

BROCKTON CONSERVATION COMMISSION
April 25th, 2023 - 6:30 PM MINUTES

The Chair, Joyce Voorhis called the April 25th, 2023 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, Ruby Clay, and Peggy Curtis. A quorum was established. The Commissions consultant (BETA Representative Elyse Tripp – herein “Miss Tripp”), Director Rob May, New Conservation Agent Kyle Holden and Admins Isaiah Thelwell and Rhode Germain were also in attendance.

NOTE: Agenda Items:

#8 Notice of Intent 940 Belmont St / VA Hospital was continued to the 5/23 Meeting .

#7 Notice of Intent Pleasant St was continued to the 5/23 Meeting.

1. Acceptance of Minutes

A motion to accept the March 15th meeting minutes was properly made by Ruby Clay, seconded by Peggy Curtis, and approved by a unanimous vote.

2. Commission Matter: 30 Oak Street Extension

Per Miss Tripp, the Planning Department received a request to review trees marked for removal on a property located at 30 Oak Street Extension. Miss Tripp went out to the property on March 20th and observed four marked trees for removal. Two of them were in the Riverfront Area and, although dead, provide important wildlife habitat; Therefore, Miss Tripp did not recommend their removal. The other two trees were within the buffer zone to Bank and could be removed if a Request for Determination of Applicability (RDA) was filed with the Conservation Commission (the Commission). During the site visit, Miss Tripp also observed violations of the Wetland Protection Act (WPA) on the property, including debris and stone piles around the corner of the parking lot and within buffer zone to the Bank, and potentially within Riverfront Area and Bordering Land Subject to Flooding (BLSF). Miss Tripp, previously the Commissions Acting Agent, sent a Notice of Violation via certified mail requesting that the property owner or

representative attend the meeting to discuss the issue and restore the area. The Notice of Violation was noted to have been received as Admins confirmed that a signed return receipt was returned to the Conservation Department.

Chair Voorhis asked Miss Tripp to explain what an RDA was, and Miss Tripp summarized that an RDA could allow for certain work within Resource Areas or the associated buffer zones with a less intense permitting process than a Notice of Intent (NOI).

The owner or their representative was not present at the meeting, and the Commission discussed whether to give the owner another chance to attend the next meeting or escalate the situation. Per the Notice of Violation, the owner was requested to attend this meeting to answer questions about tree removal and a concrete slab under the dumpster that appeared to have been recently poured. Commissioner Curtis suggested continuing the discussion to the next meeting to give the owner a chance to answer the Commission's questions. Commissioner Clay agreed, and the Commission decided to continue the discussion to the next meeting.

3. Commission Matter: 35 Westwood Avenue Order of Conditions Expiration Date

Miss Tripp informed the Commission about a letter received regarding the expiration date of the Superseding Order of Conditions (SOOC) for a project at 35 Westwood Avenue. The original expiration date was October 4, 2022, but per guidance provided by the State relating to permitting during and following the State of Emergency (the “Joint Guidance on Permit Tolling following the End of the State of Emergency”) the expiration date had been extended by 462 days, with a new expiration date of January 9, 2024. Miss Tripp noted that the Commission may see more of these extensions in the future but that there was no action required by the Commission at this time. The Project Engineer Eric Dias was present and inquired if his client could receive a sign-off on a building permit since the Project was currently under construction. Miss Tripp indicated that they would need to review the specifics of the SOOC and suggested that Mr. Dias send a follow-up email to the Agent to discuss further.

4. Commission Matter: Discussion - Blackledge Appeal

The Order of Conditions (DEP File No. 118-0804) as issued by the Commission relating to a portion of a larger development at 0 Pleasant Street was appealed by a group of abutters who retained Hill Law as their representative. Miss Tripp updated the Commission that there was an onsite meeting with MassDEP, the appellant, the applicant, and the Commission (Chair Voorhis and Miss Tripp were in attendance) regarding this appeal on March 16th, 2023. At this meeting, the applicant indicated that monitoring wells had been installed as requested by the Easton Conservation Commission and the peer reviewer retained by the Easton Conservation Commission. These monitoring wells were installed to acquire more information to address conflicting data relating to the Estimated Seasonal High Groundwater (ESHGW). Since sufficient data from the monitoring wells had not yet been collected, the MassDEP analyst present at the meeting indicated that a decision would not be made until more information could be provided. After this meeting, the applicant provided a written response to the Hill Law appeal letter that also summarized work being undertaken to provide the Easton Conservation Commission with more information regarding groundwater conditions. It was additionally clarified by Miss Tripp that any

plan or project changes because of information received from the installation of the monitoring well would have to also be approved by the Commission.

