

**BROCKTON CONSERVATION COMMISSION**  
**May 23rd, 2023 - 6:30 PM MINUTES**

The Chair, Joyce Voorhis called the May 23rd, 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, Laura Beichler, Peggy Curtis and Shareefah Mapp. Ruby Clay was unable to connect due to technical difficulties. A quorum was established. The Commission’s consultant - BETA Representative Elyse Tripp – herein “Miss Tripp”, Director Rob May, Conservation Agent Kyle Holden and Admin Isaiah Thelwell were also in attendance.

**NOTE: Agenda Items:**

**A motion was made to continue the Amended Order of Conditions for [455 Oak Street to the 6/21 Meeting](#) by Peggy Curtis and Seconded by Laura Biechler. motion carried by roll call vote.**

**1. Acceptance of Minutes**

**Continued to the 6/21/23 Meeting, in order to resolve the attendance question.**

**2. Commission Matter: Peer Review Procedure**

Agent Kyle Holden provided a statement regarding the ongoing relationship between the Conservation Commission and the BETA group. The Commission has engaged the BETA Group in an on-call contract to provide peer-review services for reviewing applications for compliance with the Wetlands Protection Act, its regulations, and the stormwater management standards.

When a new application or application revisions are received, the Commission, at the conservation agent's discretion, will request a scope and fee from the BETA Group for review. The applicant will be responsible for payment according to the city's regulations. The review by BETA Group will commence once the planning department receives the payment.

Joyce Voorhis acknowledged that this process was followed for stormwater reviews when Megan Shave was the agent. She notes that until Kyle is fully comfortable in his position, BETA Group

will handle both stormwater and Wetlands Protection reviews. Joyce mentioned that without an agent report, hearings can still be opened, and discussions can occur with the applicant. However, the performance standards review cannot be provided until the fee is paid and the BETA Group completes their review. Miss Tripp added that during this period, the discussion can still proceed, but the measure of compliance will only be available after the peer review is completed and “agent” reports are issued. .

### **3. Commission Matter: Utility Notifications**

Miss Tripp provided details regarding the first notification from Ever Source, which involves vegetation management on Right of Way 6, an electrical easement. Tripp explained that the work will be conducted within Bordering Vegetative Wetlands and their buffer zones. This activity is exempt from permitting for utilities under the Wetlands Protection Act if required to maintain public utility service as long as best management practices are followed.

To access the area, Eversource will use timber mats to distribute the weight of machinery and avoid compacting the soil. After completing the work, they will restore the areas they accessed. Tripp clarified that this is a courtesy notification since it falls under the exempt utility category.

Tripp provided information about another Eversource project, one that involves replacing existing natural gas lines. Although some areas are within the buffer zone to bordering vegetated wetlands and within the riverfront area, this activity is considered exempt under the Wetlands Protection Act, and extensive best management practices will be employed, including erosion and sedimentation controls. Tripp mentioned that it is a year-long project and will likely be conducted in phases over time.

Joyce Voorhis asked about the contractor responsible for the maintenance. Tripp stated that Eversource might have internal departments or personnel dedicated to such projects. Joyce also asks about the "de-watering" mentioned in the documentation. Elyse clarifies that a watering pit refers to an area sectioned off, often using stones or bricks or a compost filter tube. The water pumped out during the project is be directed to this area for infiltration, and water will be directed to an area with grass or stone where it can infiltrate naturally. Elyse assures the commissioners that EverSource has a comprehensive plan in place for implementing best practices throughout the project

### **4. Commission Matter: Violation Discussions**

#### **30 Oak Street Extension**

Kyle Holden provided a summary of events related to the property at 30 Oak Street Extension. A site visit was conducted in March in response to a request from the Planning Department to review the location of trees on the property and assess the possibility of their removal. During the visit, violations of the Wetlands Protection Act and its regulations were observed, including

debris and stone piles, as well as a recently poured concrete pad for dumpsters within the buffer zone to Lovett Brook. The matter was discussed at a previous Conservation Commission meeting where it was requested that an additional notice be sent to the property owners, urging their attendance at the current meeting. Another site visit was conducted, and the conservation agent determined that remedial work was underway based on discussions with the property manager, Olga.

