

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

December 21, 2017

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

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on December 21, 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 (7:10), 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, Paul Gately, Patti O'Keefe, Kevin O'Keefe, Jennifer Delmore, David Maclean, Zac Basinski, Richard Selby and Mike Ball.

**Request for Determination of Applicability:**

- 1) Donald Jones Jr.  
File # CC17-44  
Representative: David MacLean  
45 Baxendale Road, Cataumet

To repair and rebuild an existing seawall within a VE Flood Zone and a Wetland Resource Area.

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

David MacLean addressed the board and explained the existing seawall has been in existence for approximately 100 years with an existing Chapter 91 License. He stated that even though the project is listed as a rebuild on the application, he is only seeking to re-mortar the open areas. He referred to photographs to pinpoint an area of the wall that has crumbled down. He stated this serves as a revetment and will remain untouched. He reiterated that they simply would like to re-mortar along the length of the wall where the mortar has broken through.

Board Comment – Mr. Ligor asked what caused the stones to fall creating the revetment. Mr. MacLean stated he did not know; however, it's been in that condition since the 60s.

Mr. Ligor asked if the Bank will become destabilized once the stones are moved. Mr. MacLean stated that area of the wall is staying intact, they are only seeking to re-mortar along the length of the wall. A brief discussion ensued.

Mr. Berman asked if there will be any equipment on the beach. Mr. MacLean stated there is no need to have any equipment on the beach since they're not bringing any stones in.

Mr. Ligor asked if the mortar will be carried down to the beach. Mr. MacLean stated there's an existing concrete abutment located at the foot of the beach stairs which is where they will mix the mortar, in a small wheelbarrow or something similar. He added that the work won't be performed until the spring.

Mr. Szwed asked for the length of the wall. Mr. MacLean stated the entire wall is 365'. Of that, approximately half will require mortar, at most.

Ms. Leduc commented that some of the area to be re-mortared is inundated at high tide. She questioned if there's enough time between tides for the mortar to set. Mr. MacLean

stated similar work was performed on the opposite side of the wall in 2010 and there was sufficient time for the mortar to set with that project. He noted that the same individual will be performing this work and the work will be conducted at low tide.

Agent Comment – Mr. Haines stated there are areas in the wall that need to be repointed. The area of revetment would be a substantial project; therefore, if any work in that area was being proposed, it would have to be brought before the Commission under a Notice of Intent. If the work will be done by hand and nothing is being proposed in that revetment area, Mr. Haines sees no reason why a Negative Determination couldn't be issued. He mentioned that if any members are concerned about equipment on the bank, they could condition the Determination such that it would not allow equipment on the Bank or the beach, and if rocks were required, no grounding of any barges during rock delivery is allowed. Mr. MacLean stated he doesn't think any rocks will be needed; however, if some had to be brought in by barge, they would be brought in where the existing docks are located at the base of the beach.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Mr. Ligor seconded a Negative Two Determination with the two conditions recommended by the agent.** With no discussion the motion carried. 6-0-1. Mr. Palumbo abstained.

**Notice of Intent:**

- 1) Carol Hickey  
File # SE7-1988  
Representative: Bracken Engineering, Inc.  
51 Pasture Rd., Cataumet

To construct two additions, a garage and coastal access stairs; install a pool; install a new Title V septic and 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, revised Site Plan of Record dated 12/20/2017, Planting Plan and DEP Wetlands Change Mapping.

**(Continued from December 7, 2017)**

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

Zac Basinski addressed the board and explained the continuance he requested was to discuss installing a potential buffer with his client. He stated his client was concerned that by adding a buffer, the beach access they use at the existing stone revetment would be cut off. He explained that to maintain beach access he is proposing to install a set of removable stairs. Another concern the property owner has is that by installing a buffer, she'd be unable to install a pool on the property at a future date. The representative asked the agent if he could amend the application to include the installation of a pool in an upland area, outside the Flood Zone. He stated the pool and all hardscape associated with the pool will be outside the fifty-foot buffer. Additionally, Mr. Basinski stated they are seeking to remove invasive species and replace them with non-invasive species as listed on the attached plan; which they're requesting be maintained at a height of three feet. Mr. Basinski also provided detailed information regarding the removable stairs.

