

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

December 7, 2017

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on December 7, 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, § 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, Paul Szwed, Melvin P. Holmes, Elise Leduc and Associate Member, Greg Berman.

Excused Members: None.

Also Present: Sam Haines, Carol Mitchell, Jim Mulvey, Sandy Weld, Cameron Bright, Wally Weld, Patti O'Keefe, Zac Basinski, Joseph Cecchinelli, Chris Horiuchi and Tim Santos.

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 from November 16, 2017)

The representative was not present. Chm. Gray deferred the matter.

- 2) Candace Fisher
File # CC17-43
Representative: Same
6 Fisher Lane, Sagamore Beach

To repair existing stairs with no change to footprint within an AE Flood Zone, Velocity Flood Zone and within a Wetland Resource Area.

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

The representative was not present. Chm. Gray deferred the matter.

Notice of Intent:

- 1) Gitchie Gumees Nominee Trust
File # SE7-1991
Representative: Walter Weld
0 & 65 Winsor Rd., Cataumet

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

(Continued from November 16, 2017)

Materials Reviewed – The Woods Hole Group December 6, 2017 monitoring revised protocol and the Massachusetts Division of Marine Fisheries December 6, 2017 letter,

Ms. Leduc recused herself from discussion and vote.

Chm. Gray stated he and the agent met last week at the site with representatives of the applicant and representatives from the Division of Marine Fisheries (DMF).

Cameron Bright, a float owner, addressed the Commission. He stated at the last meeting the communications from DMF asked that a more substantial monitoring plan be developed than the one that was conducted previously. The Woods Hole Group developed a monitoring plan and sent it to DMF who responded with a letter indicating that the plan met their requirements. The float owners are seeking to move forward with the proposal and if after three years of monitoring, there are no adverse impacts to the environment, receive a Certificate of Compliance (COC).

Board Comment – None.

Agent Comment – Mr. Haines informed the Commission that he had administratively approved placement of the floats during the 2017/2018 winter. On November 30, 2017, John Logan and Eileen Feeney met with the agent, Mr. Gray and representatives of The Woods Hole Group. The Woods Hole Group has provided a revised sampling plan that received written approval from DMF. It is Mr. Haines's recommendation that the Commission require conditionally a sampling analysis and report based on The Woods Hole Group's December 6, 2017 sampling protocol prior to any request for extension or a Certificate of Compliance. Copies of that report will be provided to the Bourne Conservation Department and the Division of Marine Fisheries. Mr. Haines stated it will be up to the Commission to determine whether one sampling analysis will be sufficient in terms of issuing a COC and allowing the project to continue in perpetuity. He does not recommend conditioning the Order at this time; rather, wait until the sampling analysis has been submitted.

Board Comment – Mr. Berman opened a brief discussion regarding the revised sampling analysis.

Chm. Gray asked if the monitoring will be performed annually during the three-year period of this Order. Mr. Haines stated it is his understanding that an initial sampling analysis will be performed and then another sampling analysis will be performed prior to appearing before the Commission again. Mr. Holmes read the last bullet of the DMF requirements.

Public Comment – Mr. Mulvey asked if this is a commercial operation. Mr. Bright stated it is not. Mr. Mulvey questioned if the property is in trust. Mr. Bright stated there are two property owners, one of them is a trust. The floats are privately owned and are

stored on the property at no cost to the float owners. Mr. Mulvey asked who is legally responsible because there are two lots and two owners involved. Mr. Bright stated each float owner is responsible for their property. Mr. Haines stated if the Commission issues an Order, condition # 20 stipulates who is responsible for any damage.

Chm. Gray 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. 5-0-1. Ms. Weston abstained.

Prior to reading the Draft Order of Conditions, Mr. Haines asked if the Commission would like to change some of the language regarding damage in Condition #20. Mr. Bright questioned whether the Order can stipulate that damage will be the responsibility of the float owner whose float caused the damage rather than the applicant's responsibility. Mr. Haines stated the Commission will need to receive a list of each of the float owner's names and the float number they own. Mr. Palumbo feels it may be difficult determining which float caused the damage. After a brief discussion, the Commission decided it would be best for one party, the applicant, be held accountable.

