



Robert F. Sullivan
Mayor

CITY OF BROCKTON

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Planning Board

Historical Commission

Conservation Commission

Robert May, CEcD
Director

MINUTES

September 20th, 2023 – 6:30 PM

Joyce Voorhis called the September 20th, 2023 meeting of the Brockton Conservation Commission to order and read the following statement: “The meeting is being conducted remotely in accordance with the extension of the Governor’s Order suspending certain provisions of the Open Meeting Law M.G.L. c 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 the 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 ‘*9’ raise your hand. A copy of this recording will be on the City’s webpage. All votes will be done by a roll call to ensure count accuracy..”

The following members were confirmed to be in attendance by roll call: Laura Biechler, Peggy Curtis, Ruby Clay, Shareefah Mapp, Lily Green, and Joyce Voorhis - Chair. Conservation Agent Kyle Holden; and Administrators Rhode Germain & Isaiah Thelwell were also in attendance.

NOTE - Agenda Items Continued to the October 4th, 2023 Meeting:

- #13 549 Copeland Street- ANRAD
- #14 10 Peckham Avenue- Notice of Intent
- #15 166 East Ashland - Notice of Intent
- #16 339 Quincy Street - ANRAD

COMMISSION MATTER

1. Acceptance of August 16th, 2023 Minutes

A motion was made (Biechler) and seconded (Curtis) to accept the August 16, 2023 minutes. Motion passed by unanimous vote.

NEW FILINGS

2. Certificate of Compliance

Property: Grove Street Gas Main Replacement

Project: Public Utility

Representative: SWCA Environmental Consultants

Rebecca Weissman representing SWCA Environmental consultants explained that SWCA provided environmental compliance monitoring weekly throughout the construction time period and after the public utility project. She confirmed restoration and that the erosion controls had been removed. Agent Kyle Holden stated he went to the site and everything looks great. He added that even though the Order of Conditions prohibits the use of pesticides and herbicides on restored areas, the utility is not responsible for maintaining the roadways. Holden was charged to reach out to the DPW who are in charge of maintaining the roadways in the city to make them aware of this limitation in environmentally sensitive areas..

A motion was made to issue a Certificate of Compliance for the Grove Street Gas Main Replacement. (Curtis) and seconded by (Biechler). Motion passed by unanimous vote.

3. Certificate of Compliance

Property: 47 Westwood Avenue

Project: Single Family Home

Applicant/ Representative: Strongpoint Engineering

No representative from Strongpoint Engineering was present. Agent Kyle Holden made the presentation. Per Holden, the construction of the home on 47 Westwood Ave is complete, the yard is seeded and stable. Holden stated he visited the site and the outstanding complaint was that the silt fence and erosion controls were still in place on site. The Order of Conditions states it needs to be removed and discarded appropriately somewhere off site. He communicated with the Applicant and it was removed. He went out to the site and confirmed. Agent Holden recommends issuance of the Certificate of Compliance.

A motion was made to issue a Certificate of Compliance for 47 Westwood Avenue (Curtis) and seconded by (Biechler). Motion passed by unanimous vote.

4. Extension Request

Property: Oak Hill Way (Parcel ID: 119-015)

Project: Industrial Development

Applicant/Representative: MBL Land Development & Permitting Corp.

Per Agent Holden, he met with the property owner Mr. Levy. Holden noted some issues and corrective actions have been done by Mr. Levy. Agent Holden also informed them about containers in the 100ft Buffer Zone and Mr. Levy stated it is being moved. Kyle Holden also recommended they reach out to the erosion control company to replace the worn out silt sock. Mr. Levy stated they are open to do that and have begun the process. The chair requested for a brief history of the project. Mr. Levy summarized the project as building of about 1000 feet of road and two retention basins as part of their Phase One A of the project. All the water and sewer pipes and catch basins have been installed. And they need to do the final connection with the city water and sewer at the end of Oak Hill way which will be coordinated with DPW.