Olga Leroy, the property manager, joined the meeting and acknowledged that they are working on addressing the violations that were identified and requested an extension of time due to scheduling issues with their landscaper. Olga explained that they initially put stones down to address a rat problem in the area and were unaware that it violated regulations. They are committed to restoring the site back to its original condition. Joyce Voorhis expressed appreciation for the company's willingness to comply with the Wetlands Protection Act and work with the commission. Olga requested an extension until the end of the following month, and Joyce suggested reporting back to the commission by the June meeting. The commission agreed and Olga confirmed that they will provide an update by the specified date.

## **26 Allen Street**

Kyle Holden conducted a site visit in April 2023 in response to a request from the City's Building Department to inspect the property for multiple building and health code violations. During the visit, violations of the Wetlands Protection Act were observed, including trash, brush piles, a sofa, television, and refrigerator within the buffer zone to the bank of Salisbury brook. These violations were also within the 25-foot floodplain and riverfront area. A notice of violation was sent to the owner via certified mail, and a green slip confirming receipt was received. However, no one was present at the meeting representing the property at 26 Allen Street. Joyce Voorhis suggested that an enforcement order should be initiated at this point, but Kyle suggested conducting a follow-up site visit to see if any cleanup work has been done. If necessary, another notice of violation can be issued with a request for the owner's presence at the next month's meeting. Commissioner Curtis suggested that there may be a potential language barrier since the letter was issued, possibly in another language. Kyle acknowledged the language concern and agreed to confirm if there is a language barrier and follow up accordingly. The Chair concurred and suggested taking action with enforcement if there is no progress by the next month's meeting.

## **5. Commission Matter: Enforcement Orders**

### **19 Otis Street**

Kyle Holden informed the attendees about an unauthorized construction activity that occurred at 19 Otis Street on April 19, 2023. The building department conducted an inspection following a neighbor's complaint and discovered the construction of a retaining wall and pergola, which encroached upon city-owned land near Salisbury Brook. The construction potentially violated regulations pertaining to flood-prone areas. On April 27, Kyle issued an Enforcement Order and received confirmation of delivery. He shared visual evidence, including photos and aerial

images, to demonstrate the construction's location in relation to property boundaries and the brook. A family member acting as spokesperson for the owner, Mr Andrade, apologized for the trouble caused and asked about the next steps to resolve the issue. Miss Tripp clarified, that the construction must be removed to comply with the enforcement order and that the removal must be permitted via a NOI process.. Andrade agrees to email Kyle to discuss necessary actions and to arrange a meeting.

## **82 Ames Street**

Kyle provided an update on the ongoing violation at 82 Ames Street. He presented several pictures of the site taken over the years to illustrate consistent non-compliance. The photos showed various instances of unauthorized groundwork and clearing on the property. Kyle highlighted that this had been an ongoing issue for multiple years, and the property owner had received previous enforcement orders. He mentioned that a new enforcement order had been sent out recently and discussed the timeline of previous orders and interactions with the property owner. Kyle has submitted the information to and are waiting for a response from the law department regarding assistance with the matter. Peggy Curtis raised a question about a retaining wall she noticed in one of the photos and inquired if it was still intact. Kyle explained that the angle of the photo might not show the retaining wall clearly but mentioned that he had a current photo where it could be seen.

Joyce Voorhis brought up the need to ratify enforcement orders and asked if anyone had spoken to the property owner directly. Miss Tripp clarified that in this case, the commission had already voted to issue the enforcement order, so ratification wasn't necessary. She mentioned that the property owner had been in contact with the conservation department in the past but stopped attending meetings. Miss Tripp also stated that an after-the-fact Notice Of Intent had been filed but wasn't followed up on. Joyce Voorhis and Kyle Holden expressed uncertainty about the current use of the buildings on the property, and Kyle mentioned that he didn't have that information. Miss Tripp added that the property was owned by a realty company, suggesting the possibility of exploring other avenues of enforcement, such as issuing a warning of revocation of their real estate license.

