

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

January 18, 2018

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on January 18, 2018. 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, § 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, Rob Palumbo, Susan Weston, Thomas Ligor and Elise Leduc.

Excused Members: Paul Szwed, Melvin P. Holmes and Associate Member, Greg Berman.

Also Present: Sam Haines, Carol Mitchell, Shawn MacInnes, Nancy Bolles, Fred Bartholomew, Kenneth Feeney, Michael Clark, Tom Younis, Linda Younis, Paul Gately, Bill Grafton, Liz Anoja, Chad Haitsman and Ralph Parkes.

Request for Determination of Applicability:

1) Judith Skillman

File # CC18-01

Representative: Shawn MacInnes, PE

6 Peninsula Circle, Pocasset

To repair, rebuild and upgrade a failed septic system to include installation of concrete leaching chambers within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Letter from Health Department and DEP Wetlands Change Mapping.

Shawn MacInnes addressed the board and discussed the proposed project. He stated Mr. Haines had a question regarding the Coastal Bank and the health agent submitted a letter sighting issues with the plan that were not able to be addressed yet.

Chm. Gray read the health agent's letter and explained that she would like to explore the possibility of moving the proposed system to the contiguous lot.

After a brief discussion regarding the need to explore this further with the health agent as well as discuss the Coastal Bank issue with the conservation agent, the representative requested continuing the matter to February 1, 2018.

Board Comment – Ms. Leduc commented that the area the health agent would like explored has many trees that would need to be removed.

Chm. Gray stated the Bank isn't clearly defined on the plan; therefore, the agent would like to perform a site visit.

Chm. Gray asked if Mr. Haines would like to give his report.

Agent Comment – Mr. Haines stated if the representative is willing to address the issues, a report isn't necessary.

Public Comment – None.

Chm. Gray stated the matter will be continued to February 1, 2018 to allow the conservation agent and the health agent to perform an on-site inspection.

Notice of Intent:

1) NW Holdings, LLC

File # SE7-1994

Representative: Holmes and McGrath, Inc.

490 Scraggy Neck Road, Cataumet

To repair and maintain an existing rip-rap revetment and reconstruct a coastal access stairway and stone groin within a V Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Letter from DMF, Chapter 91 License and DEP Wetlands Change Mapping.

Tim Santos addressed the board and stated he previously obtained a tear down and rebuild permit for the house which is currently under construction. The applicant is now seeking to perform some repair work and mortaring on the existing licensed rip-rap and at the same time, rebuild the groin which has a lot of dislodged stones. They are also proposing to remove the timber steps that exist over the rip-rap as well as the existing concrete pad at the base of the rip-rap and replace them with a new set of stone steps into the rip-rap. Any vegetation that's disturbed at the top of the rip-rap will be replanted in-kind.

Board Comment – None.

Mr. Haines asked the representative to explain the construction methodology. Mr. Santos discussed the construction access and the construction methodology.

Chm. Gray asked the length of the license. Mr. Santos thinks the original license was with the previous owner. The new property owner re-licensed it when he purchased the property. Chm. Gray questioned whether there's a maintenance requirement clause in it. Mr. Santos stated there is. Chm. Gray questioned whether the agent looked into this. Mr. Haines stated it appears to be an active license with a license allowing for maintenance.

Agent Comment – Mr. Haines stated the representative's plan of action to minimize impacts to the Resource Area by performing work from the upland and the top of the groin is the best available option because the rest of the revetment is steep and mortared in place. Mr. Haines does not have concerns with the proposed stairs in the existing revetment. Currently, the groin has loose stones. Mr. Haines stated he does not want any concrete or mortar material within the stone groin. Mr. Santos stated there is no proposed mortar for this section of the groin, even the proposed stairs will be dry fit. Mr. Haines stated DMF issued a letter that discusses some minor issues including erosion controls and spill containment. There's also a recommendation regarding the concrete landing