The missing piece as mentioned by Mr. Levy is the work requests for power. He stated they are working on the full site plans but Phase one A is the main entrance to the property and utility installation.. The ultimate plan for the site is a green industrial park. A 18,000 foot building is designed to go in between the two ponds that are constructed. The park will receive source-separated organics

and packaged food waste, which will go through a de-packaging process, and be captured in tanks. The slurry of organics will be transported off-site to an anaerobic digester to be used in another community as biofuel. There is also a plan to build a small scale leaf and yard waste composting operation. The site will be using state of the art technology to accelerate the process and better control odors, leachate, condensate and stormwater. He mentioned they will ensure all the concerns of the city are addressed. The digester will be offsite and the organic slurry would be shipped via tanker.

Agent Holden made a presentation on the site plan for the project. He mentioned when they have completed Phase one, the applicant will submit Phase two plans for different portions of the project.

Commissioner Curtis asked where the food waste was coming from. Mr. Levy stated that his company, Save that Stuff located in Charlstown, has a diverse group of customers i.e. schools, universities, retail, restaurants, hotels, hospitals as initial sources of separated organics or expired packaged food.

She also asked how the roads will be maintained during winter months in terms of snow plowing and use of salt on roads. Mr Levy stated regular plowing will be done, and the company will be sensitive to all such issues.

The Chair asked when the original permit was issued and the response was November 1 of 2017. And they received an amendment in 2021, and an extension in February of 2021. The amendment was updated to include plans for phase one.

It was established that the request is not for an amendment but an extension of time. Agent Kyle Holden was of the opinion that there was no need to wait for the installation of the erosion control structures before issuing the extension as the project is time sensitive and an enforcement order can be issued later if they do not follow through on the replacement of the erosion controls.

Alex Pogany stated he reached out to Meadow Brook regarding the silt sock and they're making progress on that. Tracy Duarte, a civil Engineer working on the project noted that getting a new DEP file number when there's a current DEP file number on the site has been an issue in the past.

Kyle Holden informed the Commission that BETA was not needed in this as the Commission was only ensuring compliance with the issued Order of Conditions and deciding whether to issue the extension or not and not to issue a permit.

A motion was made (Curtis) to grant the extension for Oak Hill Way as long as the conditions stated in the agent's report are met and verified within a timely manner and seconded (Biechler) The motion passed by unanimous vote.

5. Notice of Intent

Property: 115 Goldfinch Drive

Project: Inground Pool construction with associated patio / Buffer Zone Restoration

Applicant/Representative: Merrill Engineers and Land Surveyors

DEP file number and abutter notifications were verified by Mr. Holden for this NOI.

Thomas Pozerski, an Engineer with Merrill Engineers, presented the Notice of Intent application for 115 Goldfinch Drive. According to Mr. Pozerski, the applicant's contractors had cleared and encroached on the adjacent property which is owned by Wildlands Trust, a regional Land Trust, and had also built a retaining wall and cleared areas that are within resource areas. When notified, the owner hired wetland scientists from ECR to delineate the wetland boundaries. The line was delineated in late 2021.

Mr. Pozerski presented plans to the Commission that were submitted to the agent two hours before this meeting. He was responding to an Agent report from Kyle Holden which his company had received a week before. Mr. Holden stated that his Agent Report did not include the new plans from Mr. Pozerski as he had just received them by email.

Mr. Holden had suggested that the 115 Goldfinch project be split into two distinct phases with phase one being the restoration plan and construction in phase two.

The Applicant's representative summarized the new plans which included simultaneously removing the unpermitted retaining wall, sloping the area to its previous contours, and rebuilding a wall closer to the home and proposed pool area. Restoration planting plans were also presented

The Chair asked if the proposal was to use the same material from the old wall that was outside of the boundary to simultaneously build the new wall within the property boundary. The engineer answered in the affirmative and stated that the project would be supplemented with new materials as needed. There was some discussion about the need for any 4 foot wall, including footings, requiring a building permit.

Agent Holden mentioned that more time is required to review the revised plan before issuing an Order of Conditions, and agreed to contact the engineering company regarding the plans and the city's requirements for building a retaining wall

A Motion was made (Curtis) and seconded (Biechler) to continue 115 Goldfinch Drive to the October 4th Meeting. The motion passed with unanimous vote.

6. Notice of Intent

Property: West Elm Street Extension (Parcel ID: 004-012R)

Project: Buffer Zone & Floodplain Restoration

Applicant/Representative: Merrill Engineers and Land Surveyors

DEP file number and abutter notifications were verified by Mr. Holden for this NOI.