Mr. Haines asked how heavy the proposed removable steps will be and the procedure for removing them. Mr. Basinski stated they will weigh between three and four hundred pounds and will be able to be removed by hand. He stated a local fabricator, Matt Swift, has designed similar staircases for other property owners and the design is to allow the stairs to be removed from the top, not from the beach. Adding that the install will be performed by hand, no equipment will be needed.

Agent Comment – Mr. Haines stated the applicant has decided to include all their dream projects in this filing. They are proposing a new 8' buffer in addition to the existing small buffer; which will address the Commission's concerns regarding nitrogen pollution from the lawn. Regarding the proposed removable stairs, should the Commission decide to issue an Order, Mr. Haines recommended that they apply the standard condition that is usually used for docks and piers regarding the applicant's responsibility to recover it and the owner's responsibility for any damage to the structure.

Board Comment – Ms. Leduc commented that the planting plan is mainly shrubs and questioned whether any type of seed would be placed between them to fill in the space until they fill in. Mr. Basinski they would.

Mr. Berman commented on the selection of shrubs.

Public Comment – None.

Mr. Palumbo 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. 6-0-0.

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, 9-12, 15, 16, 18, 19, 26, 27-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 4-7, 9, 20, with the additional Special Conditions; ASC (1) the Order requires the installation of a 931 (plus or minus) sq. ft. naturalized buffer as shown on the revised 12/20/2017 plan of record and ASC (2) herbicide application must be performed by a licensed applicator. Herbicide must be applied directly to the cut stem of the invasive plant; no foliar spraying of herbicides is permitted under this Order.

The board also agreed that Condition #26 would be amended to require that the new plantings must be allowed to grow to maturity before pruning and will be maintained at a height of 3 feet.

Mr. Berman asked if a demarcation for the buffer is required. Mr. Haines stated he typically asks for a demarcation for a meadow habitat; however, since there's not meadow habitat he doesn't feel it's necessary but will leave it up to the Commission.

Mr. Palumbo entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Ms. Leduc seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 6-0-0.

*Chm. Gray returned to chair the meeting.*

## 2) Keith Bradley

File # SE7-1992

Representative: Outback Engineering, Inc.

3 Vicki Circle, Buzzards Bay

To upgrade a septic system within 100 feet of a Wetland Resource Area.

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

Jen Delmore addressed the board and discussed the proposed project. She stated the existing tank and leaching pit will be filled with sand. She explained that other than relocating one existing shrub, no other tree clearing is being proposed. Ms. Delmore stated the Board of Health has yet to approve the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines stated the wetland identified appeared to him as if it had the hydrology for a potential Vernal Pool; there was water in it during his site visit. Mr. Haines noticed an existing Coastal Bank that wasn't identified on the plan. Chm. Gray offered a solution to avoid having to continue the matter. Mr. Haines stated there are two ways to resolve the issue; affix the stamp that states, although the Commission approved the project, they do not approve the delineation. Or the Order can be conditioned that the AE Flood Zone 15 is considered by the Conservation Commission to be the top of the Bank and the closest Wetland Resource Area to proposed work. Ms. Delmore stated she is in favor of conditioning the Order. A brief discussion ensued. Mr. Haines stated other than the potential for a Vernal Pool, he didn't see anything else that raised any flags.

Board Comment – None.

Public Comment – None.

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 1-3, 5, 7, 13, 15, 18, 19, 21, 27, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 7, 9, with the additional Special Condition; ASC (1) regarding AE 15 Flood Zone line is considered by the Bourne Conservation Commission to be the top of Coastal Bank.

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. 7-0-0.

### 3) 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.

Mike Ball addressed the Commission and stated there's a fence located within the Resource Area, a saltmarsh. He referred to the plan which had various colored lines used to label key points on the property; i.e., the saltmarsh boundary (green), the fence that was installed (orange), the existing in-ground paver walkway (blue), the footprint of a proposed deck expansion that will be part of a reconstruction (yellow) and invasive species control (purple).

Mr. Ball described the fence, which is used as a pet enclosure for their two dogs and its components. He stated when looking at the saltmarsh regulations and their performance standards, in his opinion, conforms to a small project that allows sunlight to reach the marsh; therefore, it does meet the performance standards; even though it is an unusual project.