## **6. Commission Matter: Extension Request - 132 Campanelli Industrial Drive**

Kyle Holden met with representatives from Kelly Engineering on May 16, 2023. They were requesting an extension for Condition E of the Order of Conditions related to the completion of Buffer Zone Restoration. The original order was issued on September 7, 2021, and the extension they were seeking was for one year from that date. Kyle explained that the property owner had previously requested a similar extension on October 5, 2022, which was granted until June 7, 2023. However, no work has started on the site due to changes in ownership and occupancy issues with the commercial lots.

The property owner now requested an additional time extension until June 7, 2024, as they anticipate starting the buffer zone work around June 1, 2023. They have been communicating with the conservation department and have not yet commenced any work. Miss Tripp confirmed

that the Restoration Plan, including the buffer zone work, had been approved as part of the original Order of Conditions. The property owner plans to begin the work in early June and wanted to allow ample time for progress before reporting back to the commission. Peggy Curtis questioned the reasonableness of a one-year extension and suggested periodic progress reports. Miss Tripp explained that the extension was recommended to avoid the need for the property owner to come back to the commission repeatedly. She mentioned that a sign-off would be required before they could proceed with other work, ensuring that the restoration is done correctly.

Joyce Voorhis requested specific information about the approved restoration plan, and Miss Tripp confirmed that it was included in the original documents. She also clarified that the property owner had submitted a letter and intended to start the buffer zone work in June 2023. Miss Tripp suggested that the commission could consider a different time frame if they felt comfortable, and Peggy Curtis expressed her willingness to grant a one-year extension given the scope of work required. She emphasized the importance of progress being made. Laura Biechler suggested having a mid-year check-in point to monitor progress, and Joyce Voorhis agreed, proposing a review in November 2023.

**A motion was made to grant an extension request to 132 Campanelli Drive with the stipulation that there will be an evaluative report submitted to the Commission in November 2023** was made by Peggy Curtis and seconded by Laura Biechler. Motion carried by roll call vote.

## **7. Notice of Intent**

**Property: Pleasant St**

**Project: Two Family Dwelling**

**Applicant / Representative: JK Holmgren Engineering**

Scott Faria represented the applicant, who has submitted a request for a proposed construction project on a property located on Pleasant Street. The property is currently zoned for commercial use but is situated in a residential neighborhood. The project involves the construction of a two-family home with parking facilities. The construction plans have been approved by the Zoning Board of Appeals, and the project is now seeking approval from the Commission for compliance with Wetland Protection act, since the property is situated near the Salisbury River. Included in plans are precautions being taken to prevent runoff from the parking lot into the river. The parking lot design includes a catch basin for proper drainage. The topography of the property is relatively flat, and no retaining walls are planned. The proposed parking lot has seven parking spaces to accommodate the two units, based on the assumption of one car per bedroom. The property is not intended for business use, and if converted, it would invalidate the variance received. The project has not yet been reviewed by Beta for compliance with local stormwater or MA Wetland Protection standards. A scope and fee for the review has been submitted by BETA to the city. Upon receipt of fee payment, BETA will complete their review and submit their recommendations to the applicant and to the Commission.

**A motion to continue the Notice of Intent for Pleasant Street to the June 21st Meeting** was properly made by Laura Biechler and seconded by Peggy Curtis and approved by a unanimous vote.

