

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

November 16, 2017

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on November 16, 2017. Chm. Gray explained all 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, Melvin P. Holmes, Elise Leduc and Associate Member, Greg Berman.

Excused Members: Rob Palumbo and Susan Weston.

Also Present: Sam Haines, Carol Mitchell, Zac Basinski, Jack Dailey, Cameron Bright, Walter Weld, Alexander Weld, Matthew Swift, Kathy Sargent-O'Neil, David Hobaica and Adam Finkle.

Request for Determination of Applicability:

1) Kevin Hough

File # CC17-42

Representative: Kevin Gould

310 Shore Rd, Pocasset

To construct a pool storage shed with a covered porch within an AE Flood Zone.

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping.

(Hearing Under State Act Only)

(Continued to December 7, 2017)

Notice of Intent:

1) Gitchie Gumees Nominee Trust

File #

Representative: Walter Weld

0 & 65 Winsor Rd., Cataumet

To seasonally store eleven 16'x 16' floats within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Woods Hole Group Study, Massachusetts Division of Marine Fisheries letter and DEP Wetlands Change Mapping.

Ms. Leduc recused herself from discussion and vote.

Cameron Bright and Matthew Swift addressed the board. Mr. Bright stated he was before the board in July 2017, because the float owners had a succession of permits to store the floats at this location; however, they failed to renew in 2016. In July, the Commission suggested the best course of action to take was to have the Woods Hole Group perform a similar study as they did from 1995-1997 to see what impacts storing the floats for twenty years had on this area. The study was performed and shows there is no negative impact to the ecosystem in the small cove. Therefore, they are seeking permission to resume storing the floats.

Board Comment – Mr. Ligor stated the representative's letter discusses the location on the salt marsh where the floats will be anchored. He asked the representative to

pinpoint where the floats will be anchored. Mr. Swift referred to map to pinpoint the location where the floats will be anchored.

Mr. Ligor asked where in town this property is located. Mr. Bright stated it's located in the northeast corner of Hospital Cove.

Mr. Ligor asked for final analysis of the study. Mr. Bright stated the study showed that there hasn't been a change in the ecosystem. Mr. Haines read the final paragraph of the Conclusions section of the study which states there has been no negative impact.

Chm. Gray asked the representative to better address concerns raised in the Division of Marine Fisheries (DMF) letter which seemed to critique the Woods Hole survey. Mr. Bright asked Adam Finkle of the Woods Hole Group to address the letter. Mr. Finkle discussed the results of their survey, the storage methodology and their willingness to address concerns raised by DMF in their letter. The representative asked if there was something specific the Commission would like to see addressed. A brief discussion ensued.

Chm. Gray expressed his thoughts regarding pedestrian foot traffic damage to the marsh.

Mr. Berman asked if the property is located within an A or V zone and whether the representative feels waves or storm events will affect the slopes of the marsh. Mr. Bright stated he could not provide a response those questions but will have a response to at the next meeting.

Mr. Ligor opened a brief discussion regarding the possibility of storing the floats on the nearby sandy beach vs. the salt marsh.

Agent Comment – Mr. Haines asked that the property owners sign off on any changes made to plan. Additionally, he stated that he did not find any compression areas during his site visit. He briefly discussed the revised language that the Commission changed back in September regarding seasonal storage. Mr. Haines concurred with the Chair's recommendation that the representative better address concerns raised in the letter submitted from DMF. He also recommended that additional monitoring with a more detailed baseline be performed prior to any continuance. Chm. Gray suggested that the Woods Hole Group work with DMF to decide on a level of monitoring that DMF feels is appropriate.

Public Comment – Walter Weld, a float owner, provided information on how the name Gitchee Gumie was derived.

With no further discussion, at the concurrence of the applicant, the matter was continued to December 7, 2017.

Ms. Leduc returned to the meeting.

2) Carol Hickey

File # SE7-1988

Bracken Engineering, Inc.

51 Pasture Rd., Cataumet

To construct two additions, a garage and to install a new Title V septic to include all grading, landscaping, utilities and appurtenances within an AE Flood Zone and 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, and DEP Wetlands Change Mapping.