Thomas Pozerski, an Engineer representing Merrill Engineers presented the Notice of Intent application for West Elm Street Extension. Per Pozerski, this project ties in with the 115 Goldfinch Drive project, since it is part of the land that was encroached upon and must be done together. This notice of intent is for implementation of a restoration plan.

Agent Kyle Holden recommended issuing both permits at the same time as the best course of action.

A Motion was made (Clay) and seconded (Curtis) to continue West Elm Street Extension to the October 4th Meeting. The motion passed with unanimous vote.

7. Notice of Intent

Property: 511 Thatcher Street

Project: Solar Canopy Construction

Applicant / Representative: Farland Corp.

The Chair requested and was given verification of a DEP file number and abutter notification. This was not reflected in the agent's report as the DEP number was issued after the agent report was filed.

According to the applicant's representative, Christian Farland, Principal Engineer and President of Farland Corp. representing Powell Products, the 7.82 acre site is currently a junkyard. The NOI proposal is for the erection of three solar canopies over the existing car stockpile area. According to the

applicant, the stormwater flow won't be affected as water sheet flows through the existing panels. The site is within a flood zone. There will be 30 inch diameter concrete pilings built placed 30 feet apart , up to 10 feet deep constructed to hold steel columns as support for the solar canopy. In order to compensate for loss of flood retention area due to the construction of 30 inch diameter footings, a flood storage compensation of 756 cubic feet of storage has been provided on the site plans Mr. Farland stated there's a good tax credit for having these canopies on junkyard sites. And it gives a chance to clean up these sites, as vehicles are moved out of the area when the canopies are being installed. There is enough height clearance for loaders to move vehicles in and out underneath the canopies. He mentioned that 80% of the project is outside the 100 foot Buffer Zone.

Mr. Farland gave a description of the material used for the canopies and how they will be constructed. Commissioner Curtis asked about repairs and if panels were made of any hazardous materials. He stated that they're monitored 24/7 and panels are inspected every six months, and would be replaced as needed. Also it's all non-hazardous material. She also asked if the panels block any light to plants and protected areas. Mr. Farland noted that the panels are all outside in the open area outside of the 25 foot no touch. She also asked if hazardous materials are released in the process of moving the cars and where the cars will be moved to. Mr. Farland informed the Commission that the junkyard site is under DEP jurisdiction, under their own regulations.. All cars there are already stripped of all hazardous gasoline and oil material. He noted that the gravel that will be removed will be taken off site.

Agent Kyle Holden mentioned that the Wetlands Protection Act is in its location for this project to take place due to grandfathering provisions Historical aerial photos have shown a drastic increase in the number of autos on site over time. He noted that if an NOI were approved, the Commission could add certain stipulations in the Order of Conditions to improve the site and make it a better site environmentally than it currently is. Commissioner Clay asked if the site plans have been reviewed by Beta. Mr. Holden has recommended this be peer reviewed by BETA.

A Motion was made (Curtis) and seconded (Clay) to present this case to BETA to review 511 Thatcher Street, Solar Canopy construction and to be continued to the October 4th meeting. The motion passed with unanimous vote

8. RDA

82 Ames Street, Riverhawk Environmental

Legal notices were not posted, applicant funding required. Not discussed at the meeting

PRESENT FILINGS

9. Amended Order of Conditions and Enforcement Order

Property: 455 Oak Street

Project: Flood Prevention

Representative: PVI Site Design

Tim Power representing PVI Site Design, presented on behalf of the Fuller Craft Museum. Mr. Power explained that the plans submitted with the original Order of Conditions was to solve a flooding problem at the parking lot adjacent to the handicap accessible entrance to the Fuller Craft museum. An isolated wetlands to the south area became full of water and began flowing onto the parking area and filling an infiltration basin, and the Fuller Museum was issued an Emergency Order which allowed the property owners to cut a new channel between the isolated wetland and the Bordering Vegetated Wetlands. The request now before the commission as part of their Amended Order is to modify the drainage design. They propose to create a berm along the edge of the road along the isolated wetland to keep the water from overflowing into the parking area. Also there is a request to fill in overflow from the infiltration basin higher to prevent back feeding into the infiltration basin and then provide a pipe outlet back behind the museum more directly into the ponds.

