

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

November 17, 2016

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

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on November 17, 2016. 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 By-law.

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 and asked if anyone in the audience was audio or video recording the meeting to acknowledge that.

**Members Present:** Chm. Robert Gray, Robert Palumbo, Thomas Ligor, Betsey Kiebala, Melvin P. Holmes, and Paul Szwed (7:07).

**Excused Members:** Susan Weston

Also Present: Sam Haines, Elise Leduc, Carol Mitchell, Carol Murphy, Michael Rausch, Barbara Frappier, Christine Gustafson, Lavinia Giardina, Earl Lantery, Carl Spillhouse, Richard Kangas, Rick Grady and Bruce MacDonald.

### **Requests for Determination of Applicability:**

#### **1) P. Valeri Construction**

File Number: CC16-70

Representative – Barbara Frappier of Warwick & Associates, Inc.

41 Little Bay Lane, Buzzards Bay

Replace the existing failed septic with a new Title V system within an AE Flood Zone and 100 feet of a Wetland Resource Area.

Materials Reviewed – Site photographs, DEP Wetland Change Map and Site Plan.

Barbara Frappier addressed the board and discussed the proposed project.

Board Comment – None.

Agent Comment – A site inspection was performed on November 16, 2016. The area of the proposed work is a previously disturbed lawn. The grading on the site will require a silt fence as shown on the plan of record. There are no issues with the project.

Public Comment – None.

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

**Notice of Intent:**

- 1) Tom Shioutakon  
DEP File Number: SE7-1961  
Representative – Earl Lantery, P.E.  
0 Monument Neck Road, Gray Gables

Construct a single family residence and install a septic system within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Attachment A - Project Narrative, prepared by Lantery Associates, April 29, 2011 Violation Notice for subject property, Minutes (pg. 5) from May 5, 2011 discussing the violation, Site photographs, DEP Wetland Change Map and Site Plan.

Mr. Lantery addressed the board and discussed the proposed project. He described the parcel of land and the layout of the proposed residence. Additionally, he discussed the property owner's intention to protect/preserve the Resource Area.

Board Comment – None.

Agent Comment – A site inspection was performed on November 9, 2016. The property is located within the ACEC Back River. Although the house is located outside the 100

foot setback, it is subject to the 200 foot setback as required in the By-law. He stated the delineation of the salt marsh appeared accurate in the field. He included in the packet a previous violation on the property from April 2011, for vegetation clearing in the Buffer Zone. The Conservation Commission decided at that time that the property owner would work administratively with the agent and replant a 25 foot buffer of native vegetation, the rest was to be used a Llama pasture. Mr. Haines stated it was unclear at the time of his inspection whether or not that replanting occurred; however, the native vegetation has grown back. If the Commission decides to issue an Order, he recommends a Special Condition be added that no vegetation clearing is allowed outside the proposed limit of work, shown as the green dotted line on the plan of record; any future clearing or vista pruning would require a new filing with the Bourne Conservation Commission.

Chm. Gray offered a brief history on the previous violation.

Board Comment – Ms. Leduc asked if there is Coastal Bank located on the property; and if not, should there be? A brief discussion ensued.

Public Comment – Abutter, Carl Spillhouse, addressed the board. He offered clarification on the marsh and discussed the previous violation of the clearing. He expressed concern that a future homeowner may think it's permissible to continue to keep that area cleared. Mr. Palumbo clarified, stating any future clearing/pruning would have to be approved by the Commission.

Abutter, Richard Kangas, addressed the board. He too is concerned about clearcutting and opened a discussion concerning approximately 20 yards of fill that was dumped on the property. After a brief discussion, Chm. Gray asked the representative if the fill can be used during the regrading of the property. Mr. Lantery stated there is a lot of organics mixed in, his intent is to reuse the fill on the property. Mr. Haines elaborated further and a brief discussion ensued.

Board Comment – Ms. Kiebala asked if additional fill will be needed. Mr. Lantery stated he will know better once he's cleaned the organics out of the existing fill pile.

Mr. Ligor asked how many yards of fill is in the pile. Mr. Lantery stated the pile is approximately 12'-15' high by 20'-25' wide. Mr. Ligor stated it will be quite a task to clean the fill. Mr. Lantery stated it will be less expensive than hauling it away and bringing in all new fill. Mr. Haines clarified that only clean fill may be used for construction purposes. Chm. Gray stated that is a standard Condition.

With no further discussion, **Mr. Holmes moved and Mr. Palumbo seconded to close the public hearing.** The motion carried 5-0-1. Mr. Szwed abstained.

Mr. Haines – The plan of record was dated August 12, 2016, and stamped by Harry Earl Lantery Jr. Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-6, 9, 10, 12, 13, 16-22, 24 and Special Conditions pursuant to the Town By-law numbers, 4, 7-9, 11, and an additional Special Condition that any future clearing or vista pruning will require a new filing with the Bourne Conservation Commission.

With no additional Conditions, **Ms. Kiebala moved and Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no further discussion, the motion carried. 6-0-0.