Chm. Gray recused himself from discussion and vote for the next three hearings. Ms. Leduc chaired the hearings.

Zac Basinski addressed the board and discussed the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines stated all work is being performed outside the 50-foot buffer on existing landscaped areas. He observed unpermitted tree clearing and vista pruning along the top of the coastal bank and referred to the plan to further explain the clearing.

Mr. Ligor asked if the area that was cleared will be replanted. Mr. Basinski stated he will discuss a mitigation plan with the property owner. A brief discussion ensued.

Ms. Leduc asked if the cutting was done recently. Mr. Haines replied that the property owner is actively clearing between the grass and the revetment. Mr. Haines suggested continuing the matter to allow the representative the opportunity to discuss a planting plan with the property owner.

Mr. Holmes opened a brief discussion concerning the existing septic system.

Public Comment – None.

With no further discussion, **Mr. Holmes moved, Mr. Ligor seconded to continue the matter to December 7, 2017.** With no discussion, the motion carried. 4-0-0.

3) Dave Hobaica

File # SE7-1989

Bracken Engineering, Inc.

724 MacArthur Blvd., Pocasset

To install an inground swimming pool to include all grading, landscaping, utilities and appurtenances within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, and DEP Wetlands Change Mapping.

Zac Basinski addressed the board and discussed the proposed project. He provided a brief history of the site.

Board Comment – Mr. Holmes inquired as to whether the site is a habitat for turtles. Mr. Basinski stated no and that no concerns were raised by The Massachusetts Natural Heritage and Endangered Species Program.

Mr. Ligor asked what type of pool is being proposed. Mr. Basinski stated it will be a fresh water pool. Mr. Hobaica explained the pool will be a display pool to allow potential clients to see what he builds. It will be an in-ground pool made of concrete and isn't sure what size the display pool will be yet. Mr. Hobaica explained that his company performs a lot of work in this area, stating they have two other retail stores and feels there's a need to expand his business in this area.

Ms. Leduc opened a brief discussion regarding the clearing of the lot. Mr. Haines asked if changes to the parking area are being proposed. Mr. Basinski replied no

Agent Comment – Mr. Haines stated the site is listed as having a potential Vernal Pool. He feels that the wetland delineation is accurate, and thinks the pool has the hydrology to support obligating amphibian breeding. It dries out seasonally, so there's the potential that this is a Vernal Pool which is undoubtedly the result of road drainage from somewhere. He stated he didn't see a culvert, but he didn't have access to the

adjacent properties to investigate further. Given the wildlife value, Mr. Haines recommended the Commission condition this Order with a 50-foot no touch.

Mr. Berman asked if any of the amphibians may be drawn to the proposed man-made pool once it's been installed. Mr. Haines stated there is a possibility of that. Mr. Hobaica stated they will put a frog log in the pool which has as an escape ramp.

Public Comment – None.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Ligor seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

Mr. Haines – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 7, 9-12, 14, 15, 18, 19, 21, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2-7 and the Additional Special Condition; ASC 1; this Order does not allow for the installation of any swimming pool. Any pool and any surrounding hardscape must come under an additional filing.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

- 4) Steven and Nancy Candela
File # SE7-1987
Bracken Engineering, Inc.
41 Harbor Dr., Pocasset

Permitting of a modified pier/float system on an existing stone groin within an AE Flood Zone, V Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record dated 11/16/17, and DEP Wetlands Change Mapping.

(Continued from November 2, 2017)

Zac Basinski addressed the board and discussed the proposed project. He explained the project was before the Commission back in February of last year. At that time, they were seeking to permit a modification to the existing pier and float system; however,

regulations prohibited modifications or expansion within the Velocity Zone. Since then, the regulations have changed. Mr. Basinski explained the property owner inadvertently installed a twenty-four-foot gangway. He is requesting the board's forgiveness and permit the work that was performed without permission.

Board Comment - Mr. Ligor expressed his opinion to approve the project without further delay.

Mr. Berman asked if the existing Chapter 91 License is in good standing. Mr. Haines stated it is.

