

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

August 17, 2017

### **I. Call to order**

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on August 17, 2017. Chm. Gray explained all of the reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rule; which allows the applicant / representative five minutes to make a presentation to the Commission members, Commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. He asked for all to silence their cell phones.

Note: The meeting was being recorded anyone in the audience who was recording or videotaping was asked to acknowledge such to the Commission. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

**Members Present:** Robert Gray, Thomas Ligor, Paul Szwed, Rob Palumbo, Melvin P. Holmes and Elise Leduc.

**Excused Members:** Susan Weston.

**Also Present:** Sam Haines, Carol Mitchell, Paul Gately, Jim Mulvey, Steve Strojny, Pam Palumbo and Joe Palumbo.

**Request for Determination of Applicability:**

**1) Gerhard Bottcher**

File # CC17-33

Representative: Warwick & Associates, Inc.

11 Bayhead Shores Road, Buzzards Bay

To install a Title V septic to service two dwellings which will include all associated landscaping, grading utilities and other appurtenances within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

**Continued to September 7, 2017**

**Request for Certificate of Compliance:**

**1) Gerhard Bottcher**

File # SE7-1534

Representative: Warwick & Associates, Inc.

11 Bayhead Shores Road, Buzzards Bay

Removal of an existing metal shed, construction of a garage and upgrade of an existing onsite sewage system within an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

**Continued to September 7, 2017**

**2) Susan Gilmore**

File # SE7-1113

Representative: Same

51 Pine Ridge Road, Buzzards Bay

Replacing a support, ramp, float and a section of the existing pier within an AE Flood Zone, V Flood Zone and within a Wetland Resource Area.

Agent Comment – A site visit was performed on August 17, 2017. The floats and ramp are currently on land and are in very bad condition. The pier is also in disrepair, it is however built within the footprint approved by the Commission and shown on the Chapter 91 License application. Mr. Haines supplied DNR with photos of the dock so they can assess the safety of the structure, but recommended issuing the certificate. Mr. Haines stated it is obvious that the feature requires substantial work and feels it's appropriate to add a cover letter explaining any future proposed work will require a new filing with the Conservation Commission.

Board Comment – Mr. Szwed asked if there's more work to come. Mr. Haines stated some repairs were performed in 1995 and he doesn't think it's been touched since. The floats aren't floatable at this point and the pier itself is in disrepair. The property is for sale so he thinks the new homeowner will probably come forward with a new application.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

**3) Ralph & Margaret Mary Darling**

File # SE7-1824

Representative: Holmes & McGrath

2 Tern Way, Scraggy Neck

To construct a single family house, garage, deck, in-ground pool, porch, spa, patio, Title V system, reconstruction of timber stairs, utility installation, selective vista clearing, maintenance, and all associated clearing, grading and landscaping within an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment – A site visit was performed on August 10, 2017. The certification letter from the engineer states the changes from the original plan were approved by the Conservation agent on November 12, 2013; however, Mr. Haines could not find any evidence of that in their files. He checked the files in the Building Department and the Board of Health and both had the revised plan. The former agent also signed off on the Building Permit dated November 22, 2013. Mr. Haines feels that's sufficient evidence of an administrative approval and given that, he feels this is in substantial compliance with the approved plan from November 12, 2013. He recommended issuing the certificate.

Board Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Mr. Ligor seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

**4) Daniel & Maureen Flatley**

File # SE7-1882

Representative: Holmes & McGrath

9 Gull Lane, Scraggy Neck

Demolition and rebuild of a single family dwelling, with garage, porch, patio, deck, Title V system, utility installation, selective vista clearing, maintenance and all associated clearing, grading and landscaping within an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment – A site visit was performed on August 10, 2017. The site is in substantial compliance and Mr. Haines recommended issuing the certificate.

Board Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

5) Edmund Burke

File # SE7-1644

Representative: Same

450 Barlows Landing Road, Pocasset

Raze and rebuild dwelling, add denitrification to existing septic, landscaping, utilities and other appurtenances within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment – A site visit was performed on August 17, 2017. Mr. Haines stated he had previous discussions with the representative and performed a pre-filing inspection. The site wasn't in compliance at that time; however since then, additional work has been performed and now is. Mr. Haines feels the site is in substantial compliance with the Order and recommended issuing the certificate.

Board Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Mr. Szwed seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

6) Keith & Cheryl Ciampa

File # SE7-1862

Representative: Same

180 North Road, Pocasset

Renovation of an existing dwelling and construction of a new 3 bay garage. Work to include, replacement of an existing seating bench, remove and relocate a portion of dwelling, removal of yard debris in the Resource Area, installation of a Title V system, utilities, landscaping and other appurtenances within an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment – A site visit was performed and appears to be in substantial compliance. Mr. Haines recommended issuing the certificate.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

7) Kelly Regan

File # SE7-1505

Representative: JC Engineering, Inc.

