the standard special conditions. Some of these additional conditions would be to remove tires, any evidence of construction debris and other instances of dumping on the site before the pre-construction meeting and approval of building permits. The Agent is also recommending having an environmental monitor and for the Commission to get an updated as built plan that includes the final base and elevations including the spot grades for the top of berm elevations which should be confirmed prior to the issuance of a complete certificate of compliance. The Agent is recommending that the Commission put a condition of one year for the completion of the basin reconstruction work and in the event it's not completed, the Commission shall issue an Enforcement Order and a stop work order until the basin work is completed. The Agent is also recommending that a limit of work markers be installed along the limit of work behind the house lots 25 through 28 which relates to Wetland flags B16 through B27. The Agent is also suggesting that a partial certificate of compliance be issued prior to any certificate of occupancy for these 4 lots. Lastly, she is suggesting that as a minimum requirement, a partial certificate of compliance would include an as-built plan with final grading and the latest inspection of the stormwater management system.

The Chair questioned if number 28 was in the 25 ft. Buffer Zone, which it wasn't. Peggy Curtis questioned if a letter would be given to the owner with the deed which would include information about the limitations of having a yard backed up to the vegetated wetlands.

Public Comments

Jamal Brathwaite (18 Parkview Lane)

Resident Jamal Brathwaite is looking forward to the completion of this development and believes it would increase the annual property tax revenue for the city of Brockton and therefore would like to have the Order of Conditions renewed.

Patrick Quinn

Resident Patrick Quinn is also in favor of the project and requesting that the Commission vote on it favorably.

A motion to close the hearing was properly made by Laura Biechler, seconded by Peggy Curtis and unanimously approved.

A motion to issue an Order of Conditions with the special conditions as outlined in the Agent's report was properly made by Peggy Curtis, seconded by Laura Biechler and unanimously approved.

9. Commission Matter - Regulations for Use of Conservation Land Re: Stone Farm

Per the Agent, in December 2019, the Commission voted to adopt rules and regulations for conservation areas in the city of Brockton and one of those regulations is a prohibition against camping. The Agent received a report of a tent erected at the Stone Farm conservation area and believed an enforcement of the rules and regulations might be in order. However, the Agent is pending confirmation from the Law Department to know how to proceed with the enforcement. Nevertheless, she is recommending that the Commission take a motion to post a violation notice pending notification of the Law Department.

A motion to issue a notice of violation of infraction on conservation land following input from the Law Dept was properly made by Laura Biechler, seconded by Peggy Curtis.

Meeting adjourned.