pad. Mr. Haines attempted to contact DMF for further clarification but was unsuccessful. Since he observed only one area of concrete, should the Commission issue an Order, they should condition it that the concrete pad be removed along with the stairs. This should negate any mitigation that's discussed in the letter. Mr. Haines recommended applying the following Special Conditions; 1) no concrete or mortar may be used to fill any voids within the existing stone groin. This Order allows for the groin to be constructed of loose stone only, 2) no equipment is allowed on the Coastal Beach or saltmarsh. All equipment must remain within the upland or the footprint of the existing licensed stone groin, 3) erosion controls must be placed around the proposed construction staging area, which is at the top of the revetment, 4) no fueling is allowed within the Wetland Resource Area. If refueling is required within 100 feet of the Wetland Resource Area, then secondary containment must be utilized. Spill containment materials will be kept on site at all times, 5) both the wooden stairs on the Coastal Bank and the cement landing on the Coastal Beach must be removed from the Resource Area.

Board Comment – Chm. Gray asked if during the site visit, did the agent examine the groins on each side, stating based on the photos, it appears that the adjacent properties have similar groins. Mr. Haines explained there are groins on either side of this property and if you look at aerial photos, there are groins all along that section. Compared to the other groins, this groin is in disrepair. The other groins appear to be in significantly better condition.

Mr. Ligor questioned whether the contractor will be removing vegetation on top of the bank. Mr. Santos clarified that it will only be removed in the area in front of the groin in order to access the groin. Mr. Ligor asked approximately how many feet of vegetation will be removed. Mr. Santos stated it will be the width of the groin. He used a scale to measure the area stating it's approximately 30 feet wide. Mr. Ligor referred to the plan and questioned whether a particular area depicted on the plan is manicured lawn. Mr. Santos stated it's a lawn that comes down to the vegetated buffer. Mr. Ligor asked if the lawn is fertilized on a regular basis. Mr. Santos stated he wasn't sure. Mr. Ligor stated he would like to see a buffer zone between the manicured lawn and the Resource Area as mitigation for removing 30 feet of vegetation. Mr. Santos stated the removal is temporary to access the groin for reconstruction. It will be replanted with in-kind vegetation. Mr. Ligor requested 15 feet of buffer be installed between the manicured lawn and the vegetation, on top of the Bank.

Ms. Weston asked how wide the existing buffer is. Mr. Santos stated it's 8 feet wide. Mr. Haines mentioned that there's an approved open Order of Conditions for the house and lawn and under that Order, 8 feet of buffer was accepted.

Ms. Leduc questioned how the vegetation will be removed. Mr. Santos explained an excavator will need to be used. Ms. Leduc asked if in order to prevent destabilizing the soil, cutting them down instead of removing them is an option. Mr. Santos stated the vegetation can be lopped off, but it will need to be replanted because it will not grow back.

Ms. Weston questioned the use of mortar. Mr. Santos stated mortar will only be used on the existing rip-rap which already has existing mortar. No mortar will be used on the groin.

Public Comment – Paul Gately questioned the location of the property. Chm. Gray described the location.

Chm. Gray entertained a motion to close the public the hearing. **Mr. Palumbo moved, Mr. Ligor seconded to close the public hearing.** With no discussion, the motion carried. 5-0-0.

Mr. Haines – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 5, 7, 9, 10, 12, 14, 15, 18, 19, 22, 26, 27, 28, 29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 4, 6, 7, 15, 18, 21 and the five additional Special Conditions recommended previously.

Board Comment – None.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Ms. Weston moved, Mr. Ligor seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 5-0-0.

2) Tahanto Associates, Inc.

File # SE7-

Representative: Design Consultants, Inc.

0 Tahanto Road, Pocasset

To demolish an existing 30' wooden pedestrian bridge and replace it with a 35' aluminum pedestrian bridge within a Velocity Flood Zone and within a Wetland Resource Area.

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

Michael Clarke addressed the members. He provided a history of the bridge, the location of the existing bridge and the Resource Areas in its vicinity. He stated the bridge, which had a small draw bridge, was built to provide access to the beach by the surrounding residents who also kept small sail boats in the tidal pond. That bridge has since been abandoned.