5. Commission Matter: Enforcement Order Discussion - 803 Crescent Street

Miss Tripp provided a summary of the Enforcement Order that was issued for paving that occurred beyond the previous limit of pavement and plowing of snow into Beaver Brook within the 25-foot Riverfront Area. As the result of a phone conversation with the property owner, Miss Tripp determined that the property was sold to the current owner, Mr. Bruno Silva, around the time that the Enforcement Order was issued in January. As a result, the Enforcement Order was issued to the previous owner and never received by Mr. Silva. Miss Tripp informed the Commission that the Enforcement Order was reissued to list the current property owner, and that the Commission would need to ratify the Amended Enforcement Order. Prior to ratification, the Commission decided to hear from Mr. Silva.

Mr. Silva spoke with the previous owner and learned that he moved the gas line and fixed some portions of the pavement, particularly a 6-foot long and 8-10 feet wide area at the back of the building. There was some confusion about the specifics due to a bad remote connection so, to prevent miscommunication, Miss Tripp suggested visiting the site to explain the WPA and the requirement to file an after-the-fact Notice of Intent (NOI) so that both parties clearly understood the concerns posed by the Enforcement Order. Chair Voorhis asked why this property was not previously issued an Order of Conditions relating to its construction, to which Miss Tripp explained that it could depend on a variety of factors, such as when the lot was constructed. Miss Tripp suggested that Mr. Silva provide any additional documentation he may have relating to this work to discuss further when completing a Site visit. Chair Voorhis offered to attend the Site visit with Agent Holden and Miss Tripp.

A motion to ratify the Amended Enforcement Order for 803 Crescent Street was properly made by Ruby Clay and seconded by Peggy Curtis and approved by a unanimous vote.

6. Commission Matter: 2023 Sewer System Rehabilitation Project

Miss Tripp discussed a notice received relating to a Sewer Rehabilitation Project undertaken by the Brockton DPW that may affect areas within the buffer zone to the Bank and BLSF. Miss Tripp indicated that the Project was exempt under the WPA as a utility project, and that Best Management Practices (BMP's) such as erosion controls and newer trenchless technologies would be employed to make the Project as non-invasive as possible.

Commissioner Curtis asked about the specific locations of the project, and Miss Tripp shared a GIS screenshot showing multiple areas. Commissioner Curtis also inquired about how the streets were chosen for the project, and Miss Tripp suggested that it was probably based on repairing existing damaged infrastructure. During this conversation, Chair Voorhis inquired about the Expanded Environmental Notification Form (EENF) for the East Bridgewater- Brockton Sewer Extension project that was discussed at the March meeting, and whether an RDA was requested. Miss Tripp suggested that requesting an RDA would be beneficial for ensuring BMP's are employed. Miss Tripp also explained that the work occurring in Bridgewater must be approved by

the Bridgewater Conservation Commission, and that the work proposed in Brockton was much less invasive. Chair Voorhis requested that notice be provided to the project proponent (the Town of East Bridgewater) that the Commission has requested submittal of an RDA for the work being completed in Brockton.

9. Enforcement Order Update / Notice of Intent

Property: Map 181-042 Claremount Ave

Project: Restoration, grading, drainage improvements

Applicant / Representative: New Heights Builders / South River Environmental & Grady Consulting

Per Kevin Grady, the Applicants representative, a summary of the Project was provided. The Project involves removal of fill within the 25-foot buffer zone to BVW, restoration of the buffer zone to comply with the issued Enforcement Order, and implementation of stormwater BMP's including revegetation of uplands at the Site and installation of an infiltration basin. Mr. Grady explained that the site is under a consent order by MassDEP to remove all asphalt, brick, and concrete materials. Additionally, Mr. Grady summarized that requested conservation notes were added to the project plans and that a soil testing protocol as required to comply with the issued Enforcement Order had been provided to the Commission the previous day. It was also noted that BETA Group had peer-reviewed the project and confirmed that it complied with the Massachusetts Stormwater Standards under the WPA.