Mr. Haines stated moving forward, for any contentious projects occurring within a Wetland Resource Area, he will include a statement explaining why the Commission has approved the project.

Mr. Haines – It is the opinion of the Commission that the applicant and the representative has shown that there has been no adverse impact to the Wetland Resource Areas to date, as a result of the storing of seasonal floats. The Commission is allowing the continued placement of seasonal floats under this Order with the understanding that the salt marsh vegetation will continue to be monitored under the Mass. Division of Marine Fisheries approved sampling protocol.

Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 7, 10, 22, 27, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 14, 15, 20, and ASC (1) the Commission requires a sampling analysis and report based on The Woods Hole Group's December 6, 2017 sampling protocol prior to any request for extension or a Certificate of Compliance. Copies of that report will be provided to the Bourne Conservation Department and the Division of Marine Fisheries. The placement of the floats on the salt marsh must occur after November 1st and must be removed from the salt marsh prior to March 15th. Any materials stored on the salt marsh during the growing season will be subject to enforcement under the Massachusetts Wetlands Protection Act and the Town of Bourne Wetlands Protection Bylaw.

Chm. Gray 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. 5-0-1. Ms. Weston abstained.

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, Google Earth photos and DEP Wetlands Change Mapping.

(Continued from November 16, 2017)

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

Zac Basinski addressed the board and provided a summary of the proposed project that he presented at the November 16th hearing. He explained that during the site visit, the agent observed that a tree on the property had been cut down without approval. He stated as mitigation, the property owner is willing to plant some Bayberry and/or Beach plum with the Commission's approval and a planting plan will be submitted. Mr. Basinski referred to Google Earth photos to discuss the history of the property.

Mr. Haines questioned whether the owner would consider planting silt tolerant grass. Mr. Haines stated the property owner is concerned with ticks and does not want to plant grass because of health concerns.

Board Comment – None.

Agent Comment – Mr. Haines stated the matter was continued to allow the representative and the agent to discuss potential mitigation. They met on site on November 29th to discuss mitigation. In addition to the tree clearing, there was also vista pruning of the

native shrubs in that area and it's up to the Commission to decide whether they want to enforce a buffer.

Mr. Palumbo questioned whether there would be impacts with or without the buffer. Mr. Basinski stated the lot's been there since 1980 and a precedent's been set by the Commission approving similar clearing on adjacent lots with no buffer requirements. He discussed a rock revetment that is used for beach access and feels a buffer may restrict that access. He stated the property owner is opposed to a buffer.

Mr. Haines stated there's clearly a revetment and clearing was performed at the top of the revetment; not the entire coastal bank. He noted the property has a well-maintained, fertilized lawn and discussed the three options the Commission has; not issue an Order, which he feels would be drastic; issue an Order requiring a buffer, which the property owner has the right to appeal; or, issue the Order without requiring a buffer.

Mr. Palumbo referred to historic photos of the site and made note there wasn't a buffer on the property.

Ms. Weston stated she is in favor of a buffer.

Ms. Leduc questioned whether requiring a buffer is fitting mitigation. A discussion ensued.

Mr. Berman shared his views on the need to apply buffers moving forward.

A brief discussion transpired regarding the Commission's purview with requiring buffers.

Mr. Basinski stated he'd like to continue the matter so that he may discuss this with the property owner. A brief discussion transpired regarding possible planting options.

Public Comment – Mr. Mulvey asked for clarification on the number of additions being proposed. Mr. Basinski referred to plan and explained the proposed project.

Mr. Mulvey expressed concern over storm water runoff. Mr. Haines explained that gutters and a dry well will have to be installed as a condition of the Order.

With no further discussion, **Mr. Holmes moved, Ms. Weston seconded to continue the matter to December 21, 2017.** The motion carried. 6-0-0.

Chm. Gray returned to chair the meeting.

3) Sweetwater Realty Trust, Gordon B. and Joanna M. Hoffstein, Trustees

File # SE7-1990

Holmes and McGrath

438 Scraggy Neck Road, Cataumet

To demolish and reconstruct a single-family house to include; a garage, porches, terraces, Title V, driveway, excavating, landscaping and all utilities and appurtenances within an AE Flood Zone and within 100 feet of Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Coastal Bank Transect drawing and DEP Wetlands Change Mapping.