Mr. Clarke stated the existing bridge is approximately 30 feet long and is supported by ten piers, some were made of only of concrete, others had footings with concrete and wood. Originally, the ends of the bridge were at the same elevation as the surrounding ground surface; however, that is no longer the case due to erosion. The bridge is now accessed by temporary cinder block stairs. He stated in the 1990s, DEP began licensing all unlicensed structures. A Chapter 91 License was issued and the Conservation Commission, at that time, issued an Order of Conditions; a copy will be submitted for the record. Mr. Clarke stated the existing structure, which is over 50 years old, has become severely degraded. He referred to the plan to pinpoint an existing boat ramp which has since been abandoned, stating from Mean High Tide down, it's now a Resource Area, Tidal flat.

He is proposing to construct an aluminum bridge off site, stockpile materials on a sandy area and cover them with a waterproof tarp, demolish the existing bridge by hand and install the preconstructed aluminum bridge on two concrete pilings on either end with a great beam on top of them. A crane will be used to remove the existing pilings. The proposed bridge will have Trex decking and will be slightly longer than the existing bridge to accommodate for the makeshift stairs. He stated in order for the access of the proposed bridge to be ADA compliant, sand will have to be brought in and will have to be maintained in the future. Erosion controls will be implemented.

Mr. Clarke stated based on the Order, he will either file a letter of minor change or a minor modification permit prior to commencing work. He stated the reason why a file number hasn't been assigned is because DEP has no record of the check that was submitted and is waiting for a copy of it.

Mr. Ligor asked if the existing sand path will be widened and if vegetation will be removed. Mr. Clarke stated sand will be added but he isn't planning on making it wider. Mr. Ligor expressed concern of loss of vegetation if he plans on widening the path. Mr. Clarke stated he would replace vegetation if necessary. Mr. Haines interjected

stating the plan as shown depicts a four-foot wide sand ramp. Currently, the path is 18” – 24”.

Ms. Leduc stated the saltmarsh isn’t mapped on the plan as a Resource Area and it appears the path is located entirely within the saltmarsh; therefore, the concept of the sand path is against regulations. Additionally, Ms. Leduc voiced concern over storing the materials on the barrier beach. She stated that area is under water at high tide. Mr. Clarke discussed alternatives for storing the materials. A brief discussion transpired concerning the types of material that will be stored and the length of time it will take for staging.

Ms. Leduc questioned whether the area is shellfish habitat. Mr. Haines stated he has not received any information back from DMF yet.

Agent Comment – Mr. Haines expressed concern over the proposed sand path.

Chm. Gray stated he does not see the sand path being compatible with saltmarsh regulations. Mr. Clarke discussed an existing Order of Conditions which covers the project. Chm. Gray stated it doesn’t permit adding sand in that location. Mr. Clarke stated an alternative to the sand would be to install a set of stairs.

Ms. Leduc asked if the property is located within a Velocity Zone and whether the project falls under their Piers and Docks regulations. Mr. Haines stated the property is located within a Velocity Zone and the Commission would have to determine whether those regulations apply to this project. A discussion ensued.

Mr. Haines stated the Commission will also have to decide whether a bridge meets the Dock and Pier Regulations. Mr. Clarke argued that a bridge is not a dock or a pier. Mr. Haines stated his interpretation of the regulations is that a bridge is not subject to that regulation; however, that’s a decision the Commission will have to make. Chm. Gray stated he’s comfortable with the bridge being classified as an existing structure if it’s properly licensed. For him, the only troubling aspect of the project is the sand path.

Mr. Clarke discussed the need to meet not only Conservation requirements but there are also access requirements that must be met. Ms. Leduc stated a walkway over the length of the saltmarsh would be approvable. Mr. Clarke explained the criteria a walkway would have to meet according to the Architectural Access Board requirements. Ms. Leduc discussed the benefits of installing an elevated walkway. A discussion transpired regarding the existing access. Chm. Gray stated the existing access is not legal and the

Commission is required, when a saltmarsh is being impaired, to correct the impairment. He discussed installing a walkway, which would provide legal access according to the regulations. Mr. Clarke disagreed that a walkway would be more beneficial.

Chm. Gray stated the landward edge and the seaward edge of the saltmarsh needs to be added to the plan. Mr. Haines will have to verify that the two edges have been properly marked.

A lengthy discussion transpired regarding the existing path and the Chapter 91 License.

Mr. Haines stated it may be a good idea to perform a site review. He stated the construction methodology needs to be better detailed. Mr. Clarke stated he will provide that to the agent.