BETA reviewed the plan and suggested the channel be widened from 2 feet to 4 feet wide. Kyle recommended a Cape Cod Berm on the pavements which will be adopted. Agent Holden asked for the approved changes to be reflected in the new plan and submitted by the next meeting.

**A Motion was made (Clay) and seconded (Biechler) to continue to the October 4th meeting to receive the updated recommendations on the site plan for 455 Oak Street
The motion passed with unanimous vote.**

10. Notice of Intent

Property: 710 Oak Street

Project: Car Wash

Applicant/Representative: Civil Design Group LLC

Philip Henry with the Civil Design Group representing the applicant, Chris Fazio, gave a brief history of the project. Phil explains that they have worked with BETA to satisfy their concerns of ensuring the Walmart runoff was managed correctly.

Agent Kyle Holden affirmed that BETA is comfortable issuing an Order of Conditions.

**A motion was made to close the hearing for 710 Oak Street (Biechler) and seconded by (Curtis).
Motion passed by unanimous vote.**

A motion was made to issue an Order of Conditions with standard conditions for 710 Oak Street (Curtis) and seconded by (Biechler) pending any data that BETA might need to add, that would be verified by Kyle. Motion passed by unanimous vote.

11. Amended Order of Conditions

Property: 900 West Chestnut Street

Project: Solar Canopy Construction

Representative: Farland Corp.

Christian Farland, Principal Engineer and President of Farland Corp presents The ANRAD application for Solar Canopy Construction at 900 West Chestnut. According to Mr. Farland the project was presented about 2 months ago and the revisions requested by the Commission have been made. This is an existent filing that was previously approved. They are putting solar canopies over the existing pavement, with there's no additional work outside the work area that was already approved.

Agent Holden recommended that the Amended Order of Conditions be issued. Commissioner Curtis suggested that this be subject to the applicant's submitting the final plans inclusive of all agreed upon changes. Mr. Holden mentioned he will continue the discussion of the documents and specifics needed via email with Mr. Farland.

A Motion was made (Curtis) and seconded (Biechler) to continue 900 West Chestnut Street to the October 4th Meeting. The motion passed with unanimous vote.

12. Amended Order of Conditions and Extension Request

Property: 0 Hammond Street (Parcel ID: 133-003 and 133-002)

Project: Revised Hope Garden Cemetery

Representative: JDE Civil

Attorney Burke, representing JDE Civil Engineering, addressed the Commission regarding an extension request for the building of Hope Garden Cemetery on Hammond Street, and stated that he was correcting a prior misunderstanding regarding the project.

He stated that \$184,000 has been expended to date instead of \$150,000 stated in the email sent to Agent Holden, refuting that no work had been done on the project. He requested that The Commission approve the request for the general extension going forward.

Josh White from JDE Civil presented and explained that most wetland flags are in place. He also gave an overview of the work done so far. Agent Holden acknowledged there has been some tree removal during the most recent round of amendments which was issued on November 5, 2020. He noted that the Wetlands Protection Act does not have any limit to how many times a Commission can extend an Order of Conditions, nor is there any language requiring that Orders be extended. Agent Holden stated as this is a long term project, started in 2015. He suggests a new filing, because the proposed work is vastly different than what was initially proposed in 2015. Attorney Burke stated that the project should proceed with the amendment as suggested. He also mentioned duplicity of costs and expenses seems to be prevalent in the City on development projects. He stated that doing the amendment has virtually no impact on the resource areas. And the rest of the project that are outside of jurisdictional issues really are irrelevant to the discussion.

White gave an overview of the project. He demonstrated aerial views to demonstrate that tree removal and access changes to the site, He noted the wall in the back of the property and the grading were the only things changed. He mentioned what will change is the rate at which the runoff flows overland from anywhere to this basin. However they evaluated it and believe they're still in compliance with stormwater standards. There was discussion between Agent Holden, The Chair and Attorney Burke on the Stormwater Ordinance for the city. Agent Holden suggested Attorney Burke contact the legal department for the city for further clarification on the issue. He also stated that Mr. Burke's issue with BETA should be channeled to the right place and not to the Commission. He also mentioned that the Order of Conditions doesn't expire until January of 2024 so there is time to either issue or deny the extension request.