Agent Comment – Mr. Haines explained that the property owner has been in violation this entire time. He went ahead and installed a twenty-four-foot dock even though the original Order prohibited it. Furthermore, the applicant has in the past, asked for quite a bit of forgiveness. Next, Mr. Haines read Town of Bourne's regulation; (e) (3), and asked the representative if the twenty-four-feet meets the minimum 3' clearance standard stated in the regulation. Mr. Basinski explained that a longer ramp system would be required, which is why they requested to install the pipe piles. That being said; Mr. Haines feels the adjusted regulations now allow this.

Ms. Leduc asked if any feedback has been received from DMF. Mr. Haines stated an email was received and it essentially states they have no issues with this project.

Public Comment – None.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Ligor seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

Mr. Haines stated the new Order will reflect the revised date supplied on the new plan – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 6, 7, 22, 27, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 8, 12, 14-22, 24, 25, with an amendment to Condition #12, which reads, this Order of Conditions is not valid until the applicant applies for and receives an amended license from the DEP Division of Wetlands and Waterways relative to Chapter 91.

Mr. Berman asked if there are any outstanding violations or fines that need to be addressed. Mr. Haines stated this will resolve the violation.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

5) James Diede

File # SE7-1986

Representative: Bracken Engineering, Inc.

60 Lewis Point Road, Bourne

To place supplemental fill material, grade and install vegetative plantings within an AE Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, FEMA CLOMR-F Conditional letter of map revision based on fill, LOMR-F letter of map revision based on fill, and DEP Wetlands Change Mapping.

(Continued from November 2, 2017)

Zac Basinski addressed the board. He quickly summarized the proposed project and discussed the performance standards associated with Coastal Banks per Section 10.30 of the bylaw.

Board Comment – Mr. Szwed opened a brief discussion regarding the stability of the Bank.

Ms. Leduc questioned the construction access and the type of equipment they anticipate will be needed to regrade and deliver materials. Mr. Basinski explained the access will be through a path on Nye Road. Dump trucks, a Bob Cat and either a hand compactor or small rollers will be used.

Mr. Ligor asked if the existing Bank serves as a sediment source. Mr. Basinski stated only a small portion. Mr. Ligor asked what the composition of the existing Bank is. Mr. Basinski stated it's a sandy material with natural vegetation on top of it.

Ms. Leduc asked if he's cored into it to see what's below the surface. Mr. Basinski stated it's all sand. A wetland scientist determined that the site does not have any hydric soil conditions.

Mr. Ligor asked if the fill being brought in will be consistent with what's existing. The representative concurred. He explained they'll first bring in the sandy material and will top it off with loam to allow vegetation to grow. They will bring in approximately 800 cubic yards of fill.

Mr. Haines asked if the sandy fill will comply with the requirements under FEMA. The representative stated yes, it meets construction fill requirements.

Mr. Haines opened a brief discussion regarding the planting plan.

Mr. Ligor asked if there are any remnants of wetland in the depressed area of the site. Mr. Haines stated there are some wetland shrubs but overall, he didn't see any characteristics of any jurisdictional wetlands.

Mr. Berman offered his thoughts on the proposed project.

Agent Comment – Mr. Haines stated almost all Commission members have visited the site. His only recommendation to the Commission is to stay focused on the performance standards of the Coastal Bank. If the Commission feels the project meets those performance standards, then conditions may be placed on the project to maintain buffers, green space etc.; however, approving or denying the project must be based on the performance standards.

Ms. Leduc opened a brief discussion regarding buffer zones and future erosion control measures.

Public Comment - Kathy O'Neil questioned the potential of hiring an independent consultant as discussed in a previous meeting. Mr. Haines stated he doesn't know the value in hiring an independent consultant since this project pertains to interpreting the regulations.

Ms. O'Neil questioned the replanting requirements when a larger tree is removed. Mr. Basinski explained the replanting process.

Ms. O'Neil briefly discussed the access path on Nye Road and the depressed area of the site.

