

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

October 18, 2018

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on October 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 rules; which allow 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, Elise Leduc, Susan Weston, Melvin P. Holmes and Associate Member, Greg Berman.

Excused Members: Rob Palumbo and Paul Szwed.

Also Present: Sam Haines, Carol Mitchell, Peter Valeri, Paul Gately, Steve Ballentine, Grace Rowe, John Black, Theresa Sprague, Bill Lee, John Queen, Brendan Mullaney, Jim Mulvey, Mike Borselli, Jim Halliday, John Keenan Jr. and MaryFrances Galligan.

Request for Determination

1) Applicant: Nagy Webby
File Number: CC18-33
Representative: Peter Valeri
185 Captains Row, Mashnee Island

To install a new Title V Septic System within a V Flood Zone.

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

Peter Valeri addressed the members and described the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines reported the site is flat and the proposed work is over 100 feet from any Wetland Resource Area. The site is located within a Velocity Zone so it is subject to the Commission's bylaw. He said he didn't identify any issues with the project and it is his understanding that the Board of Health approved the project pending Conservation approval.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Ligor moved, Ms. Leduc seconded a Negative Two Determination.** With no discussion, the motion carried. 5-0-0.

2) Applicant: Patrick Ryan
File Number: CC18-34
Representative: Peter Valeri
75 Head of the Bay Road, Buzzards Bay

To install a new pump chamber and leaching system within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

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

Peter Valeri addressed the members and described the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines stated the proposed work will be within 100 feet of a non-eroding Coastal Bank but is over 100 feet from the Bordering Vegetated Wetland. The homeowner has maintained a vegetated buffer on the secondary parcel. The lots are contiguous through zoning; the same owner owns both lots. He doesn't feel the proposed work will have an adverse impact on the Resource Area.

Board Comment – Mr. Ligor asked if this is a well-developed, flat lot. Mr. Haines said the lot is fairly flat. It does slope back toward the Resource Area, but there's a vegetated buffer in between. He doesn't feel erosion controls are necessary.

Mr. Berman asked if the proposed work will disturb the vegetated buffer. Mr. Haines indicated it will not; the proposed work will be performed within the existing landscape.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Mr. Ligor seconded a Negative Two Determination.** With no discussion, the motion carried. 5-0-0.

Chm. Gray announced, at the request of Joseph Saade and the Town of Bourne Selectmen, both matters are continued to November 1, 2018. He informed the audience that that meeting will be held at the Community Center; not at Town Hall.

3) Applicant: Bourne Conservation Trust

File Number: CC18-35

Representative: Stephen Ballentine

130 Red Brook Harbor Road, Cataumet

To continue annual vista clearing to maintain the scenic view from Red Brook Harbor Road within an AE Flood Zone and 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs and DEP Wetlands Change Mapping.

Steve Ballentine, president of the Bourne Conservation Trust, addressed the members explaining that the Trust has owned the property since 1992 and its main purpose is for public enjoyment of a vista. He explained in the operation of maintaining their property, they mow a field area several times per summer and beyond the field area there is another area that is cut once per year with a gravely type of machine to prevent the Phragmites and tidal vegetation from creeping further onto the property. The Trust is seeking permission to continue to maintain their property on an annual basis. He acknowledged his negligence by not renewing a previous Order which allowed for the maintenance.

Board Comment – Mr. Ligor commented that the Trust has been mowing and pruning. Mr. Ballentine stated the maintenance has been mainly mowing. The field can be

maintained with a large mower; however, the area beyond that is rougher and requires a gravely machine to be used. Mr. Ligor asked if any of the trees will be pruned. Mr. Ballentine indicated no. He referred to site photographs to pinpoint the location of the mowing. Mr. Ligor referred to another photograph and asked if the area of heavy growth will be pruned. Mr. Ballentine said that area will remain untouched. Mr. Ballentine stated there are two small trees he'd like to remove. Mr. Haines referred to photographs and said the two trees being removed have a green ribbon on them.

Ms. Leduc asked what the original Order of Conditions allowed. Mr. Haines explained the original Order of Conditions from 2000 allowed for annual mowing in that location. That RDA expired but they've continued to perform annual mowing in that location.

