

**BROCKTON CONSERVATION COMMISSION  
DECEMBER 7th, 2022 - 6:30 PM MINUTES**

**This meeting was rescheduled from Weds. Nov 16**

The Chair, Joyce Voorhis called the December 7th, 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 Ruby Clay. A quorum was established. Conservation Agent Megan Shave, Director Rob May, Admin Isaiah Thelwell, and Rhode Germain were also in attendance.

**Request for continuances:**

Per Chair Joyce Voorhis, the following items have requested continuances to the January 18<sup>th</sup> meeting,

**4. Request for Certificate of Compliance**

**Property: Dunbar St – Davis Commons**

**Project: Maintenance Building**

**Applicant/Representative: NAHF Brockton Limited Partnership / JK Holmgren Engineering**

**5. Notice of Intent**

**Property: 940 Belmont Street – VA Hospital**

**Project: Fueling station**

**Applicant / Representative: Acela Architects & Engineers / JK Holmgren Engineering**

**1. Acceptance of Minutes**

**A motion to accept the October 5<sup>th</sup>, 2022, and the October 6<sup>th</sup>, 2022 meeting minutes** was made by Laura Biechler, seconded by Ruby Clay, and approved by a unanimous vote

## **2. Letter of Support – Open Space & Recreation Plan**

Conservation Agent Megan Shave updated the commission on the status of the City of Brockton Open Space and Recreation plan. The plan is a framework that was set up by the State Division of Conservation Services, created to guide cities in both taking inventory of their open space and recreation facilities, and also planning future acquisition development management projects for open space in the city. It also aims to incentivize cities to both adopt and update their plans; the Division of Conservation Services makes their grant funding opportunities contingent upon having a current Open Space Plan. Agent Shave explained that the timeline for completion of the plan is on track to be completed by the end of the year. A letter of support for the updated Brockton OSRP was read and approved

**A motion was made to accept the letter of support of the OSRP from the commission to the State Division of Conservation Services**, made by Peggy Curtis, seconded by Laura Biechler, and approved by a unanimous vote.

## **3. Enforcement Order Update - Claremount Ave Map 181-042**

Agent Shave presented the Enforcement Order for unpermitted work on map 181-042 of Claremount Ave. The owner/applicant submitted a Notice of Intent for restoration work on the parcel, including the regrading and removal of existing fill and drainage improvements. The submission was received ahead of the December 21st deadline.

In preparation for the December 21 meeting, the legal notice will be posted. At the meeting, the hearing for the Notice of Intent will be opened. Agent Shave recommended leaving the Enforcement Order open, pending the review of the Notice of Intent. This would allow for a thorough review of the submitted notice before a decision is made regarding the Enforcement Order.

**A motion to keep the Enforcement Order open at Claremount Ave** was properly made by Laura Biechler, seconded by Ruby Clay, and approved by a unanimous vote.

## **6. Notice of Intent**

**Property: 37 Frost Street**

**Project: Single-family house**

**Applicant / Representative: Larry Fargo / ECR**

DEP file numbers and abutter notifications were verified by Dr. Shave.

Brad Holmes of ECR spoke as a representative for the applicant regarding a proposed single-family dwelling at 37 Frost Street. The property is located near a vegetated wetland and is also within the FEMA flood zone. However, the applicant received a letter of map amendment from FEMA confirming that the **project area** is not within the flood zone. The proposed dwelling will be 44 feet from the lot line and beyond the 25-foot buffer zone of the wetland. The

driveway and utilities will come off of Frost St and erosion controls will be installed before construction begins. The house will be similar to other houses in the neighborhood and no wetland Resource Area impacts are expected from the project. Chair Joyce Voorhis asked how far the house was from the 25-foot buffer zone and Brad Holmes confirmed it was 44 feet from the lot line.

Agent Shave reviewed the plans and visited the site. The wetland was within the existing brush line and most of the 25-foot buffer zone was also within the existing brush line. The site was likely cleared at some point and maintained as a lawn for the abutting house. The proposed house is not large, only 800 square feet, and there should not be any clearance issues for maneuvering equipment during construction. The grading of the site was mostly within a foot of existing grades and no substantial fill or stockpiling was expected.

Agent Shave recommended that the Commission issue an Order of Conditions for the proposed construction project. This order would include standard special conditions along with 2 additional conditions. The first condition required that permanent markers be installed every 15 feet along the approved limit of work prior to the issuance of a certificate of occupancy for the house. The second condition required that no sump pump or basement de-watering system be installed without the Commission's review and approval. These two conditions would be considered In Perpetuity in the same way as the standard "no pesticides" condition.

No abutters or members of the public commented.

**A motion to close the hearing** was made by Laura Biechler, seconded by Ruby Clay, and approved by a unanimous vote.

**A motion to accept and to issue an Order of Conditions with the conditions outlined by the Commission's Agent** was properly made by Laura Biechler, seconded by Ruby Clay, and approved by a unanimous vote.

**7. Enforcement Order Update / Notice of Intent**  
**Property: 1330 Pleasant Street**  
**Project: Single-family house site improvements**  
**Applicant / Representative: Danielson Gomes / ET Engineering Enterprises**

DEP file numbers and abutter notifications were verified by Agent Shave

Azu Etoniru from E.T Engineering presented on behalf of the applicant Mr. Gomez regarding the Enforcement Order issued by the Commission. Mr. Etoniru provided assistance in preparing a Notice of Intent and updating plans to reflect the requirements needed to protect the wetland Resource Areas. Mr. Gomez removed the gravel he had placed on the property and planted grass in its place. As recommended in the Enforcement Order, Ken Thompson, a wetland scientist, flagged the wetland Resource Area, and the site plans reflected the wetland delineation. Mr. Etoniru's team provided an invasive species removal specification and a planting schedule for the revegetation of areas of the disturbed 25-foot buffer zone.