- 2) Matthew Monroe  
DEP File Number: SE7-1959  
Representative – Grady Consulting, LLC  
895 Sandwich Road, Bourne  
*(Continued from 11/3/2016)*

Perform septic repair within 100 feet of a Wetland Resource Area.

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

Rick Grady addressed the board and discussed the proposed project; stating there's a minor revision to the plan based on feedback given from the Board of Health. Initially, it was thought that the property contained five bedrooms, it actually contains seven; therefore, two rows of chambers have been added to the system. Mr. Grady referred to the site plan and discussed the layout of the property, the erosion controls that will be used and the grading of the property.

Board Comment – Chm. Gray made a comment with regard to the sub-division on the back side where the plan depicts the location of an Isolated Wetland, off of Pleasure Point Road on lot 15. He stated the actual Wetland is on 9, 11 and 15; and while the Wetlands appear to be isolated, they're in fact culverted and flow by culvert to the Cape Cod Canal, so they're actually BVW. Chm. Gray advised the board that they don't have to act on this tonight, but reiterated that 9, 11 and 15 are all BVW. He advised Mr. Haines that a large enforcement file should exist on this matter as it was the subject of a long-term investigation by the DEP and the Bourne Conservation Commission when Pleasure Point Road was installed. He stated this project was done without permits.

Mr. Haines asked if the Commission would be satisfied with the applicant submitting a revised plan after the fact, acknowledging the BVW, which will be documented in the Order. After a brief discussion, it was decided that the wetlands delineation required further investigation and plan revisions may be required.

Public Comment – None.

Chm. Gray entertained a motion to continue the matter. **Mr. Ligor moved and Mr. Holmes seconded to continue the matter to December 1, 2016.** With no further discussion, the motion carried. 6-0-0.

3) David C. Warner  
DEP File Number: SE7-1962  
Representative: Warwick & Associates  
276 Scraggy Neck Road, Cataumet

License and maintain the existing season wooden pile supported dock and to restore a 25' vegetated buffer along the top of a seawall within a V Flood Zone and within 100 feet of a Wetland Resource Area.

*(Continued from 11/3/2016)*

Materials Reviewed – Page 17 from “The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts”, Massachusetts Plant Advisory Group, April 1, 2005, Project Narrative created by Warwick & Associates, Site photographs, DEP Wetlands Change Map and Site plan.

Ms. Frappier stated the project started with an outstanding Order of Conditions that never received a Certificate of Compliance. Part of the original Order required that a 25' vegetated buffer be planted on top of the seawall. She stated that may have occurred; however, the plantings are no longer there. Additionally, there are questions surrounding the dock's license. After a brief discussion, Ms. Frappier requested another continuance to December 15, 2016; which will allow her to research this further.

Public Comment – None.

Board Comment – None.

Agent Comment - Mr. Haines stated the narrative calls for Rosa rugosa along with three other species to be planted. He stated Rosa rugosa is a non-native species and is no longer planted. He asked the board's opinion on changing the planting to one of the other species mentioned in the narrative. After a brief discussion, the board and Ms. Frappier decided to remove the Rosa rugosa from the narrative.

**Mr. Holmes moved and Mr. Ligor seconded to continue the matter to December 15, 2016.** With no further discussion, the motion carried 6-0-0.

Chm. Gray acknowledged Bruce MacDonald, former chair of the Bourne Conservation Commission.

- 4) Mark A. Leary  
DEP File Number: SE7-1960  
Representative – Bracken Engineering  
63 Bellavista Drive, Pocasset

Raze the existing dwelling, construct a new single-family home and install a new septic system within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

*(Applicant requested a continuance to 12/1/2016)*

Chm. Gray entertained a motion to continue the matter. **Mr. Ligor moved and Mr. Holmes seconded to continue the matter to December 1, 2016.** With no discussion, the motion carried. 6-0-0.

**Request for Certificate of Compliance:**

- 1) Lavinia A. Giardina  
DEP File Number: SE7-853  
Representative – Same  
153 Captains Row, Mashnee Island

Construction of a stone riprap revetment and construction of four timber stairways within a VE Flood Zone, Coastal Beach and Coastal Bank.

Materials Reviewed – Site photographs, DEP Wetlands Change Map and As-built plan.

Agent Comment – Mr. Haines stated the Order of Conditions was the result of a 1991 Enforcement Order; building a Coastal Revetment in front of four different homes; the Order is actually on four separate properties. The work was completed in 1992, there is an As-built on file from 1992 and a letter from Holmes and McGrath stating the work on the revetment was completed in compliance with the Order. Mr. Haines stated he only reviewed the property whose owner requested the Certificate of Compliance; the other three properties would have to request their own certificate. He noted one deviation from Special Condition number 44, which stated there would be a 5 foot buffer of *Rosa rugosa* along the top of the revetment. There's also a By-law Condition, number 5, stating that 5 feet of native vegetation was required along the top of the revetment. There is no

evidence that this work was completed. Mr. Haines feels this is a minor deviation considering this is a 25 year old order. If the Commission feels it necessary, Mr. Haines is willing to work with the new property owner to plant the vegetation that was previously required.