Agent Comment – Mr. Haines reported that in the Summer of 2018, he received a complaint from a resident about the mowing. At that time he didn't issue a violation as there had been a previously approved RDA; however, in order to continue with the process, he advised Mr. Ballentine that he would have to refile with the Commission. Mr. Haines suggested adding a condition that annual coordination with the Commission will be required going forward. In the interim, he said he has received additional correspondence from the resident as well as from Joe Costa of Buzzards Bay National Estuary Program regarding the issue. Mr. Haines doesn't believe there's an adverse impact caused by the mowing. This was a previously approved project and as long as there's no fertilizer used in the area, he doesn't have an issue with the maintenance program; but thinks it should be continually reviewed. Additionally, that he thinks this serves a public benefit. He reiterated his position to add a condition regarding annual coordination with the Commission should a Determination be issued.

Mr. Ballentine questioned which area the agent was referring to that will require coordination. Mr. Haines said he feels the meadow area may continue to be mowed as an existing landscaped area. He'd like to monitor the area just beyond that which directly abuts the saltmarsh.

Ms. Leduc asked if the purpose is to maintain a view, why wouldn't the Commission require that the vegetation be maintained at a height of at least three feet; just as they've done with previous filings. Mr. Haines explained this was previously a shrub community that was approved to be cleared and maintained as a meadow community with annual mowing.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Ligor moved, Mr. Holmes seconded a Negative Two Determination.** With no further discussion, the motion carried. 5-0-0.

Chm. Gray recused himself from discussion and vote. Ms. Leduc chaired the hearing.

Notice of Intent

1) Applicant: John and Elizabeth LoMedico
File Number: SE7-
Representative: Bracken Engineering, Inc.
18 Winsor Road, Cataumet

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

To raze and reconstruct a single-family dwelling including associated grading, landscaping, utilities and appurtenances within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Brendan Mullaney, Bill Lee, John Queen, Theresa Sprague and Jim Halliday were in attendance to discuss the proposed project.

Mr. Mullaney described the location of the property, the Resource Areas located on the property and the existing layout of the property. He provided a history of the property and discussed the length of time spent designing the proposed project to ensure it meets all local, state and FEMA Flood Zone regulations. He then provided a lengthy presentation describing the proposed project.

Board Comment – Mr. Ligor opened a brief discussion regarding wave deflection should there be a catastrophic flood event.

Mr. Ligor asked if the freestanding garage and the boat house are also being razed. Mr. Mullaney said there is no work being proposed on the existing boat house and the existing garage will be removed.

Mr. Mullaney introduced Theresa Sprague of BlueFlax Design who discussed the existing vegetation and the proposed planting plan. She referred to site photographs to discuss areas on the property where she feels invasive species management and vista clearing previously occurred and also provided the goals and objectives of the land management portion of the project.

Mr. Holmes opened a discussion regarding the proposed tree removal on the property.

Agent Comment – Mr. Haines stated a structural engineer has certified that this project meets the building code and FEMA regulations. He expressed concerns about the proposed pool based on previous conversations he's has with FEMA representatives, but feels it'd be more appropriate to address those concerns with the building inspector.

Mr. Berman asked if the structural certification also covers the pool or just the foundation and framing. Mr. Queen, the structural engineer, said the certification also covers the pool. He then provided detail of the pool's design.

Mr. Haines reported there are fragments of Coastal Banks on the property and are depicted on the plan. He said although there isn't a 50-foot setback, none of the design features as proposed will be closer than what currently exists. He expressed concern over the non-eroding Coastal Bank at the rear of the property, stating a portion of the garage and the septic system is proposed at that location. The Bank is serving as protection to a neighboring property; therefore, the Commission will have to consider whether the project as proposed will have an adverse impact on that ability for storm prevention. Mr. Mullaney explained why that location on the property was chosen for the installation of the proposed septic system. He said they are proposing to regrade back to existing conditions once the septic installation is complete. Adding that the new structure is designed with seven bedrooms vs. the nine that's existing.

Mr. Haines asked what the plan is for the existing tennis court. Mr. Mullaney said there currently isn't work being proposed for the tennis court; however, should that become a focus for the property owners, they will appear before the Commission.

Mr. Ligor asked what the size of the pool will be and will it be fresh water or salt water. Mr. Mullaney replied, the pool will be 12' x 24' and the type of pool hasn't been determined yet. Mr. Ligor expressed concern over the eventual need to pump water from the pool and asked the representative to have that information available at the next hearing. Mr. Haines stated under M.G.L. c. 131, § 40 and Board of Health regulations, they aren't allowed to pump any chlorinated water into the Resource Area. A discussion ensued.