Agent Shave recommended that the Commission continue the hearing to the December 21 meeting in order to have time to review the changes to the plans and revisit what had been done in response to the Enforcement Order and take a closer look at the updated plan that addresses her recommendations from her November 9th report. She recommended that the Commission should use the time leading up to the next meeting to draft and consider special conditions to ensure the new construction and remediation work is carried out according to the plan.

**A motion to keep the Enforcement Order open and continue the hearing** to the December 21st, 2022 meeting was properly made by Laura Biechler, seconded by Ruby Clay, and approved by a unanimous vote.

**5. Notice of Intent**

**Property: Map 003-049 Pleasant Street**

**Project: 40B apartment complex with stormwater infrastructure in Brockton**

**Applicant / Representative: Blackledge, LLC / Coneco**

Michael Toohill and Damien Demetrik from Coneco Engineers and Scientists spoke to the Commission, presented their project, and answered questions from Agent Shave. The project was peer-reviewed by BETA, who agreed with the design. However, representatives from Hill Law Firm and their consultants disagreed with the applicant's interpretation of the seasonal high groundwater data. Mr. Toohill reiterated that the project complied with the Wetlands Protection Act and was protective of Resource Areas because they had more than 50% offset from groundwater, which was beyond what is required by the Massachusetts Stormwater Standards. When questioned about why the Easton Conservation Commission continued their hearing, Mr. Toohill indicated the Commission hired a peer reviewer to review BETA's peer review, and they were waiting for a report from Ecotec's Art Allen, a wetland scientist.

Agent Shave reported that there was not a lot of additional information from BETA regarding the current situation, as their revolving account for this review was currently at its limit. The latest report from BETA was their November letter which did not have any direct actionable recommendations, and the latest report from Agent Shave is from October.

The Chair and Agent Shave discussed a possible design recommendation from BETA which would raise the level of the stormwater filtration system to ensure separation from groundwater. Mr. Demetrik explained that they believed they already had 6 feet of separation, which was 50% more than the required 4 feet, and he would not prefer adding an additional 6-tenths of a foot to the design. Mr. Demetrik indicated a preference to keep the extra .6 feet of fill on the top of the retention system. Agent Shave deferred to the recommendations from BETA Group to maintain 6 feet of separation and stated that she would not comment further beyond what was provided in BETA's letter as she defers to them as the stormwater review engineer for the Commission.

The Commission and Representatives discussed the soil absorption system for the wastewater effluent at the site and the concerns raised by DEP about the mounding analysis and the potential impact on the wetlands. Mr. Toohill explained that there had been an analysis done, but they had not received any comment back from DEP. Mr. Toohill mentioned that the rise of the groundwater elevation was only a tenth of a foot and was subsurface flow which would only

make the area slightly wetter. Chair Voorhis asked if the presence of treated wastewater would affect the rate of absorption of stormwater in the event of a storm. Mr. Toohill indicated that they were trying to find out, but he could not predict when DEP would take action on this matter. Mr. Toohill noted that if DEP or the Easton Conservation Commission's findings changed the site plans after approval by the Commission, then they would have to request an Amended Order of Conditions from the Brockton Conservation Commission.

Mr. Mobile reinforced that the Ecotech letter validated the concerns that Michael and Scott Horsley had regarding the use of the redoximorphic features to estimate groundwater conditions. His presentation attempted to invalidate BETA's claims made by Gary James, who said that the redoximorphic feature approach was fine. The letter provides a suggested approach to resolve the issue by collecting more data using monitoring wells. Dr. Mobile also disputed Mr. James's report where Mr. James claimed that the water levels are artificially high due to rainfall.

## **Public Comments**

### **Elizabeth Pyle**

Elizabeth Pyle is an attorney at Hill Law, who presented a statement from a letter from EcoTech, a third-party peer reviewer hired by the Easton Conservation Commission, which supported the findings of her consultants that more groundwater monitoring be done at the site in question. The letter suggested that monitoring wells be installed near the proposed infiltration areas to determine the separation between the infiltration basin and high groundwater. Elizabeth introduced Dr. Mobile to address the issue and requested that the Commission require the additional monitoring before making a decision.

### **Felicity Kagan**

An abutter Felicity Kagan spoke about her property. The area has Dorchester Brook running through it and is now a FEMA-designated zone. There is also a road that was illegally constructed that runs through her property. She feels that the wetlands are rapidly expanding in the area due to development and due to illegal filling and roadwork done by the original owner, Benson.

Chair Voorhis expressed concern about not having seen a letter from Ecotech before the meeting and requested time to digest the information before making a decision. She mentioned that they received the letter at the last minute and would like to consider it further.

Agent Shave confirmed that the letter had been added to the file and was from an additional peer reviewer for the Easton Conservation Commission. In response to Commissioner Clay, Agent Shave said that BETA can review the letter if the Commission requests them to, but the revolving fund for this account has reached its maximum.

Mr. Toohill addressed the Chair about the Ecotech letter and mentioned that the letter did not have any specific recommendations for the site and provided a general discussion about groundwater wells and redoximorphic features. He expressed confusion about the letter and requested that the hearing be closed tonight. Mr. Toohill stated that the applicant did not want this hearing to be continued.

The Chair asked Agent Shave if the hearing could be closed tonight, with discussion and vote at the next meeting. Agent Shave stated that no public input could occur if the hearing was closed and that once closed the vote must occur within 21 days, but the issue could be discussed at the next meeting.

**A motion to close the hearing** with discussion and a final vote to be made at the December 21 meeting, was properly made by Laura Biechler, seconded by Ruby Clay, and approved by a unanimous vote.

**The meeting was adjourned at 10:15 pm.**