Tim Santos along with Chris Horiuchi addressed the board. Mr. Santos stated the property was recently sold and the new owners would like to make changes. He discussed the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines discussed the Coastal Bank located on this property. He made note that portions of the Coastal Bank, mainly the area immediately landward is being actively mowed and maintained as turf grass; a portion of this area does not belong to the property owner. Mr. Haines stated there are areas on the property that do not have a buffer and cautioned the Commission with phrasing the Order should they require a vegetated buffer as a Condition because some of the maintained area belongs to someone else. He stated they could simply condition the Order as such; it is does not permit the mowing or clearing of any vegetation on 426 Scraggy Neck Road; Map 50, Parcel 141, any proposed vegetation clearing on that property must be filed under a separate Notice of Intent. Clearing or mowing without a separate Order of Conditions would be subject to enforcement action.

Mr. Haines stated there are paving stones on the beach which are associated with the dock that is located on the property and feels these should be removed because they are not part of any approved dock system.

Mr. Haines explained although the proposed project does not meet the 50-foot setback or the nitrogen loading guidance, it is a retreat from what's existing. Since the septic and the driveway is outside of the Commission's jurisdiction, the only way the Commission could potentially reduce nitrogen is through lawn reduction.

Board Comment – Chm. Gray asked for additional information regarding the dock. Mr. Santos explained the dock is a seasonal dock with an existing Chapter 91 License.

Chm. Gray asked for additional information regarding the stone steps that are located on the Scraggy Neck Recreation Association land.; which are separate than the stones located on the beach. Mr. Santos provided a brief history of the existing house and explained there's an existing set of stone steps down the Bank that allow for access to the beach and pier.

Chm. Gray asked when the steps were installed and if it was prior to the Wetlands Protection Act. Mr. Santos stated he did not know but will find that out, but thinks they've been in place for a very long time.

Chm. Gray asked what the arrangement is between the property owner and the Scraggy Neck Association relative to the mowing that's been occurring on the association property. Mr. Santos stated the previous owners always maintained that area because it is used to access the beach by the property owners in the association. He is unsure as to whether there is a formal agreement for the maintenance of the area.

Chm. Gray asked Mr. Haines if he had been in contact with Scraggy Neck Recreation Association to find out whether a formal agreement is in place. Mr. Haines stated he had not been in contact with them. A brief discussion transpired regarding the mowed area and whether it should be allowed to continue being mowed.

Ms. Leduc opened a brief discussion regarding setback regulations. She expressed concern that the proposed new construction does not meet the current 50-foot setback requirements, even though there is enough land on the property to accommodate that. Mr. Santos explained that although the proposed new structure does not meet the 50-foot setback, it will be moved out of the Flood Zone and the leaching system will be moved to over 150-feet away. He feels these are both benefits to the site. A discussion ensued. Chm. Gray feels the proposed project is a substantial improvement over existing conditions and discussed the pros and cons of the proposed project vs. the existing structure.

A brief discussion transpired regarding the submitted transects of the Coastal Bank.

Ms. Leduc reiterated her concern that the project does not meet the setback requirements.

Mr. Berman stated he is pleased that the proposed septic will be further away and that the proposed structure will be out of the flood plain.

Public Comment – None.

Ms. Weston suggested the representative contact Scraggy Neck Association to discuss possibly abandoning the mowing that's been occurring or planting a buffer.

A lengthy discussion transpired regarding buffer zones and whether the proposed regrading will impact the Coastal Bank transects.

Chm. Gray entertained a motion. **Ms. Weston moved, Mr. Ligor seconded that an Additional Special Condition be added requiring that a minimum distance of 10' of natural vegetation must be maintained.** The motion failed, 3-4-0. Ch. Gray, Mr. Palumbo, Mr. Holmes and Mr. Szwed were opposed.

Mr. Haines suggested adding an Additional Special Condition, ASC (1) that the Order does not permit the mowing, clearing or fertilizing of any vegetation on 426 Scraggy Neck Road; Map 50, Parcel 141. Any proposed vegetation clearing on that property must be filed under a separate Notice of Intent. Clearing or mowing without a separate Order of Conditions would be subject to enforcement action. **Ms. Weston moved, Ms. Leduc seconded to accept Additional Special Condition (1).** With no discussion, the motion carried. 7-0-0.

