

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

April 6, 2017

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

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on April 6, 2017. 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.

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, Paul Szwed, Melvin P. Holmes and Elise Leduc.

**Excused Members:** Susan Weston and Robert Palumbo.

**Also Present:** Sam Haines, Carol Mitchell, John Dimitro, Jr., Jose´ Pichardo, Peter McEntee, Gregory Cotter, Paul Nitschke, Diane Nitschke, Jim Mulvey, Maureen Harlow-Hawkes, Sean Burke and Jamie Bissonnette.

**Request for Determination of Applicability:**

1) Owen A. Peltier

File # CC17-008

Representative: Green Seal Environmental, Inc.

30 Lathrop Road, Sagamore Beach

Repair an existing septic system with a new septic tank, distribution box and leaching system within 100 feet of a Wetland Resource Area.

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

Jose´ Pichardo addressed the board and discussed the proposed project.

Board Comment – Ms. Leduc observed that the plan the Commission received is different than the plan Mr. Pichardo referred to in his presentation. Mr. Haines stated the plan Mr. Pichardo was referring to is not the Plan of Record he received. After a brief discussion, Mr. Pichardo stated he submitted the revised Plan of Record to the Board of Health earlier in the day. Mr. Haines asked for him to provide the Commission with two stamped copies of the revised plan; Mr. Pichardo agreed.

Agent Comment – A site visit was performed on April 3, 2017. After reviewing the wetland in the field, Mr. Haines doesn't believe it meets the criteria of isolated land subject to flooding and feels this review falls under the By-law only. He stated he visited the site after approximately 2 inches of rainfall and there was only approximately 6-8 inches of water in the wetland itself. He did not observe any amphibian egg masses. He stated that the wetland is used for storm water from the town; in fact, the parcel behind the area is owned by the town and there are three catch basins off of Standish Road that empty into this area. Mr. Haines spoke with the DPW director who confirmed that the parcel is a town owned storm water basin. Mr. Haines observed a fair amount of erosion in the location of the original proposed septic tank which may have led to the change in design. He referred to photographs he'd taken of the site and stated it appears that there's a lot of storm water coming off Carver Road that has channelized at the southeast boundary of the property. It looks as though they perc tested in an area and the erosion is going on to the property owned by the Town of Bourne. The DPW director expressed concern with regard to that erosion and expressed the importance of keeping the storm water basin area clean and free from surrounding sediment.

Mr. Pichardo stated they are proposing erosion controls. Mr. Haines asked if there are plans to change the grading. Mr. Pichardo stated there are not. Mr. Haines commented

on the amount of storm water coming down the side slope. He stated this may be a result of the perc testing and that the area has not been reseeded or revegetated but there is currently sedimentation occurring on Town of Bourne property.

Mr. Haines noted there are no erosion controls shown on the original plan but apparently have been added to the revised plan which will control the erosion during the construction phase. Mr. Haines expressed concern about sedimentation afterwards.

Board Comment – Mr. Szwed asked if a condition may be added. Mr. Haines stated because this is an RDA it's not conditioned the same way; though the Commission does have the authority to place conditions on the project. He advised the representative that the erosion controls that will be implemented during the construction phase will have to stay in place until the ground is seeded and stabilized. Mr. Pichardo agreed and reiterated the grade will not be changed.

Public Comment – None.

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

Mr. Haines noted that the RDA will include the revised plan.

**2) Jameson H. Hannah**

File # CC17-009

Representative: Bracken Engineering, Inc.

240 Wings Neck, Pocasset

To relocate existing driveway and garage doors, convert old driveway to a lawn and to regrade area around garage within an AE Flood Zone and 100 feet of a Wetland Resource Area.

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

*Chm. Gray recused himself from discussion and vote. He asked Mr. Ligor to chair the meeting.*

Mr. Haines explained that the representative, Zack Basinski, was unable to attend the meeting. Mr. Haines performed a site visit and spoke to the representative prior to the hearing. He received confirmation that the abutters were notified.