Additional Agent Comment - Mr. Haines commended the proposed buffer zone restoration. He commented on the amount of concrete being proposed and feels that some EPA best management guidelines for concrete wash out be incorporated into the Order. He mentioned that the proposed structure will be moved further away from the Resource Area, has an increased buffer and feels that a lot of effort has gone into meeting FEMA guidance and managing flow. He expressed excitement with learning how the proposed

hinged breakaway walls will function and asked the structural engineer to elaborate. A discussion transpired regarding the design of the hinged breakaway walls.

Mr. Haines stated because a DEP file number hasn't been issued, the matter will need to be continued.

Mr. Berman asked how the amount of impervious surface is changing. Mr. Mullaney stated the amount of impervious will be increasing stating there are subsurface infiltrators being proposed in a number of locations to contain roof runoff. Additionally, concrete is being proposed for the parking area. A brief discussion transpired regarding roof runoff and the proposed parking circle. Mr. Berman asked for additional information on dry well locations.

Mr. Berman opened a brief discussion regarding the proposed planting plan.

Mr. Ligor asked if they are proposing to plant turf grass to produce a lawn on the property. Ms. Sprague stated they are not and briefly discussed the minimal amount of lawn being proposed.

Ms. Weston asked that additional information be supplied at the next hearing regarding water drainage at the parking area. Mr. Mullaney agreed.

Public Comment – MaryFrances Galligan questioned the amount of fill that will be brought by truck down Winsor Road onto the site. Mr. Mullaney explained the majority of the project is structure. He doesn't have an overall number; but doesn't think it will be a substantial amount. There will however be a lot of material being trucked in; i.e., steel, concrete etc. He said it will be an active project site but in terms of dirt, fill material, it's not substantial.

Mr. Haines stated he will look into whether Winsor Road is public or private.

Abutter, Jack Keenan, said Winsor Road was resurfaced last year and doesn't think the road will withstand the amount of construction equipment this project will require. He feels some sort of bond to repair the road upon completion of the project should be required. He briefly discussed impacts the project may have on some of the abutting properties; stating other than the road, he won't be impacted directly.

Ms. Galligan expressed concern over the width of the road. She said it is extremely narrow and becomes overcrowded with parked vehicles of people shell fishing. She feels

this will be an issue for construction vehicles accessing the property and questioned whether the construction will occur over the summer months. Mr. Mullaney said because of the scope of the project, work will be performed year-round. They anticipate starting the project as soon as all of the necessary permits are obtained. He said accommodations will have to be made when it comes to construction equipment utilizing the road to access the site and precautions will be taken to protect the road. Mr. Haines said he will speak with the DPW director about these concerns; however, the road is not within the purview of the Conservation Commission.

Ms. Galligan expressed concern with runoff and questioned the amount and type of lighting being proposed. Ms. Leduc stated lighting is not within the Commission's purview; however, runoff is and the representative will be supplying additional information regarding the runoff at the next hearing. A discussion ensued.

Jim Mulvey asked whether the hinged breakaway walls are designed to swing both ways and if they're required to extend the entire length of the structure. As a follow up, he asked whether there are any regulations that require the movement area of the breakaway walls remain unobstructed. Mr. Lee stated as far as he knows there are no code requirements; however, they will need to remain clear in order to allow them to swing. He explained that the hinged panels will be placed along the entire length of the house and will vary in size; three feet to eight feet in length and will be placed in between the concrete structural columns.

With no further discussion, **Mr. Holmes moved, Mr. Ligor seconded to continue the matter to November 1, 2018.** The motion carried. 4-0-0.

Chm. Gray returned to chair the hearing.

2) Applicant: Joseph Saade
File Number: SE7-2033
Representative: GAF Engineering Surveyors
51 Pine Ridge Road, Buzzards Bay

To remove and reconstruct an existing licensed pier, gangway and float, as well as licensing an existing mortared stone seawall within a V Flood Zone and within 100 feet of a Wetland Resource Area.

(Continued to November 1, 2018)

3) Applicant: Town of Bourne Selectmen
File Number: SE7-

Representative: BCS Group, Inc.
810 Shore Road, Pocasset

For a new dewatering site associated with the Pocasset River dredge within an AE Flood Zone, 100 feet of a Wetland Resource Area and within the 200 Riverfront Area.