Mr. Haines opened a brief discussion regarding the removal of the paver stones on the beach. Mr. Santos stated he will inform the new property owner that the pavers will need to be removed. This will be a second Additional Special Condition; ASC (2).

Ch. Gray 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. 7-0-0.

Mr. Haines – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-5, 7, 9-16, 18, 19, 21, 22, 27-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 4-7, 9, with the additional Special Conditions; ASC (1) and ASC (2) as stated by the agent previously.

Ms. Weston asked if there's a demarcation of the property line at 426 Scraggy Neck Road. Mr. Haines stated there is not. Mr. Santos stated they will place monuments to delineate the property line. Mr. Haines stated this will be ASC (3); monuments or boundary markers must be placed at the property boundary to delineate the seaward property line.

Chm. Gray 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. 6-1-0. Ms. Leduc opposed.

Chm. Gray suggested the property owner consider adding the 10' buffer, based on feedback from several Commission members.

Certificate of Compliance:

1) Gordon Pierce
File # SE7-853
Representative: Same
153 Captains Row, Mashnee Island

To construct 460 l.f. of stone riprap revetment including filling, regrading and seeding the area upland of the riprap and the construction of four timber stairways within an AE Flood Zone and V Flood Zone.

Agent Comment – A site visit was performed on December 6, 2017. After a brief explanation, Mr. Haines recommended issuing the Certificate of Compliance.

Chm. Gray entertained a motion to grant the Certificate of Compliance. **Mr. Palumbo moved, Mr. Holmes seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 7-0-0.

Other Business:

- Violation at 5 Kerna Drive – Mr. Haines submitted site photos to the members and stated he received a complaint that the homeowner had cleared several trees and shrubs on the property along the Coastal Bank. When he arrived at the property, he observed significant clearing. The shrubby vegetation had been mowed and a handful of medium sized trees that were also on the Bank had been removed; however, there was no root damage to existing vegetation. He explained there was an existing Order that stated trees

and shrubs must be maintained at a height of 3 feet. This was to remain in perpetuity; which was included in the file. Mr. Haines stated the property owner is out of compliance with that previous Order as well.

The property owner's son-in-law addressed the members. He stated the property along the Bank hadn't been touched in over five years. Over the past several winters, several trees had come down, so they cleaned them up. He admitted to being heavy handed with the brush clearing.

The property owner, Joseph Cecchinelli, addressed the board. He referred to a drawing of his property that he'd created to show the area that he thought was the Coastal Bank. He stated he was unaware that the area he cleared is part of the Coastal Bank. Mr. Haines explained the process for vista pruning and clearing to the property owner. A brief discussion transpired regarding the existing open Order. Mr. Cecchinelli apologized.

Chm. Gray asked what the agent's recommendation is to remedy the situation. Mr. Haines stated because the root system wasn't damaged, the shrubs will probably grow back thicker; therefore, if the property owner is willing to plant some new trees at the base of the Bank, allow the Bank to grow back to the height of maturity and come forward under a filing prior to any future work, that would be sufficient. Chm. Gray asked the agent if he is willing to handle the violation administratively with the property owner. Mr. Haines stated yes. The property owner agreed.

Ms. Weston asked if an after-the-fact filing is needed. Mr. Haines stated he will draft a letter to the property owner stating the Commission is willing to work with him this time; however, any future violations will be subject to enforcement action. The members agreed. Chm. Gray entertained a motion. **Ms. Weston moved, Mr. Holmes seconded that the agent will work with the property owner to resolve the issue.** With no discussion, the motion carried. 7-0-0.

- 2018 Conservation Hearing Schedule – Mr. Haines submitted a draft schedule at a previous meeting. A brief discussion transpired regarding adjusting the schedule around the Fourth of July holiday. Chm. Gray entertained a motion. **Ms. Weston moved, Mr. Ligor seconded to accept the 2018 Conservation Hearing Schedule with the adjustments that were proposed.** With no further discussion, the motion carried. 7-0-0.

- Vote excused absent members, if necessary – N/A.