Commissioner Curtis mentioned she was not comfortable going forward with the extension request. Ruby Clay agreed with Curtis and also reiterated how long the project has been going on. And they would like to be better equipped with information before making a decision. The Chair stated her concern was about the change in plans from the original plan for which the permit was issued. Attorney Burke stated it was expensive to do that and the time delay was an issue as well.

Commissioner Curtis noted that, with eight years gone by it cannot be said that there's no impact on the resource areas as Attorney Burke claims considering erosion, flooding, and seasonal changes, which should be formally evaluated

Mr. White stated there are expenses involved in a new filing and noted that they would prefer an amendment and extension. Kyle Holden suggested the case be moved to the October meeting and have further discussions then. Chair Voorhis suggested the applicant could get the area delineated and get the resource area evaluated while they wait for the next meeting. Mr. Holden suggested BETA be contacted to begin the peer review. Attorney Burke agreed that this could be done and asked Mr. Holden to share the scope and fee information available. Mr. White stated they will work on the Resource Delineation in anticipation of the October 4 Meeting.

A Motion was made (Curtis) and seconded (Clay) to continue 0 Hammond Street to the October 4th Meeting and to refer the project to BETA for review. The motion passed with unanimous vote.

VIOLATIONS DISCUSSION

17. 30 Oak Street Extension Hamilton Oaks

Agent Holden reviewed Violation Notice, this that the Applicant added an extra space to their pavement for dumpsters and pushed existing gravel into a resource area. Agent Holden visited the site this week. They have however removed the gravel and started restoration planting. He will contact Management since the seeded area has not yet stabilized, and suggest to them to re-seed the area in order that it be fully stabilized, allowing this item to be removed from the Agenda..

ENFORCEMENT ORDERS

18. 411 Warren Avenue

The Chair announced that a new Wetland Protections Act enforcement order has been issued and been sent via certified mail for property at 411 Warren Avenue. Agent Holden requested that the property owner attend this September hearing, however she wasn't present. The property is adjacent to the Brook and there is an elevation change from the Brook to the property. The Applicant started building an impromptu retaining wall and putting fill behind it right on the drop off. In addition to this, they used excavation waste from the basement to be used as fill for the retention wall. The wall will have to be removed as it is not permitted. Agent Holden presented some pictures and mentioned he will invite the property owner for the October Meeting. He stated the property is not within floodplain, but it is within a 25 foot riverbank and also within 100 feet of the Bank. Agent Holden issued the Enforcement order on the day he went to the site. removal of the impromptu wall and. restoration will be required

A Motion was made (Curtis) and seconded (Mapp) to ratify the enforcement order on 411 Warren Avenue. The motion passed with unanimous vote.

19. 19 Otis Street

Agent Holden, summarized that the original order was issued in April and there has been no attempt by the property owner to address this after multiple attempts. Agent Holden is of the opinion that the property owner may not have the funds to complete the work. Kyle noted that Mr Resende was present as a participant earlier in the evening, but was no longer present.

After consultations with the Law Department, The Commission suggests that the property owner be asked to sign a Voluntary Compliance Agreement. This outlines the steps required for the restoration. The Commission reviewed the draft of the Voluntary Compliance Agreement in order to determine appropriate timelines to include in the document.

Chair Voorhis suggests letting the City do the work and put a lien against his property. Agent Holden mentioned he can follow up on the potential of that being used by the legal department if the Compliance Agreement is not a successful mechanism for getting the work done.

Ruby Clay agrees with Kyle's proposition in order to hold the property owner accountable and for the work to be done. It was resolved that the property owner will be asked to get in touch with an Environmental Scientist by the November meeting. By March of 2024, there should be a restoration plan in place and filed, with work begun by April, and work done within the calendar year. The Chair suggested the Voluntary Compliance Agreement be standardized for future use with other enforcement order cases. **A MOTION WAS MADE (Curtis) AND SECONDED (Voorhis) at 9:30 PM TO ADJOURN THE MEETING, THE MOTION PASSED BY UNANIMOUS VOTE.**