(Continued to November 1, 2018)

Request to Extend Order of Conditions:

1) Applicant: John Black and Ann Taylor
File Number: SE7-1914
Representative: Falmouth Engineering, Inc.
388 Scraggy Neck Road, Cataumet

To construct a new single-family dwelling including Title V septic system, in-ground pool, utilities, grading, landscaping and other appurtenances within an AE and V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Email from Michael Borselli to Sam Haines.

Mike Borselli explained the need for the request to extend the Order of Conditions. Mr. Black, the property owner, elaborated further.

Board Comment – None.

Agent Comment – Mr. Haines said the Commission was also supposed to hear an amendment to this filing; however, due to an administrative oversight, the information wasn't published in the public hearing notice. The applicant will move forward with the extension request tonight and will be heard on the amendment at the November 1st hearing. He explained that since there has been some work performed in terms of tree clearing and grading on site; he doesn't see any reason to deny the extension. The filing doesn't expire until February 2019, regulations require only 30 days to request an extension, so they are well within the required time frame. This request is for a three-year extension.

Board Comment – Ms. Leduc questioned whether the grading and clearing work that has been done to date is consistent with what was proposed and approved. Mr. Haines stated it appears so.

Mr. Holmes asked whether granting the extension will impact their request for an amendment to the filing. Mr. Haines stated it will not, all they'd be granting is an extension of the previously approved project.

Chm. Gray clarified that a one-year extension was already granted in February 2018. He said there's been no regulatory changes that would require the Commission to reexamine the plan as opposed to the Order that was set; therefore, he doesn't see any reason to not grant the three-year extension.

Ms. Leduc opened a brief discussion regarding the Commission's ability to deny the extension had there been adverse impacts to the Resource Area as a result of work having already been started at the site. Mr. Haines doesn't feel that applies in this case.

Mr. Ligor moved, Mr. Holmes seconded to grant the three-year extension. With no further discussion, the motion carried. 5-0-0.

Mr. Borselli reconfirmed that the November 1st meeting will be held at the Community Building.

Certificate of Compliance

1) Applicant: Richard J. Anderson, Trustee
File Number: SE7-1527
Representative: JC Engineering, Inc.
217 County Road, Monument Beach

To install a Title V septic system within 100 feet of a Wetland Resource Area.

Agent Comment – A site inspection was performed on October 17, 2018 and appeared to be in substantial compliance. Mr. Haines recommended issuing the COC.

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

Other Business:

► Vote excused absent members, if necessary – **Mr. Ligor moved, Ms. Leduc 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 September 20, 2018 meeting. Mr. Haines noted revisions. **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the September 20, 2018 meeting as revised.** With no discussion, the motion carried. 5-0-0.

► Report of the Conservation Agent – Mr. Haines stated Town Counsel received notification from Barnstable Superior Court that the legal case involving Sagamore Highlands has been dismissed with prejudice. He reported he remains in coordination with Town Counsel regarding the matter and will bring forward additional information when it becomes available. Mr. Holmes discussed an article in the Boston Globe regarding building seawalls. He will provide it to the agent to share with the members.

Chm. Gray announced there will be a celebration of life for Betsy Kiebala at 1:00 PM on Sunday, October 21, 2018 at 26 Pasture Road, Cataumet. All members are invited to attend.

Mr. Haines provided an update on the matter concerning 165 Jefferson Road. He stated a letter was received from DEP requesting additional information and site plans.

Chm. Gray asked the agent if he's made decision when to address changes to some of the Commission's regulations. Mr. Haines said he isn't sure yet; depending on which regulation they are revising; a lot of time may be needed for discussion. Chm. Gray will leave it up to the agent to determine which of the regulations he wants to address first. Chm. Gray asked whether the committee that was charged by the Board of Selectmen to review the dock and pier regulations has met. Mr. Haines said Mr. Mulvey was appointed to serve on that committee and asked him whether they've met. Mr. Mulvey stated they were supposed to meet the previous Monday but didn't. They are scheduled to meet the second Monday in November.

► Public Comment Period on Non-Agenda Items – Mr. Mulvey mentioned an article he read in the Cape Cod Times where Falmouth Conservation denied a walkway with a platform at the end of it for access to the beach. He reported that the denial is being challenged in the courts. A discussion ensued.

► 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. Holmes moved, Ms. Leduc seconded to adjourn. With no discussion, the motion carried. 5-0-0. The meeting adjourned at 8:49 PM.

Minutes submitted by: Carol Mitchell