Agent Comment – The majority of the proposed new driveway is outside of jurisdiction. This area has the most significant grade changes and will require

substantial earth moving. Erosion controls are shown on the plan and Mr. Haines feels they will be placed in the adequate location. He walked to the rear of the property and feels the Wetlands Change Map is reasonably accurate. The grading shown in the area of the garage is right at the 100 foot buffer so the project may impact a few feet of the Buffer Zone. He stated the entire buffer is undisturbed, vegetated woodland; he doesn't feel this is a concern. The change from the existing gravel driveway over to lawn is located in the AE Flood Zone only. Assuming the erosion controls are installed properly, he has no issues with the project.

Board Comment – Ms. Leduc asked where on the map the wetland is located. Mr. Haines stated the wetland was not delineated. One of his recommendations would be to stamp it with the language that says; any action taken by the Commission does not indicate acceptance of the Resource Area boundary delineation.

Ms. Leduc asked what type of wetland it is. Mr. Haines stated it is a Bordering Vegetated Wetland.

Public Comment – None.

Mr. Ligor entertained a motion. **Mr. Holmes moved and Ms. Leduc seconded a Negative Two Determination.** With no discussion, the motion carried. 4-0-0.

*Chm. Gray returned to chair the meeting.*

3) Mass. Maritime Academy  
File # CC17-010  
Representative: Activitas, Inc.  
101 Academy Drive, Buzzards Bay

Renovate an existing natural grass baseball field with synthetic turf, install additional lighting and construct a storage shed within a V Flood Zone and 100 feet of a Wetland Resource Area.

**(Continued to April 20, 2017)**

Mr. Haines stated that the reason for the continuance is to allow the applicant to perform public outreach to further discuss the project. Interested parties may contact the agent or Mass Maritime directly.

4) James Harding

File # CC17-011

Representative: Engineering Works, Inc.

17 Wallace Point, Buzzards Bay

Upgrade the septic system within an AE Flood Zone and 100 feet of a Wetland Resource Area.

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

Peter McEntee addressed the board and discussed the proposed project.

Board Comment – Mr. Szwed asked if the location of the proposed system is the same as the previous location. Mr. McEntee stated it is.

Agent Comment – Mr. Haines stated it is a septic upgrade. Its proposed location is as far away from the Resource Area as it can possibly be. Assuming the erosion controls are installed as shown on the plan, he has no issues with the project.

Public Comment – None.

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

**Notice of Intent:**

1) Estate of Carol White

File Number: SE7-1972

Representative: Zenith Consulting Engineers, Inc.

354 Circuit Ave, Pocasset

Septic replacement within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, revised Site Plan of Record, stamped Structural Retaining Wall design and DEP Wetlands Change Mapping.

**(Continued from March 16, 2017)**

*Chm. Gray recused himself from discussion and vote. He asked Mr. Ligor to chair the meeting.*

Jamie Bissonnette addressed the board and discussed variations from the originally proposed project. He stated a stamped Structural Retaining Wall design has been submitted. He also discussed a misinterpretation with regard to the location of the blower unit. A concern was raised by an abutter at the previous meeting over the proposed location of the septic blower. Mr. Bissonnette stated the blower they are proposing is an underground blower unit; therefore there won't be odor or sound level issues. As an added measure, it will be placed on the other side of the house to alleviate any noise concerns. As requested by the Commission, erosion controls have been added to the west and southwesterly side of the property.

Board Comment – Ms. Leduc asked for additional information on the proposed blower unit. Mr. Bissonnette provided a detailed description of the proposed blower unit and discussed its proposed location.

A brief discussion transpired concerning the system's ability to withstand a flood.

Mr. Ligor asked if the water table will affect the system. Mr. Bissonnette stated it should not.

Agent Comment – Mr. Haines stated at the last hearing they were awaiting a letter from Massachusetts Natural Heritage & Endangered Species Program. They have received correspondence stating the project is exempt. A question was raised at the previous meeting concerning abutter notification. Mr. Haines looked into this concern and in his opinion the abutter was properly notified prior to the hearing. Mr. Haines stated an updated plan has been received displaying the new erosion controls as well as the engineered retaining wall design.

Board Comment – None.