Mr. Haines stated the crane will require access from 183 Tahanto Road and questioned whether an access agreement has been put in place. Mr. Clarke stated one has not been put in place yet. He asked that be a condition added to the Order. Mr. Haines stated the matter needs to be continued to receive a DEP file number and feedback from the Division of Marine Fisheries.

Mr. Palumbo opened a brief discussion regarding the construction of the pilings and the stockpiling of the materials. Mr. Haines requested the materials be elevated while being stored.

Ms. Leduc explained to the representative that the revised plan should delineate all of the Resource Areas.

Public Comment – Ken Feeney of 165 Tahanto Road addressed the members. He questioned whether a granite transition step, the same width as the existing path would be permissible in order to allow access to the bridge. Mr. Clarke explained to Mr. Feeney that the Commission would like the saltmarsh vegetation to be restored. Mr. Feeney again questioned whether the transition step would be allowed. Mr. Haines stated a step would be considered fill and fill is not allowed to be placed on a saltmarsh. He stated it's a decision best made after the Commission visits the site and the Resource Areas have been delineated. A brief discussion regarding a site visit transpired.

A member of the public expressed her support for a bridge.

Tom Younis addressed the members stating it's extremely important to maintain a bridge to avoid damaging the saltmarsh to access the beach. He thanked the members for their assistance.

Fred Bartholomew addressed the board. He stated it will be helpful for the members to view the site.

With no further discussion, the representative requested continuing the matter to February 15, 2018.

3) Kevork Tinkjian

File # SE7-1995

Representative: Bracken Engineering, Inc.

34 Benedict Road, Gray Gables

To construct a saltmarsh boardwalk and access stairs, within an AE Flood Zone, Velocity Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record dated 1/18/18 and DEP Wetlands Change Mapping.

Chm. Gray recused himself from discussion and vote. Mr. Palumbo chaired the hearing.

Mr. Haines stated the representative submitted revised plans.

Brendan Mullaney addressed the board. He described the layout of the property and discussed the proposed project. In addition to constructing a boardwalk, he is proposing to install removable access stairs. Additionally, Mr. Mullaney discussed the specifications of the boardwalk and access stairs. He also described the construction methodology and the revisions that were made to the plan.

Board Comment – None.

Agent Comment – Mr. Haines stated he agrees with the interpretation that the walkway definition under the Town of Bourne's Wetlands regulations that the structure itself would not be considered a dock or pier. The regulations start at the seaward edge of the saltmarsh according to the walkway definition. The stairs are subject to the dock and pier regulations because of their proposed location. If the Commission decides to issue an Order, he recommends the following Special Conditions; 1) the permitted saltmarsh walkway is not to be used as a boat dock, slip or mooring. No storage or mooring of

watercraft is allowed on the saltmarsh, 2) no refueling in the Resource Area and secondary containment is required within the 100-foot buffer. Spill containment materials must be kept on site at all times, 3) any areas of disturbed saltmarsh vegetation or destabilization of the Coastal Bank as a result of this project must be restored immediately after the work is completed and 4) erosion controls are required at the landward side of the stone wall.

Mr. Haines stated the Commission needs to decide whether to permit the access stairs and if so, do they want to condition the seasonal nature of them.

Ms. Leduc asked if the issue with the stairs is because they extend past the edge of the saltmarsh. Mr. Haines stated yes. Ms. Leduc opened a brief discussion regarding changing the proposed location of the stairs.

Mr. Palumbo questioned whether the design of the stairs could be such so the bottom stair doesn't touch the ground. Mr. Haines stated if there's no ground disturbance that may be permissible. A discussion ensued.

A brief discussion transpired regarding the property owner's boat and how he will access the water with it.

Ms. Leduc questioned whether the project requires further review from DMF now that stairs have been added. Mr. Haines stated yes. She asked if the Commission would need to continue the matter until they received feedback from DMF. Mr. Haines stated they could render a decision without it because DMF offers guidance. Mr. Mullaney feels DMF will issue a similar letter with the stairs.

Public Comment – None.

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

A brief discussion transpired regarding the additional Special Conditions that will be added to the Order. Mr. Haines added a fifth Special Condition; that the stairs located at the seaward end of the structure must be removable and removed seasonally between November 1st and April 1st each year. Mr. Haines explained that by including this detail, the stairs will be touching the ground.