**8. Notice of Intent**

**Property: 97 Ames Street (Substation)**

**Project: Minor Remedial Excavation**

**Applicant / Representative: Coneco Engineers & Scientist**

Michael Toohill introduced himself as a representative of the applicant, Mass Electric Company, working on a cleanup project at the substation on 97 Ames Street. He explained that there is lead contamination in the soil within the fenced area of the substation but outside the electrified area. The proposal is to remediate and remove the lead-contaminated soil from that area. He shared various maps and graphics to provide an overview of the site, including its location within the floodplain and riverfront area. The excavation and backfilling work is planned to be carried out during the summer. The excavated soil will be disposed of either at an approved landfill or a facility that treats soils to remove lead. Joyce Voorhis raised the question of an agent report, expressing the need for a consultant report for the City of Brockton before proceeding with the evaluation of the project. She emphasizes the importance of having an agent report before making any decisions. Miss Tripp stated that a scope and fee for the review is pending,

**Public Comment**

*John McMahon* - John McMahon expressed concerns about the property and its impact on his property at 90 Fletcher Street. He stated that the property at 97 Ames Street has a history of clearing vegetation and filling land at a higher than original elevation, which results in his property gradually being at a lower relative elevation. He explains that with climate change, the adverse effects on his property are increasing due to increased flooding of the brook and culvert onto his property..

John McMahon emphasizes the need to address blighted areas and mentions that he is willing to help in addressing the situation. He mentions that previous approvals have resulted in more fill being put back into the property than what was taken out, and he questions how the monitoring of the process will be done.

Joyce acknowledges McMahon's concerns and assures him that they will take his comments and letter into account. She mentions that the plan is to remove lead from the soil and replace it with clean fill, and to keep it at grade. McMahon expresses his skepticism based on past history.

**A motion to continue the Notice of Intent for 97 Ames Street to the June 21st meeting** was properly made by Laura Beichler, seconded by Peggy Curtis and approved by a unanimous vote.

**9. Notice of Intent**  
**Property 710 Oak St**  
**Project: Car Wash Construction**  
**Applicant/Representative: CIVIL design Group LLC**

The chair asked for verification of the DEP File number, and validation of a butter notification before opening the hearing. Although not available at the meeting, Mr. Henry, representing the applicant, agreed to send his abutter list for verification, allowing the hearing to be opened.

Phillip Henry provided an overview of the site and stormwater plans for a proposed car wash facility on 2.5 acres between Walmart and Cumberland Farms on Oak St. Mr. Henry explained the location, layout and access to the proposed facility. Henry discussed the wetland areas on the site and mentioned that the wetland lines were previously approved for The Cumberland Farm project, and assured the Commission that the wetlands have not substantially changed since then. He highlighted the buffer zones around the wetlands and explained the wetland delineations, showing the proposed grading and limit of work. He stated that the project does not encroach closer than 25 feet to the wetland. He also explained the stormwater management approach, which includes an above-ground basin to collect runoff from the impervious areas of the car wash facility complies with state and local regulations, including the removal of pollutants. Commissioner Curtis asks about specific regulations for car washes regarding the use of detergents and chemicals. Philip Henry clarifies that the car wash cleaning chemicals are part of a closed system and either get recycled or go to the sewer, separate from the stormwater system.

In the conversation, Peggy Curtis asked about a traffic study and Philip Henry mentioned that they recently received a special permit for the use of the property through the ZBA in March. They are in the process of filing with Conservation and Planning boards, and the traffic-related comments and requirements will be addressed during a technical review committee meeting. Peggy Curtis also asked about the dotted black line surrounding the property and whether it would be a fence. Philip Henry clarified that the line represents the anticipated limit of work, where the construction fence and silt fence will be placed initially. He mentioned that there will be a permanent fence around the trash enclosure, but there are no fences planned to prevent runoff from snow removal. The site is designed with curbing and catch basins to manage stormwater, and they don't expect any untreated discharge into the wetlands. Additionally, Peggy Curtis inquired about the connection to the Brockton sewer system for disposal from the car wash. Philip Henry explained that they plan to have a percentage of water reclaimed and recycled within the system, while the rest will be directed into the sewage system. The sewage will go through a treatment process to settle solids and separate oil before being discharged into the sewer system. Ms. Curtis also asked about the potential pollution from car wash processes like undercarriage cleaning and wax application. Rob May clarified that all the wastewater generated within the building is treated as sewage and does not go into the stormwater system.