Public Comment - Maureen Harlow-Hawkes, representing the abutter, Mr. Francis, stated he hasn't seen the revised plan but she thinks he will be much happier. She then began to read a statement urging the Commission to consider an alternate type of septic system. Mr. Ligor interjected explaining her concerns are better raised with the Board of Health as they are not within the Commission's purview. Ms. Harlow-Hawkes disagreed, stating water quality is within the Commission's purview. She continued to read the statement which urged the installation of a tight tank and asked that should the Commission allow for the installation of the proposed system, that they require mitigation for the four Cedar trees that will have to be removed to accommodate the

new system. Ms. Harlow-Hawkes briefly discussed the impact of nitrogen on the salt marsh.

Agent Comment – Mr. Haines asked the representative if the Cedar trees have to be removed. Mr. Bissonnette stated the trees have to be removed; however, the applicant is willing to plant four new trees to replace the ones being removed. Mr. Haines stated the Commission could require mitigation for the loss of those trees in a separate location.

Public Comment – Ms. Harlow-Hawkes argued that the trees could be saved if the system were a tight tank.

Mr. Haines stated the Board of Health determines the type of system. If the BOH determines a tight tank is most appropriate under their regulations, then the applicant would then have to review other options with the Commission at that time.

Board Comment – None.

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

Ms. Harlow-Hawkes commented that Mr. Holmes wasn't present at the first hearing. Mr. Haines stated a waiver is supplied to the applicant which allows for alternate commissioners.

Mr. Holmes asked if a Condition may be added requiring planting mitigation. Mr. Haines stated an additional Special Condition could be added to the Order which would state; mitigation for the four Cedar trees that are going to be removed due to the location of the existing septic will have to be mitigated on the property and a planting plan will be supplied to the Commission or its agent after the fact.

Mr. Haines advised that the Commission recently revised its Order of Conditions. This Draft Order of Conditions for this filing will reflect those revisions.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1, 2, 3, 5, 7, 9-12, 14, 15, 18, 19, 22, 27, 28, Special Conditions pursuant to the Bourne Wetlands Protection By-law Article 3.7 numbers 2, 5, 6, 7, 9, and the additional Special Condition requiring mitigation for the four Cedar trees that will be removed and an after the fact planting plan will be prepared and submitted to the agent.

Mr. Ligor entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Szwed moved and Ms. Leduc seconded to move the Draft**

**Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

*Chm. Gray returned to chair the meeting.*

2) Gregory P. Cotter

File Number: SE7-

Representative: Same

1251 County Road, Cataumet

To manage invasive plant species and revegetate a previously altered Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Wetland Delineation, Historic site photographs provided by the applicant and DEP Wetlands Change Mapping.

Chm. Gray asked if a DEP File Number has been issued. Mr. Haines stated not at this time.

Gregory Cotter addressed the board and discussed the proposed project. He referred to photographs which reflect the condition of the property prior to the mowing that was performed. Mr. Cotter is seeking to revegetate the entire area. He described the proposed planting plan.

Board Comment – Mr. Ligor asked if some of the plantings will contain a wet meadow mix. Mr. Cotter stated yes, that he spoke with the agent who suggested a variety of seed mixtures that may be suitable for the area.

Mr. Ligor asked if the applicant plans to perform the work himself. Mr. Cotter stated he plans to hire contractors and may also ask family members to assist.

Mr. Ligor asked if he plans to mow the area on a consistent basis. Mr. Cotter stated he would like permission to mow the area once per year to eliminate any invasive species that may be lingering. Mr. Haines stated if mowing is allowed by the Commission, it would have to be conditioned heavily. In this case, Mr. Haines suggested conditioning to allow the mowing to be performed annually but only between October 1<sup>st</sup> and December 1<sup>st</sup>. A discussion ensued.

Mr. Holmes opened a brief discussion with regard to Cuffs Pond.

Ms. Leduc asked what the square footage of the cleared area is. Mr. Cotter stated the area that was cleared is slightly over 21,000 square feet.



Ms. Leduc asked if the Commission will be granting an Order after the fact since the mowing was done without the Commission's approval. Mr. Haines stated this will be an Order for the restoration phase; there is nothing that can be done about the mowing that occurred. A brief discussion transpired with regard to the regulations that pertain to altering a Wetland Resource Area.