Mr. Grady went on to further explain that the soil testing protocol included the sampling and visual inspection of four different test pits within the 100-foot buffer zone to BVW to ensure only clean material remained at the Site. Commissioner Curtis asked if permits were required to do the testing and removal described by Mr. Grady, to which he replied that they were currently under a consent agreement with MassDEP to remove the material. He added that if any unsuitable or contaminated material was discovered that the Licensed Site Professional (LSP) overseeing the work would follow the appropriate requirements and methods of removal and disposal.

Commissioner Curtis questioned Mr. Grady about the soil testing being done only in the 100-foot buffer zone and expressed concern about the rest of the property. She inquired if contaminants within uplands on the site could impact the buffer zone or BVW, and Mr. Grady assured her that continuous testing under the watch of MassDEP has occurred and that no contaminants were found. Regarding soil testing within the 100-foot buffer zone, Mr. Grady explained that fill material above the proposed grade would be entirely removed from the site and that soil testing would occur within the naturally occurring soil present under the fill piles. Chair Voorhis asked when they expect the testing to be done, and Mr. Grady expressed that he was unsure but would ideally complete all soil testing within the next three months.

Commissioner Curtis inquired what the timeline was for material removal, what permitting was involved, and what testing and permitting had been done so far. Mr. Grady reiterated that MassDEP has a consent order to have all material stockpiles removed within 6 months, the deadline of which he believed would be in June. He indicated that the consent order required an LSP to inspect the onsite materials for any potential hazard sources. Commissioner Curtis inquired further about protective measures in place during the removal of materials under the consent order, but Director

May suggested that this discussion may be outside of the Commission's jurisdiction and Miss Tripp agreed.

Chair Voorhis expressed discomfort with closing the hearing since the soil testing protocol was recently submitted and there was not sufficient time for the Commission to review its contents. Director May made a general statement that future applicants should submit supplement information or revised materials at least 10 days before the commission meeting to allow enough time for review. Commissioner Clay suggested continuing the discussion to the May 23rd meeting to provide more time for review. Miss Tripp informed the Commission that an email from Lisa Crowley, an abutter to the property, was added to the Commission google drive for their consideration.

Public Comment

Lisa Crowley

Mrs. Crowley, an abutting neighbor, confirmed that she had submitted a letter with concerns about the 8-foot-wide access way being proposed for the project, which she believed was for the convenience of the property owner. She outlined her concerns for any kind of access to the property other than the Howard Street gate, which she believed was the cause of environmental damage. Chair Voorhis clarified that the 8-foot access is proposed to provide access to the buffer zone to the BVW that needs to be restored. Other commission members also confirmed their understanding of the purpose of the access. Mr. Grady explained that the 8-foot access way was not a request by the owner, but that it was required by their peer review for maintenance purposes of the proposed stormwater basin and for the restoration of the 25-foot buffer zone.

Mrs. Crowley asks if the property owner will have access to this access way to bring in dump trucks, cranes, timber, or anything else. Mr. Grady responded that the 8-foot accessway is within the buffer zone and that it would be under the Conservation Commission's jurisdiction to shut down if used incorrectly. Director May reminds Mrs. Crowley that her time for questions was almost up.

Elizabeth Laso – Mrs. Laso expressed concerns about the proposed 8-foot accessway entrance off Claremount and the potential damage it could cause to the area. She questioned whether the Commission's peer reviewer had considered the impact on the residents and whether a structural integrity test has been performed on the roadway. She further expressed frustration with the property owner and the activities being completed at the site. Chair Voorhis reminded Mrs. Laso to keep her comments focused on the matters relating to the WPA. Director May indicated that the legal department has also been working on this case for a couple of months and that concerns over any activities outside of the Commission's jurisdiction should be addressed to the law department and the City Solicitor.

A motion to continue the Notice of Intent for Map 181-042 Claremount Avenue to the May 23rd Meeting was properly made by Ruby Clay and seconded by Peggy Curtis and approved by a unanimous vote.