Peggy Curtis expressed concerns about potential flooding and the possibility of water backup into the wetland area. Philip Henry mentioned that there is an existing 48 inch pipe that connects the nearby wetland to another on the opposite side of the Walmart lot.. The 4 foot deep infiltration basin proposed for the site is designed to handle stormwater up to and including a

100-year storm, if need be, a drain can be used to allow excess water discharge to the east of the site. Water backing up from the property into the wetland is unlikely.

Pending a Beta Consultant Review and validation of abutters notification, a **motion was made by Peggy Curtis, seconded by Laura Beichler and passed unanimously to continue the Notice of Intent hearing for 710 Oak Street to the June 21st meeting**

- 10. Property: 940 Belmont Street – VA Hospital**  
**Project: Fueling station**  
**Applicant / Representative: Acela Architects & Engineers / JK Holmgren Engineering**

**A motion to continue the Notice of Intent for 940 Belmont Street** was properly made by Peggy Curtis and seconded by Laura Biechler and approved by a unanimous vote.

- 11. 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**

Kevin Grady from Grady consulting addressed the Commission, stating that in his estimation, all requirements for an Order of Conditions have been met. Miss Tripp explains that the standard and special conditions were recommended by the prior agent and are also consistent with the overall project plan.

The first condition is that a wetland scientist or qualified professional will inspect the restoration areas within the 100-foot buffer zone after the initial plantings and seeding. These inspections will occur at the end of the growing season for two successive growing seasons. Reports of these inspections will be submitted to the March for Conservation within 90 days of each inspection.

The second condition is that a monitoring report following the completion of the initial planting and seeding within the restoration area must be submitted to the Commission before issuing a partial Certificate of Compliance. This report will confirm the species and health of the plants, as well as the seed mix.

The third special condition is that the final monitoring report, confirming compliance with the restoration plantings after two growing seasons, including any replacement of species, should be submitted to the Commission before issuing a full certificate of compliance.

The last outstanding item to be addressed for this NOI was the soil testing protocol.. As a final special condition, the Commission asked to receive copies of reports of all soil testing results, as established by the soil testing protocol. A motion was made by Laura Beichler and seconded by Peggy Curtis to close the hearing.



**A motion was made to issue an Order of Conditions with the special conditions outlined in the Agent's Revised Report for Claremont as Map 181 d.** by Laura Biechler and seconded by Peggy Curtis, and approved by roll call vote.

In order to discuss strategies for dealing with repeat Enforcement Orders, an executive session was scheduled for this meeting. A unanimous roll call vote was made to move into Executive Session. Mr Thelwell was asked to record the minutes of the executive session.

### ***Executive Session***

There is unclear direction from the Law department regarding Enforcement Orders. Several Enforcement Orders have been forwarded to the Law Department, but with no response or outcome.

Kyle has made attempts to reach out to Megan Bridges, City Solicitor, to attend a session in April, but she couldn't make it. Joyce asked if a representative could attend instead, but there was no response to the email. Joyce sent a follow-up email, but again, received no response. The commission is at a standstill because there is no one from the Law Department to speak for the lack of Enforcement Order compliance. Kyle brought up a city ordinance that Megan and some commission members crafted, which includes more stringent standards and clearly establishes fines which might encourage compliance when repeat enforcement orders are issued. Although initially in support of the ordinance, Megan Bridges stated in an email that she is not in favor of the ordinance due to the enforcement mechanism.

Kyle explained that the City has allowed a similar mechanism for the Sound Ordinance. Joyce mentioned that there is a two-year statute of limitations on all outstanding civil suits. The commission expresses concern about the lack of reply or communication from the Law Department. They mention their willingness to meet outside of executive session to understand the issues with the City Solicitor's office. Jack Lally and Shirley Asack both have expressed support for the Conservation Ordinance. Kyle mentioned that there is a new person in the Law Department who is in charge of enforcement. Joyce and Laura will offer to meet with the law department in order to discuss and to help develop a streamlined and meaningful enforcement process

**A motion was made, seconded and approved to adjourn the meeting at 915pm**