Board Comment – Mr. Ligor asked if the order has been open for 25 years and whether or not anything was planted as required. Mr. Haines stated when he performed the site inspection, there were no plantings. Mr. Ligor asked what is there now. Mr. Haines stated there is turf grass there.

Mr. Holmes asked what the purpose would have been for the plantings. Ms. Kiebala stated it would have been required to prevent erosion and wash out. Ms. Leduc stated it also creates a bit of a habitat. Ms. Giardina referred to historical photos of the site to show there has been no erosion. Chm. Gray added that the purpose of the vegetative strips between the turf grass and in this case, the revetment, would be that the vegetative strip would capture any nitrogen run off that may have occurred when the property owner fertilized their lawn. It would have been an attempt to limit the amount of nitrogen released into the coastal water. Chm. Gray suggested that Mr. Haines work with the new property owner to see if they can mutually agree upon planting a low growth species. A discussion ensued.

**Mr. Palumbo moved and Mr. Holmes seconded to grant the Certificate of Compliance with an ongoing Condition of By-law number 5.** With no further discussion, the motion carried. 6-0-0.

**Request to Extend Order of Conditions:**

- 1) Town of Bourne  
DEP File Number: SE7-1748  
Representative – Same  
Off Circuit Avenue (Hens Cove), Bourne

Maintenance and improvement dredging within Hen's Cove and associated beach nourishment at Circuit Avenue, Bell Buoy Avenue and Patuisset beaches and Coastal Dune enhancement on Bassetts Island.

Agent Comment – Mr. Haines stated the Town performs several maintenance improvement dredging projects throughout the years. The extension is required to keep the filing active. The Town is working toward developing a comprehensive dredging

permit which will cover all of the projects the Town has done to date. This extension will assist in the development of that permit. This will be a 3 year extension.

Board Comment – Ms. Leduc asked if this has already expired. Mr. Haines stated it was extended under the Permit Extension Act.

**Mr. Holmes moved and Mr. Palumbo seconded to grant the 3 year extension.** With no discussion, the motion carried. 6-0-0.

### **Other Business:**

- Vote excused Absent Members, if necessary – **Mr. Palumbo moved and Mr. Holmes seconded to excuse Susan Weston.** With no discussion, the motion carried. 6-0-0.

- Acceptance of Previous Meeting Minutes –

Chm. Gray entertained a motion to approve the minutes of the October 20, 2016, meeting. Mr. Haines noted two amendments pertaining to Materials Reviewed. **Ms. Kiebal moved and Mr. Holmes seconded to approve the minutes of the October 20, 2016, meeting as amended.** With no discussion, the motion carried. 6-0-0.

- Report of the Conservation Agent –

- Update on Rotary Gas Spill Restoration –

Mr. Haines performed a site visit on November 14, 2016. It appears that the restoration has been completed satisfactory. The vegetation growth appears to be doing well and there aren't a lot of invasive species. Mr. Haines stated there is a problem with a lot of sand and sediment coming out of the state storm water system. Mr. Haines spoke to George Sala of the DPW with regard to this. Mr. Sala stated the DPW has no affiliation with that storm water system. He asked the Commission for suggestions on how to address this concern.

Chm. Gray suggested he contact Envirotech to see whether or not they have a representative who will meet Mr. Haines at the site to discuss the concern which can then be addressed by the state. Mr. Haines agreed.

- Correspondence – Diane Lang, Superintendent at the Trustees of Reservations, contacted Mr. Haines with regard to habitat management for the New England Cottontail. This involves quite a bit of forest clearing, cutting and possible prescribed



burning to reestablish some of the coastal maritime shrub, which is the primary habitat for this species. The clearing would occur within the Flood Zone and within 100 feet of salt marsh and will occur in Wareham, Plymouth and Bourne. They provided Mr. Haines with a proposed location but have not presented a full cutting plan yet. She would like to know what the Commission requires to enable the project to move forward.

Board Comment – Ms. Leduc discussed the proposed location and expressed concern over disrupting the ongoing habitat restoration for Brook Trout. Chm. Gray stated it's the same group working on that project. Ms. Leduc doesn't feel the location for the clearing/burning is logical because it appears to be too close to the Trout Brook restoration project.

Mr. Ligor stated he would be hesitant to grant permission for open burning because that area of the state is in a severe drought. A discussion ensued. The board recommends the organization file a Notice of Intent.

Ms. Leduc suggested that Mr. Haines discuss the matter with his counterparts in Wareham and Plymouth for their feedback. Mr. Haines agreed.

- Any other business that may legally come before the Commission – None.
- Questions and Answers re: M.G.L. Chapter 131 s. 40 and 310 CMR 10.00-10.99 – None.
- Questions and Answers re: Town of Bourne Wetland Protection By-law (Article 3.7) and BWR 1.00-1.16 – None.

## **II. Adjournment**

**Mr. Holmes moved and Mr. Palumbo seconded to adjourn.** With no discussion, the motion carried. 6-0-0. The meeting adjourned at 8:26 PM.

Minutes Submitted by: Carol Mitchell