Mr. Szwed asked the applicant if he plans to alter any other parts of the property. Mr. Cotter stated that may be a possibility at some point. He will work with the agent prior to performing any additional alterations.

Mr. Ligor asked what size Maple trees does he plan on planting along the roadside. He also asked what the distance will be between them. Mr. Cotter stated they will be 8-10 feet in height and they will be spaced 15 feet apart.

Mr. Ligor asked if the blueberries he'll be planting will be sold once harvested. Mr. Cotter indicated that is not his intent.

Agent Comment – Mr. Haines stated he and the applicant have been working together to draft a planting plan. He stated Mr. Cotter has been responsive in terms of getting the wetland delineated and having the site surveyed as requested by the Commission during the initial violation. He stated although the area was actively maintained for blueberries in the 80s, there's been no agriculture of any sort within the past 5 years; therefore, there are no agricultural exemptions for this project. The DEP initially issued a letter stating the project did not meet performance standards for a BVW and no file number would be issued until additional information was supplied. Mr. Haines spoke with Mark Bartow of the DEP and explained the proposed project. Mr. Bartow wasn't clear on the fact that this was a violation, he thought the project was to mow the area. Mr. Haines explained to him that this was a restoration. He advised Mr. Bartow that the applicant is seeking to seasonally mow and advised him of the additional Special Conditions that he'll be recommending to the Commission. Mr. Bartow stated he will release a file number for this project; but that has not occurred to date. Mr. Haines recommends continuing the matter to April 20<sup>th</sup> to allow a file number to be issued.

Public Comment – Abutter, John Dimitro, stated he is satisfied with the information that's been provided.

Abutter, Sean Burke, supports the project and discussed the possibility of assisting Mr. Cotter with the proposed project.

Chm. Gray stated the matter will be continued to April 20<sup>th</sup> for the purpose of receiving a DEP file number.

3) Paul and Diane Nitschke  
DEP File Number: SE7-1973  
Representative – Same  
115 Puritan Road, Buzzards Bay

Permit an existing wooden stairway, modify an existing boat rack and perform vegetation maintenance 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.

Paul and Diane Nitschke addressed the board and discussed the proposed project.

Board Comment – Chm. Gray asked if the applicant owns two lots. Mr. Nitschke stated he does. Chm. Gray clarified that the house lot is on Puritan Road but the proposed project's location is 7 Lewis Point Way. Mr. Haines stated he made an administrative error on the agenda.

Mr. Ligor asked if the stairs are structurally sound. Ms. Leduc commented that the stairs were built without a permit. The applicant stated that the stairs are structurally sound.

Mr. Ligor asked if any vegetation has been trimmed along the stairs to prevent overgrown vegetation from hitting them in the face. Mr. Nitschke stated only a small amount of trimming has been performed

Agent Comment – Mr. Haines stated this filing is a result of a violation from late October 2016 when he observed the unpermitted stairs on the Coastal Bank, the boat rack and some vegetation debris on the bank. During subsequent site visits in preparation for the filing, Mr. Haines informed the applicant that he does not feel the boat rack can be permitted as currently constructed because it's below the Mean High Water. This means it will be subject to some of the town's Dock & Pier regulations; thus, requiring several layers of permitting, which the applicant is not interested in pursuing. Mr. Haines stated in order for the boat rack to be permitted, it will have to be relocated above the Mean High Water. Mr. Haines stated there won't be any significant vegetation that will have to be removed in order to place the rack in the proposed location above the Mean High Water. Mr. Haines advised that the rack is considered an accessory structure so the Commission should consider any By-law language relative to this when making its decision. He also stated the Commission should consider any past precedent with regard to boat racks. Mr. Haines indicated the stairs were built on what appears to be a preexisting path, and although the design may not be exactly what the Commission would

typically require as far as spacing, height and light infiltration, he did not observe any erosion or slumping of the bank in the location of the stairs. The vegetation that was dumped on the top of the bank is fairly minimal. The applicant can most likely remove it in a day and has agreed to plant Sweet Pepperbush in any bare areas that were disturbed as a result of the dumping. Mr. Haines stated this bank is better vegetated than many of the surrounding banks. He recommends adding the following Special Condition should the Commission issue an Order; vegetation management on the approved dirt pathway, coastal stairs and the area of the boat rack shall consist of hand pruning only, the applicant may also hand prune and remove invasive Bittersweet vines on the Coastal Bank, no other vegetation clearing is permitted under this Order. Any proposed vista pruning would require an additional filing with the Bourne Conservation Commission.