- Acceptance of Previous Meeting Minutes – A brief discussion transpired regarding the minutes of April 20, 2017 and May 4, 2017. Mr. Haines discovered they had not been approved. He suggested approving the minutes as written since there were no appeals.

Chm. Gray entertained a motion to approve the minutes of the April 20, 2017 meeting. **Ms. Leduc moved, Mr. Szwed seconded to approve the minutes of the April 20, 2017 meeting as written.** The motion carried. 7-0-0.

Chm. Gray entertained a motion to approve the minutes of the May 4, 2017 meeting. **Mr. Holmes moved, Ms. Weston seconded to approve the minutes of the May 4, 2017 meeting as written.** The motion carried. 6-0-1. Ms. Leduc abstained.

Chm. Gray entertained a motion to approve the minutes of the October 19, 2017 meeting. **Ms. Weston moved, Mr. Holmes seconded to approve the minutes of the October 19, 2017 meeting as submitted.** The motion carried. 6-0-1. Ms. Leduc abstained.

- Report of the Conservation Agent – a brief discussion transpired regarding the number of copies of materials needed for the members to thoroughly review each case.

Mr. Haines suggested that the topic of buffers be added to a future agenda for discussion. The members agreed. Chm. Gray asked him to review the Wetlands regulations for language that may support the implementation of a buffer policy. A discussion ensued.

A brief discussion transpired regarding the adoption of Article 3.7.

The chairman revisited the two Requests for Determination of Applicability that were deferred.

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, Revised Site Plan of Record and DEP Wetlands Change Mapping.

**(Hearing Under State Act Only)
(Continued from November 16, 2017)**

Mr. Haines stated he felt he had sufficient information to present his report to the members and because the hearing is under the State Act only, a better notification isn't necessary.

Agent Comment – Mr. Haines explained the filing was previously continued based on required revisions to the plan for the project to meet the building code and the FEMA standards. The Building Permit will now reflect that the structure is usable solely for storage. The revised plan now shows flood vents will be placed to automatically equalize hydrostatic flood forces on exterior walls. After discussing the new plans with the building inspector, Mr. Haines recommended issuing a Negative Determination.

Board Comment – None.

Mr. Ligor moved, Ms. Weston seconded a Negative Two Determination. With no discussion, the motion carried. 7-0-0.

2) Candace Fisher

File # CC17-43

Representative: Same

6 Fisher Lane, Sagamore Beach

To repair existing stairs with no change to footprint within an AE Flood Zone, Velocity Flood Zone and within a Wetland Resource Area.

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

Mr. Haines stated the applicant did provide him with abutter notification.

Chm. Gray asked the agent if he'd been contacted by the applicant. He replied no; however, the original structure was approved and constructed under Order of Conditions, SE7-976 in 1993. It is being constructed within the original footprint. The Plan of Record is the same plan that was used on that original filing. He stated this is an after-the fact filing because the repair work to the stairs is approximately 50% complete. He commented that the stairs are in terrible condition.

Board Comment – Ms. Leduc questioned whether the work on the stairs is being performed appropriately. Mr. Haines passed around site photographs for the members to review. He stated it was going to be his recommendation to issue a Negative Determination.

Ms. Leduc asked if there will be heavy equipment on the Bank. Mr. Haines stated there was nothing in the narrative that described that and there's no indication that any heavy equipment is being used.

Mr. Ligor asked if it is still the agent's recommendation to approve the project. Mr. Haines stated it is.

Ms. Leduc questioned what is being proposed vs. what's existing. Mr. Haines stated they do not appear to be replacing the footings. They appear to be replacing the posts and bracing the structure within the same footprint.

Mr. Ligor moved, Mr. Holmes seconded a Negative Two Determination. After a brief discussion regarding the applicant's absence, the motion carried. 7-0-0.

- Public Comment Period on Non-Agenda Items – Mr. Mulvey suggested when the agent begins drafting the language surrounding the term buffer, it should be clear definition of the term and its intent.

- 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. Palumbo moved, Mr. Ligor seconded to adjourn. With no discussion, the motion carried. 7-0-0. The meeting adjourned at 9:09 PM.

Minutes submitted by: Carol Mitchell