Mrs. O'Keefe stated she and her husband didn't understand the protocol and apologized for installing the fence without the Commission's approval.

Mr. Ball discussed the proposed reconstruction of the deck. The deck addition would be 252 sq. ft. added to the existing footprint of 422 sq. ft.

The proposed project also includes removing the stone pavers and replacing it with an elevated composite walkway.

Next, Mr. Ball provided specifics on the pet enclosure itself. He stated inside the enclosure is approximately 3,300 sq. ft. of area, most of which is Phragmites. The O'Keefe's have been mowing the area frequently. Mrs. O'Keefe stated they've been mowing approximately five times per year, but the mowing has ceased since Mr. Haines informed the property owners they were in violation. Mr. Ball felt it important to advise the Commission that the O'Keefe's are diligent about picking up their dog excrement.

Chm. Gray asked the representative if he knew the approximate number of piles and their dynamics for the proposed walkway. Mr. Ball stated approximately 40, 5x5 piles will be required; which will span approximately 190 feet. Chm. Gray asked how many posts exist with the pet enclosure. Mr. Ball stated there are 25, 5x5 posts. A brief discussion transpired regarding the square foot impact the posts will have on the saltmarsh.

Mr. Ball reiterated his opinion that the fencing meets the performance standards of a saltmarsh and asked that the fence be allowed to remain in place for the benefit of the O'Keefe's dogs.

Chm. Gray asked if any plant analysis was performed in the section of the saltmarsh that has been mowed that is vegetated with the Phragmites. Mr. Ball stated in the mowed area, there is typical saltmarsh vegetation.

Chm. Gray asked if a vegetation analysis was performed in the area just beyond the fencing, seaward. Mr. Ball stated yes, and the analysis showed 100% Phragmites. A brief discussion transpired regarding the adjacent property that was being mowed. The mowing has ceased and the saltmarsh on that property is lush and healthy. The saltmarsh on the O'Keefe's property is degraded because of the Phragmites. Mr. Ball is proposing to include the entire area, 13,600 sq. ft. in management of the land. He then discussed the various options to manage the land.

Chm. Gray asked whether the neighbor to the west who's been mowing used an herbicide first or if they accomplished what they've accomplished simply by mowing. The abutter, who was present, stated when he bought the property he was told he could mow it a few times per year. He stated the area was mowed every three weeks, without the application of an herbicide. Mr. Haines stated there was a historic NOI for this property that lapsed back in the 90s and is no longer a valid Order. Chm. Gray's opinion is that the mowing is highly beneficial to the health of the saltmarsh based on the mowing that's occurred. He then discussed the site visit that he and Mr. Haines performed in the fall and the condition of the saltmarsh on each property. A discussion ensued.

Agent Comment – Mr. Haines stated he's conducted research on Phragmites and he's found that nothing eradicates the plant; however, mowing after an herbicide has been applied, has produced positive results when part of a long-term strategy. He cautioned that mowing at the wrong times of the year can increase density and found that mowing prior to the end of July and at the end of the growing season is when it's appropriate. After cutting, the thatch load should be removed.

Board Comment – Mr. Palumbo feels this approach is a good start and feels the proposed raised walkway will be an improvement over what's existing.

Mr. Berman stated there are benefits to the project. He suggested to start mowing the Phragmites in the western section of the property because some of the healthy marsh from the east may extend toward the newly managed area.



Mr. Szwed stated he's not concerned with the posts' footprint but questioned the activity inside the fence area. Mrs. O'Keefe stated the area is used to allow the dogs to roam unleashed on the property; adding that she often takes the dogs hiking of property; therefore, they aren't spending an exorbitant amount of time in the back yard.

Mr. Holmes discussed his experience with similar projects and leans toward mowing vs. applying herbicides. He suggested raking and removing all debris from the site after the mowing to allow new seeds to mature. Mr. Ball thinks removing the thatch will accelerate regrowth.

Ms. Leduc asked if the ground is raised where the pavers are located and if it floods during high tide. Mr. Ball stated it looks slightly raised and it floods during high tide. He referred to photographs of the site that show the marsh at a moon tide.