Board Comment – Ms. Leduc asked if the boat rack posts will be hand dug and filled with earth or concrete. Mr. Nitschke stated they'll be hand dug and he'll fill the holes with whatever the Commission recommends. Mr. Haines stated it depends on the depth of the holes; ultimately there will be a lot of weight on one side of the rack so concrete may stabilize it better and prevent erosion.

Ms. Leduc questioned whether or not Mr. Haines considered the proposed location of the anchor post when he assessed the amount of disturbance that would occur. Mr. Haines stated he did, the area is forested so there may be some minimal root disturbance. A brief discussion ensued.

Mr. Ligor asked if the existing stairway posts are set in concrete. Mr. Nitschke stated he used post spikes that are rammed into the ground. For the rack, he is proposing to use spikes on one side and use concrete on the center posts.

Public Comment – None.

Chm. Gray entertained a motion to close the hearing. **Mr. Holmes moved and Mr. Szwed seconded to close the hearing.** With no discussion, the motion carried. 5-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-3, 7, 12, 15, 22, 26, 27, Special Conditions pursuant to the Town of Bourne Wetland Protection By-law numbers; 2, 4 and the additional Special Condition, vegetation management on the approved dirt pathway, coastal stairs and the area of the boat rack shall consist of hand pruning only, the applicant may also hand prune and remove invasive Bittersweet vines on the Coastal Bank, no other vegetation clearing is permitted under this Order. Any proposed vista pruning would require an additional filing with the Bourne Conservation Commission.

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

Chm. Gray briefly explained to the applicant the next step in the process.

### **Other Business:**

- Appointment of a Member of the Commission to “Peer Review Working Group” –

Chm. Gray stated group is being impaneled by the town administrator. He read a description of the group’s purpose.

After a brief discussion, Chm. Gray stated that Mr. Palumbo has offered to represent the Conservation Commission. **Mr. Ligor moved and Mr. Holmes seconded to appoint Mr. Palumbo to the Peer Review Working Group.** With no further discussion, the motion carried. 5-0-0.

A brief discussion transpired with regard to the Commission’s regulations conflicting with other regulatory agencies’ regulations. Chm. Gray stated the regulations haven’t been reviewed in 17 years. Several members discussed the need to revise the language in many of the town’s regulations.

- Revisions to the Bourne Conservation Commission’s Flood Zone Policy –

Mr. Haines stated a few revisions were made which will allow him to streamline the process and better define his role that the Commission would want him to play in terms of administrative approvals.

After a brief discussion, **Ms. Leduc moved and Mr. Ligor seconded to adopt the changes made to the Bourne Conservation Commission’s Flood Zone Policy.** The motion carried. 5-0-0.

- Vote excused Absent Members, if necessary –

Chm. Gray entertained a motion to excuse the absent members. **Mr. Szwed moved and 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 accept the minutes of the February 16, 2017 meeting. After a brief discussion, **Ms. Leduc moved and Mr. Ligor seconded to accept the minutes of the February 16, 2017 meeting as amended.** The motion carried. 4-0-1. Mr. Holmes abstained.

- Report of the Conservation Agent – None.

- Public Comment – None.

- Correspondence –

**Mr. Ligor moved and Mr. Holmes seconded to send Betsey Kiebala a letter of thanks from the Town and the Conservation Commission for her time spent on the committee.** With no discussion, the motion carried. 5-0-0.

A brief discussion transpired with regard to Ms. Kiebala's tenure on the committee.

- 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. Ligor moved and Mr. Szwed seconded to adjourn.** With no discussion, the motion carried. 5-0-0. The meeting adjourned at 8:35 PM.

Minutes submitted by: Carol Mitchell