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, 10, 12, 15, 18-20, 27, 28, 29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 5-7, 10, 12, 14-16, 18, 20-22, 25 as well as the five Additional Special Conditions stated previously.

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

4) Patti and Kevin O'Keefe

File # SE7-1993

Representative: MM Environmental

130 Wings Neck Road, Pocasset

Reconstruct and enlarge a deck; permit an existing dog enclosure fence; remove a paver walkway and replace with elevated saltmarsh boardwalk and invasive species management within a V Flood Zone and a Wetland Resource Area.

Materials Reviewed – Site Photographs, File Number Notification from MADEP, Project Narrative, Site Plan of Record and DEP Wetlands Change Mapping.

At the request of the applicant, the hearing for SE7-1993 will be continued until March 1, 2018.

Certificate of Compliance:

1) Jack D. and Ann E. Wood

File # SE7-1802

Representative: Bracken Engineering, Inc.

35 Park St. Pocasset

To raze existing dwelling, construct new dwelling with associated site work within 100 feet of a Coastal Bank.

Mr. Palumbo asked if a site visit was made. Mr. Haines stated a site visit was performed. He stated there were some deviations from the original plan, including some hardscaping and the proposed garage was never constructed; however, Mr. Haines recommended issuing the certificate.

Mr. Ligor moved, Ms. Weston seconded to issue the Certificate of Compliance.
With no discussion, the motion carried. 4-0-0.

Chm. Gray returned to chair the meeting. Mr. Ligor briefly exited the meeting. Chm. Gray changed the order of the remaining agenda items.

Other Business:

- Vote excused absent members, if necessary – **Ms. Leduc moved, Ms. Weston seconded to excuse the absent members.** With no discussion, the motion carried. 4-0-0.

Mr. Ligor returned to the meeting.

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the November 16, 2017 meeting. After a brief discussion, **Mr. Ligor moved, Ms. Weston seconded to approve the minutes of the November 16, 2017 meeting as revised.** The motion carried. 4-0-0.

Mr. Palumbo briefly exited the meeting.

- Public Comment Period on Non-Agenda Items – A member of the Marshfield Conservation Commission opened a discussion regarding the procedure to vote to excuse absent members.

Mr. Palumbo returned to the meeting.

- Discussion of naturally vegetated buffer strips – At a previous hearing, it was decided that several members would contact surrounding town's Conservation Departments to discuss their policies regarding vegetated buffer strips. They would then report their findings back to the members. Mr. Haines distributed Mr. Berman's findings that he previously submitted to the agent.

Mr. Ligor stated contacted the Mashpee conservation agent. He shared his results with the members. A discussion regarding his findings ensued.

Mr. Haines explained to the members of the Marshfield Conservation Commission who were in attendance the reason their members reached out to surrounding towns. Chm. Gray briefly discussed the sections of the DEP regulations that address buffer zones. He stated those sections serve as guidance language and are not enforceable. He stated that

Bourne currently does not have buffer zone regulations and explained a town vote would be required to adopt any.

Ms. Leduc discussed her findings after contacting Falmouth. She stated Falmouth was able to adopt buffer zone regulations after holding multiple open sessions; a town vote was not required. A brief discussion transpired regarding the steps that would have to be taken in order to revise Bourne's existing regulations.

After a discussion regarding the Commission's authority to enforce policies surrounding buffer zones, it was decided that Mr. Haines will develop a guidance document to be included with the application which will offer a list of recommendations for the applicant to consider while implementing their project.

- Report of the Conservation Agent – None.
- Public Comment Period on Non-Agenda Items – None.
- Questions and Answers re: M.G.L. Chapter 131 §40 and 310 CMR 10.00-10.99 – None.
- Questions and Answers re: Town of Bourne Wetland Protection Bylaw (Article 3.7) and BWR 1.00-1.16 – None.

II. Adjournment

Mr. Ligor moved, Ms. Weston seconded to adjourn. With no discussion, the motion carried. 5-0-0. The meeting adjourned at 9:09 PM.

Minutes submitted by: Carol Mitchell