Ms. Leduc expressed concern that the dogs may damage the area inside the enclosure. She suggested that in a few years, the Commission re-examine what impact the dogs have had on the saltmarsh inside the enclosure. If a negative impact has been determined, then the enclosure should be moved to a different part of the property. A discussion ensued.

Mr. Ligor agreed with the chairman's assessment of the mowing of the property but disagrees with the application of an herbicide, unless it's applied to each cut stalk individually; no foliar spraying. Mr. Ball explained the process of the herbicide application.

Mr. Ligor opened a brief discussion on the proposed extension of the deck. He questioned whether the proposed extension could be cantilevered. Mrs. O'Keefe stated according to the engineer, the proposed extension of six feet is too long to be cantilevered. Only a three-foot extension could be cantilevered.

Ms. Weston questioned what's existing on the opposite side of the existing deck. Mr. Ball referred to one of the site photographs to discuss the makeshift stone wall that was installed by the previous owners.

Agent Comment – Mr. Haines stated the applicant has been forthcoming and respectful since being notified of the violation in July 2017 when the agent observed the fence and the unpermitted mowing in the saltmarsh. The existing deck is not built to code and needs to be rebuilt. Mr. Haines's concern was the precedent of moving it forward, closer to the Resource Area. In terms of the footings, he had discussed the idea of cantilevering the proposed new deck to meet the 50' setback bylaw. The area under the existing deck is altered and consists of gravel. The elevated saltmarsh walkway will be an improvement over the fill and patio pavers, which was installed by the previous

owner. The walkway is located within a V Zone. Typically, the language in the bylaw requires that structures of this kind within a V Zone have a stamped engineering plan; which has not yet been submitted. The representative stated he will submit a stamped plan at a future hearing depending on the Commission's position this evening.

Mr. Haines suggested that any Order should be conditioned to remove the patio paver walkway, but the fill could remain if the Commission agrees. The DEP provided comments that the removal of the pavers should not be considered saltmarsh mitigation for other activities. Although the fence posts in the wetlands may be considered a fill, Mr. Haines considers the impact from the posts to be minor. The DEP provided a comment that it is not clear how the dog fence met the performance standards of 310 CMR 10:32:3. Mr. Haines's higher concern is nitrogen and bacteria from the dog excrement. He stated the Commission must consider whether to allow a containment area for animals with a non-agricultural exemption. Mr. Haines reiterated his findings of the Phragmites control method and the acceptable timing for that method. He feels mowing every three weeks is too frequent and should the Commission issue an Order, he suggested conditioning it to require all the thatch be raked out to allow sunlight penetration to any potential native plants and reach the soil surface. Once they've decided whether to allow the mowing, then BMPs for the actual mowing would be implemented. He has found that proper BMPs for mowing would be; setting the mower deck to a height greater than four inches to minimize impacts on small animals and native plants; only mowing when the site is dry enough to support the weight of the mower to avoid soil disturbance; all equipment used shall be cleaned properly of all debris before it is removed from the treatment site. Mr. Haines stated the proper removal of the thatch would need to be discussed to prevent it from being taken out to sea or spread to any adjacent properties. There is also the question whether the Commission wants to install a monitoring program.

Ms. Weston questioned the size of the deck and suggested the property owners reduce the size of the proposed deck to allow for cantilevering. Mr. Haines explained the 50-foot setback requirement to the property owner. Mr. Ball discussed possible mitigation to be granted the full deck expansion. A discussion ensued.

Mr. Berman questioned whether the expansion restriction within the 50-foot setback is just for a structure or if it includes hardscape too because he noted the gravel extends three or four feet past where the deck is being proposed. Chm. Gray stated it applies to the structure and discussed past precedent. Mr. Haines and Mr. Palumbo elaborated further.

A brief discussion transpired regarding the ability to cantilever the deck. Chm. Gray suggested the applicants discuss the options with their engineer based on the feedback they've received from Commission members.

A brief discussion transpired regarding the specifications of the elevated walkway and the invasive species management. It was decided that the representative will bring forward a stamped plan and the property owners will attempt to manage the invasive species with mowing only and not apply any herbicides. The mowing will be monitored by the Commission. Mr. Ball will obtain a professional opinion on the frequency of the mowing and submit that information to the agent for review.