Additional Board Comments – None.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Ligor moved, Mr. Holmes seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

A brief discussion transpired regarding the proposed planting plan and setting buffer zone restrictions.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-4, 6, 7, 9-12, 14, 15, 18, 19, 21,

22, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 5-7.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

Chm. Gray returned to chair the meeting.

Certificate of Compliance:

1) Elizabeth Steudel
File # SE7-1978
Representative: JC Engineering
124 Wings Neck Road

To construct an elevated walkway and vista pruning within a V Flood Zone and within 100 Feet of a Wetland Resource Area.

Agent Comment – A site visit was performed on November 15, 2017. The boardwalk was found to be in significant compliance. Mr. Haines commended the landscapers on their vista pruning and recommended issuing the Certificate of Compliance.

Chm. Gray entertained a motion to grant the Certificate of Compliance. **Mr. Ligor moved, Mr. Holmes seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 5-0-0.

Ms. Leduc asked who the landscaping company was. Mr. Haines stated it was CMS Landscapers.

Chm. Gray asked the agent why the section of the agenda that pertains to questions regarding M.G.L. Chapter 131, Section 40, no longer appears on the agenda. Mr. Haines stated the Town Clerk suggested removing that language and changing it to the current language; Public Comment Period on Non-Agenda Items.

Chm. Gray opened a discussion regarding performance standards that pertain to the stability of a Coastal Bank. He read the preamble of the regulations which is the only section of the regulations that refers to the stability of Coastal Bank. A discussion ensued.

Additional discussion transpired regarding the performance standards of Coastal Dunes and the Definitions section of the regulations. Mr. Haines stated he needs to draft a definition for the terms; Public Benefit and Environmental Benefit that are under their new regulations for V Zone expansion. He stated over the next few months he'll be working on those definitions.

Chm. Gray discussed the need to update the Definitions section of their bylaw and the need for the state to update state regulations. A brief discussion transpired regarding the updated Coastal Manual that the state released in August 2017.

Additional discussion transpired regarding various definitions in the regulations.

Other Business:

- Update on violation at 55 Salt Marsh Lane – Mr. Haines performed a site visit earlier in the week, all the drainage piping had been removed. It appeared that all the fill had been removed as well. He has a meeting with the property owner on the following Monday to discuss loaming and seeding. Overall, he is pleased with the results thus far.

A brief discussion transpired regarding driveway work that is being performed across the street from 55 Salt Marsh Lane.

- Update on violations at 130, 132 and 134 Wings Neck – Mr. Haines stated this was the violation where several residents were mowing their salt marsh and one had installed a dog fence. He expects a filing within the next 30 days from 130 Wings Neck. The property owners want to try to legally permit all violations that were brought to their attention. Because there hasn't been successful communication with the other two property owners, Mr. Haines requested permission to write a letter to them stating that any unpermitted mowing observed in the 2018 growing season will result in immediate enforcement.

Mr. Ligor moved, Ms. Leduc seconded to grant permission to the agent to draft the letters to the property owners of 132 and 134 Wings Neck Road. With no discussion, the motion carried. 5-0-0.

- 2018 Conservation Hearing Schedule – Mr. Haines submitted a draft 2018 Hearing Schedule to the members. After a brief discussion, it was decided that the hearing schedule will be finalized at a future meeting.

- Vote excused absent members, if necessary – **Ms. Leduc moved, Mr. Holmes seconded to excuse the absent members.** With no discussion, the motion carried. 5-0-0.

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the October 5, 2017 meeting. After a brief discussion, **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the October 5, 2017 meeting as revised.** The motion carried. 5-0-0.

- Report of the Conservation Agent – Mr. Haines asked for the Commission’s opinion on a case involving the storage of underground propane tanks and whether they should be treated the same as underground oil or diesel tanks. A brief discussion ensued.

Mr. Haines discussed the possibility of revisiting the topic of Special Conditions at the next hearing since the agenda is light.

- Public Comment Period on Non-Agenda Items – None.

II. Adjournment

Ms. Leduc moved, Mr. Holmes seconded to adjourn. With no discussion, the motion carried. The meeting adjourned at 9:15 PM.

Minutes submitted by: Carol Mitchell