310A Shore Road, Monument Beach

To remove previously deposited sand and filter cloth, install restorative planting, file after-the-fact for the deck within an AE and V Flood Zone, ACEC and 200 feet of a Riverfront Area.

Agent Comment – A site visit was performed. This was the result of an enforcement because the property owner created a beach along the front of the property. The site appears to be in substantial compliance, an engineer certification and as-built was submitted. Mr. Haines recommended issuing the certificate.

Board Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

### **Other Business:**

- Discussion and possible revisions to BWR 1.16 (e) 9 & BWR 1.16 (g) of the Bourne Wetland Regulations –Chm. Gray read the legal ad that was posted in the newspaper. The Commission received a copy of BWR 1.16 (e) 9, which pertains to the off-season storage of temporary seasonal docks and floats. The copy contained proposed revised language drafted by the agent. Chm. Gray expressed concern over the current language's use of the term, upland. After a lengthy discussion the agent presented the proposed draft revised

language of BWR 1.16 (e) 9 as such; Off-season storage of temporary seasonal docks and floats shall cause no adverse impact on the jurisdictional Wetland Resource Area. The location of the floats and docks shall be designated on the plan of record.

The Commission will vote on the final revised language for BWR 1.16 (e) 9, at the next hearing.

Public Comment – Mr. Mulvey discussed his experience as a cove master and feels the term, off-season is too vague. He also questioned whether the revised regulation applies to only new docks and floats or does it also apply to those previously approved. Chm. Gray stated he feels it applies to those previously approved; however, the intent here in revising the regulation is to catch the new applications that are coming forward because that's when a plan is submitted. Once the structure is built, the Conservation Commission doesn't usually revisit the matter unless an applicant returns for a COC request, there's an enforcement issue or a request is received from DNR. Mr. Haines stated he'd like to keep the off-season language because there may be areas that are appropriate during the off-season that aren't appropriate during the growing season. Chm. Gray suggested the agent speak with Tim Mullen to establish a timeline of dates that the off-season will be interpreted. Mr. Haines referred to the Definitions section of the regulations and found an existing timeline under the off-season definition. A discussion ensued.

Mr. Mulvey recommended sending the revised regulations to all of the permit holders. Mr. Palumbo stated the regulations are sent annually to permit holders. Mr. Haines stated DNR's regulations may not mirror the Conservation's, he will look into that and will notify the engineers of the new regulations which he says will trickle down fairly quickly to their clients.

Chm. Gray read the existing BWR 1.16 (g) language. Mr. Haines provided the Commission with draft revised language. He stated since FEMA updated their regulations in 2014, 90% of Bourne's shoreline is classified as V Zone. Revising the existing language in BWR 1.16 (g) will allow the Commission more flexibility when making decisions. He suggested the Commission consider the Storm Damage Prevention language of the Bylaw when considering any changes to the regulations involving Velocity Zones. Mr. Haines read the Storm Damage Prevention language. Chm. Gray reminded the members that if Bylaw language needs to change, that change is to be done at Town Meeting. He suggested focusing on the regulation language and not the Bylaw language.

Mr. Szwed opened a brief discussion with regard to the public benefit language in the draft revised regulation and Chm. Gray discussed the benefit to having more flexibility

when making decisions on a case-by-case basis; particularly when that decision will have less of an environmental impact.

Public Comment – Mr. Mulvey opened a brief discussion with regard to ice damage. Chm. Gray provided history of several docks that were damaged by ice over the years.

With no further discussion, **Mr. Ligor moved, Mr. Holmes seconded to accept the proposed draft language for BWR 1.16 (g).** Mr. Szwed stated at some point he'd like to see the public benefit language better defined. Chm. Gray agreed. The motion carried. 6-0-0. Chm. Gray asked Mr. Haines to work on a definition for the public benefit language and present it at the next meeting. He suggested that Mr. Haines refer to the Chapter 91 regulations for guidance. Mr. Haines agreed.

A brief discussion transpired regarding the need to review the seventeen year old regulations, particularly the regulation that prohibits new docks and piers in a Velocity Zone.

Public Comment – Mr. Gately asked when the revised regulation will take effect. Mr. Haines stated the effective date of BWR 1.16 (g) changed with the Commission's vote.

A brief discussion transpired concerning an applicant's ability to request an amendment to their open Order of Conditions now that the new regulation is in effect.