A brief discussion transpired regarding the DEP's comments regarding the dog enclosure. Chm. Gray asked the agent to follow up with DEP for additional input. Mr. Ball will prepare a statement to better explain his opinion on how the enclosure meets the performance standards. Mr. Haines will contact DEP with that statement for additional comment.

After a brief discussion, it was decided to continue the matter to January 18, 2018.

Public Comment – Abutter, Richard Selby, addressed the Commission stating he supports the proposed project. He discussed the frequency of the mowing that's occurring on the adjacent property. He questioned whether the Commission would consider the deck expansion request if the same number of pilings were used. Mr. Haines stated the number of pilings isn't the issue, the engineer will determine what a safe number of pilings is. The precedent is the movement closer to the Resource Area.

An abutter who did not provide his name, stated he's never been inconvenienced by the O'Keefe's dogs. He commented that the O'Keefe's do not live here year-round; therefore, the dogs aren't here for much of the growing season.

Chm. Gray discussed the Notice of Intent that needs to be submitted on behalf of the three abutters. After a brief discussion it was decided that each abutter would submit their own NOI specific to their property.

Chm. Gray entertained a motion to continue the matter. **Ms. Leduc moved, Mr. Szwed seconded to continue the matter to January 18, 2018.** With no discussion, the motion carried. 7-0-0.

**Request to Extend Order of Conditions:**

1) John Black and Ann Taylor

File # SE7-1914

Representative: Wilkinson Ecological Design

## 388 Scraggy Neck, Cataumet

### Materials Reviewed – Site Plan of Record

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

Agent Comment – Mr. Haines stated the property has not been built but there has been some grading. He expressed concern with the proposed stone wall within the Velocity Zone; which he stated if approved, the Commission is essentially permitting a future sea wall for the house that hasn't been built yet. The other concern he mentioned is the delineation of the Resource Area on the plan.

Chm. Gray noted that this project has already been approved by the Commission and after a brief discussion regarding the agent's concerns, **Mr. Palumbo moved, Mr. Ligor seconded to Extend the Order of Conditions.** With no discussion, the motion carried. 7-0-0.

### Other Business:

- Discussion and possible vote on the Cease and Desist Order at 162 Puritan Road, Buzzards Bay – Mr. Haines submitted additional information to the members that was provided by Julie Hart, the property owner. She provided a copy of the USDA 2014 Report of Commodities and she has asked the Commission to remove the cease and desist on the property. Mr. Haines contacted the DEP who felt this was good information, but they did not offer suggestions on how to proceed. Mr. Haines contacted them a second time, but they did not respond. Chm. Gray stated without additional feedback from DEP, the Cease and Desist Order may not be removed. After a brief discussion, Mr. Haines read a draft response he prepared and will send it to the property owner denying her request to remove the cease and desist until the DEP instructs them to do so. Mr. Haines will follow up with DEP for a final decision.

- Discussion on policy to establish Naturalized Buffers – Mr. Haines created a draft policy to establish naturalized buffers for future NOIs. Chm. Gray explained to adopt the policy, there needs to be language in the regulations to support the policy; otherwise the policy isn't enforceable. He asked for volunteers to contact the Conservation agent or Commission in Falmouth, Sandwich and Wareham to determine their policy with creating a Vegetated Buffer Zone where one doesn't already exist. After a brief discussion, Ms. Leduc volunteered to contact Falmouth, Mr. Ligor will contact Mashpee,

Mr. Palumbo will contact Wareham and Mr. Berman will contact Sandwich. The information gathered from each town will be discussed at the January 18, 2018 hearing.

Mr. Haines provided the group with the response he received from DEP regarding this matter. He also furnished the members with his findings from other research he conducted. A discussion ensued.

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

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the November 2, 2017 meeting. After a brief discussion, **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the November 2, 2017 meeting as revised.** The motion carried. 7-0-0.

- 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. Palumbo moved, Ms. Leduc seconded to adjourn.** With no discussion, the motion carried. 7-0-0. The meeting adjourned at 9:22 PM.

Minutes submitted by: Carol Mitchell