Commission Matter: 19 Otis Street

Miss Tripp informed the Commission that unauthorized construction occurred at 19 Otis Street, which Agent Holden was informed of by the building department. After receiving a complaint regarding the construction of a retaining area with a pergola leading down to Salisbury Brook, the building department issued a cease-and-desist order. Miss Tripp also indicated that a portion of the construction appeared to be done on city-owned property. The Commission discussed the issuance of an Enforcement Order to restore the area to its original condition, including the requirement for a survey plan to determine the property's actual boundaries, and the hiring of a wetland scientist or equivalent professional to determine Resource Area boundaries and assess impacts. The Commission agreed to issue an Enforcement Order inclusive of a cease and desist of all work at the site and requested that owner be confirmed prior to its issuance.

A motion to issue an Enforcement Order, inclusive of a cease and desist of any construction at 19 Otis Street and restoration of the area to pre-construction conditions, was properly made by Ruby Clay and seconded by Peggy Curtis and approved by a unanimous vote.

Commission Matter: 82 Ames Street

Miss Tripp and Agent Holden informed the Commission of an unresolved Enforcement issue at 82 Ames Street. The Agent received a complaint that ongoing earth-moving activity was occurring at the property that is located within BLSF and completed a site visit. Miss Tripp summarized that an Enforcement Order was previously issued for the Site, and that a Notice of Intent was filed as required by the Enforcement Order, but the permitting process was never completed. The Commission discussed whether to send a Notice of Violation or to issue a second Enforcement Order requiring the property owner to come to the next meeting. Director May recommended issuance of another Enforcement Order, inclusive of a cease and desist, and indicated that the City Solicitor could come before the Commission to explain the city's efforts to enforce these orders once referred to them by the Commission.

Chair Voorhis and Commissioner Curtis expressed frustration with the lack of compliance with Enforcement Orders. Director May noted that the City does not have authority to impose fines on the property owners at this point, which is why a Brockton Wetland Ordinance has been drafted. Commissioner Curtis suggested requesting the owner of 82 Ames Street to appear before the Commission and for the City Solicitor to speak to the enforcement process in general. Commissioner Clay agreed that having the City Solicitor present at the next meeting to explain the accountability process would be helpful. Chair Voorhis inquired about the process of referring Enforcement Orders to the City Solicitor. The Commission discussed the possibility of inviting a member of the Law Department to the next Conservation Commission meeting to discuss the general Enforcement Order process once an issue is referred to the City Solicitor.

A motion to issue a second Enforcement Order at 82 Ames Street was properly made by Ruby Clay and seconded by Peggy Curtis and approved by a unanimous vote.

Commission Matter: Brockton Wetland Ordinance

Per Agent Holden, there was a planned meeting of the standing Committee regarding the drafted Brockton Wetland Ordinance that the prior Agent and Chair Voorhis put together. In preparation, Agent Holden, Chair Voorhis, and the prior Agent Megan Shave, had a Zoom meeting to discuss a course of action and decided that Agent Holden should reach out to the legal department and the Commission to see who could attend the meeting.

Following this discussion, Agent Holden received a phone call from Megan Bridges, the City Solicitor, who expressed disagreement with the enforcement action written into the drafted Ordinance. It was additionally expressed that the city was not interested in implementing this type of enforcement action that would allow the city to levy fines for non-compliance with an Enforcement Order. As a result, discussion of the Brockton Wetland Ordinance was pulled from the agenda and postponed to an undetermined date.

The Commission expressed some confusion and concern about the lack of accountability relating to enforcement, especially when there are violations that have been ignored for a long time. Agent Holden mentioned that the legal department had recently increased their staff and capacity to handle these issues. There is also discussion about the role of municipalities in enforcing the Wetlands Protection Act, Ruby Clay questions the differences between the original proposal and the current situation, it is suggested that these questions be directed to Megan Bridges, who is expected to attend the next meeting.

Chair Voorhis expressed concern about the delay in the implementation of the Wetland Ordinance, which was discussed a year ago and then was not brought up again. She mentioned that since prior to Agent Shave, who was the primary scribe of the ordinance, was no longer present that it has been more difficult to proceed. Chair Voorhis suggested that the Commission should not postpone it any longer and risk having other enforcement orders come up. She also talked about the difficulty in attending the in-person meetings of the Ordinance Committee, as they provide short notice.

A motion was made and seconded and approved to adjourn the meeting.