Mr. Gately asked if any new dock and pier requests have been received by the Commission. Mr. Haines stated a town owned property will be coming before the Commission soon, but he hasn't permitted a new dock & pier since he came on board. A discussion ensued.

- Proposed hazard tree removal for utility corridor in Carter Beal Conservation Area. Discussion and possible vote – Mr. Haines stated he was contacted by an Eversource forester who stated there are 14 trees in Carter Beal that need to be removed. Mr. Haines referred to a site plan to describe the location to the members. He stated he doesn't think the location of the tree removal is under the care, custody and control of the Conservation Commission. He will review the issue further, speak to the selectmen about moving forward with this as opposed to the Commission. He will provide an update at the next meeting as to whether any action is required by the Commission. A brief discussion ensued.

- Update on County Road storm water outfall to Mill Pond – Mr. Haines thanked George, Randy and Matt of the Bourne DPW for taking the time to evaluate the storm water system as requested by the Commission. He stated they provided him with documentation that shows the storm water system was upgraded in 2003 with an oil grit

separator and it was last cleaned on May 15, 2017. The sediment basin between the outfall and the pond was not cleaned at that time due to vegetation preventing machinery access. Based on their evaluation, there was only approximately four inches of sediment at the bottom of the basins and the outfall is designed with a sediment drop out of approximately sixteen inches of sediment. So if it's working correctly, then sixteen inches of sediment is allowed to build up before it goes into the sediment trap. The next step of the evaluation will be to clean out that sediment basin. Mr. Haines has administratively approved some minor vegetation clearing in the area. Once that's been done they will determine a clean out schedule and will also determine whether the oil grit separator is functioning effectively.

Board Comment – Ms. Leduc asked if the property owner was aware of this information. Mr. Haines stated she was present during the evaluation.

- Violation: 221 Shore Road, Monument Beach. Unpermitted understory clearing on Coastal Bank and within 100 foot buffer – Mr. Haines supplied photos of the site to the members. He stated he was on the property to review a hazard tree removal because the property owner called to see if she was allowed to remove a tree. At that time, Mr. Haines noticed that a portion of the property, the understory on the back river, had been mowed. The property owner had been weed whacking the area over a period of two years because she wasn't aware that the Coastal Bank was a jurisdictional area. Mr. Haines stated the area cleared was thick bittersweet. The property owner is willing to allow the Coastal Bank vegetation to grow out and would like to come forward with an RDA for some seasonal mowing within the Buffer Zone. Mr. Haines stated there's no root disturbance or excavation of any kind so it should grow back within a year or two.

- Violation: 0 Channel Road, Mashnee Island. Unpermitted understory clearing on Coastal Dune and within 100 foot buffer – Mr. Haines supplied photos of the site to the members. He stated on August 14, 2017 he was notified that there was some clearing performed. He visited the site and observed there had been mowing, brush removal and three or four mature cedars had been removed. He issued a violation on August 15, 2017 to the Mashnee Island Association for unpermitted clearing on a Coastal Dune. The dune is not only protected under M.G.L. c. 131, s. 40 and the Bylaw, but is also an area protected under the state's Coastal Restriction Act, which he has to further review. There was no root disturbance or excavation, so he feels it will grow back. It will take some time for the Cedars to reestablish. Since it's an unbuildable lot, Mr. Haines feels they may have been trying to establish a view shed or perhaps it was done to fix a drainage issue; that corner does have a drainage problem. He hasn't had direct contact with any association member yet, but he's been monitoring the area to be sure it hasn't been



further damaged. Mr. Haines will update the Commission once he has further information.

Board Comment – Mr. Szwed asked for the location of Channel Road. Chm. Gray described its location.

- Vote excused absent members, if necessary – **Mr. Holmes moved, Mr. Palumbo seconded to excuse Ms. Weston.** With no discussion, the motion carried. 6-0-0.

- Acceptance of Previous Meeting Minutes – Chm. Gray deferred the approval of the May 18, 2017 meeting minutes.

Chm. Gray entertained a motion to approve the minutes of the June 15, 2017 meeting. Mr. Haines suggested one revision. **Mr. Szwed moved, Mr. Ligor seconded to approve the minutes of the June 15, 2017 meeting as revised.** The motion carried 6-0-0.

- Report of the Conservation Agent – None.

- Correspondence – None.

- Public Comment Period on Non-Agenda Items – Mr. Mulvey acknowledged Mr. Haines and his efforts.

- Any other business that may legally come before the Commission – None.

## **II. Adjournment**

**Mr. Holmes moved, Mr. Palumbo seconded to adjourn.** With no discussion, the motion carried. 6-0-0. The meeting adjourned at 8:13 PM.

Minutes submitted by: Carol Mitchell