

CONSERVATION COMMISSION MINUTES

August 21, 2014 ~ 7 pm ~ Lower Conference Room, Bourne Town Hall

Chm. Gray called meeting to order at 7:00 pm and explained the Commission's procedure pursuant to the Wetland Protection Act M.G.L. c. 131, s. 40 and the Bourne Wetland Protection Bylaw Article 3.7.

Note: Chm. Gray addresses the audience in regards to recording a public hearing. If anyone wishes to record a public meeting, they are free to do so, however, it must be known by the Board and the public. All cell phones are to be placed on vibrate or turned off during the meeting.

Members present: Chm. Bob Gray, Betsy Kiebal, Paul Lelito, Rob Palumbo and Susan Weston. Alternate member Thomas Ligor also present.

Members excused: V. Chm. Martha Craig Rheinhardt, Peter Holmes

REQUESTS FOR DETERMINATION OF APPLICABILITY:

Applicant: Joseph Agrillo, Jr.
File Number: CC14-37
Representative: SAME
Project Address: 206 Presidents Road, Gray Gables
Proposed Project: Install an asphalt driveway with associated walkways and landscaping within a AE Flood Zone and within 100 FT of a Wetland Resource Area

Homeowner is present tonight. Applicant seeks to install an asphalt driveway for access for his father who is disabled.

Brendan Mullaney – the driveway is in the Flood Zone only and there is wetlands 70 FT behind the house. The submitted plans show a wheelchair walkway for access. There will be some heavy equipment used to dig out the driveway and they will use the lower area of the side for drainage. He has no concerns with the project.

No board comment. No public comment.

Lelito moved and seconded by Palumbo a Negative Two Determination. Unanimous vote.

Applicant: Philip Poirier
File Number: CC14-38
Representative: Barbara Frappier, Warwick & Associates
Project Address: 10 Jefferson Road, Gray Cables
Proposed Project: Replace existing cesspool with new Title V septic system within 100 FT of a Wetland Resource Area

Ms. Barbara Frappier – this is a project the board has visited on a couple of occasions. The most recent was the addition of a garage in the front of the house. Part of that was to relocate the septic tank to keep a proper setback for the foundation of the garage. Although the cesspool there is functioning and passed inspection, the applicant wanted to upgrade the entire system, although not Board of Health requirement.

Brendan Mullaney – the system in front of the house as shown will have no disturbances to the coastal bank. This upgrade will be significantly better than the current cesspool. He has no other concerns with the project.

No board comment. No public comment.

Kiebala moved and seconded by Holmes a Negative Three Determination. Unanimous vote.

Applicant: Lisa Dunn
File Number: CC14-39
Representative: James Moore
Project Address: 310D Shore Road, Bourne
Proposed Project: Construct a deck within an AE Flood Zone
Hearing Under State Act Only

Mr. James Moore is not present tonight. Brendan Mullaney explained that all the appropriate paperwork was handed in and the board can hear the application going forward.

Brendan Mullaney – project is in Flood Zone only, there are no other jurisdictional resources within 100 FT. This project is off of Shore Road. He has no concerns with the project.

No board comment. No public comment.

Lelito moved and seconded by Holmes a Negative Two Determination. Unanimous vote.

NOTICES OF INTENT:

Applicant: Ken Vona
DEP File Number: SE7- 1904
Representative: Barbara Frappier, Warwick & Associates
Project Address: 34 Baxendale Road, Cataumet
Proposed Project: Remove existing dwelling including installation of Title V septic system and all associated grading, landscaping, utilities and other appurtenances within an AE Flood Zone and within 100 FT of a Wetland Resource Area.

Ms. Barbara Frappier representing – coastal bank wraps around the entire property. Right now it is a 4-bedroom property and a cesspool near the driveway. Applicant is proposing to take down the house and rebuild on the same footprint. The only difference will remove two small porches and add one porch on the front. There will be some work on the foundation to make compatible with building requirements. Proposing to move septic to the beginning of the driveway. The leaching area will be 150 FT away from the top of a coastal bank per Board of Health requirements. There will be a pump system up to the leaching area. Trenching down the driveway to relocate the water and gas.

Lelito – asked if the block foundation will be repaired. Ms. Frappier responded yes.

Chm. Gray – asked about the stonewall and the pier licensed. Ms. Frappier responded yes to the pier and doesn't remember about the wall. She will check if the wall is licensed and if necessary, Mr. Vona will obtain proper licensing.

Brendan Mullaney – not moving any closer to resource area than currently exists. The new septic system would be a vast improvement over existing conditions. No concerns with the project.

Abutter expressed concern about the load of trucks going over the bridge. Ms. Frappier will have a conversation with Mr. Vona to know what the load is. Chm. Gray suggested contacting Mr. George Sala from the DPW and the Fire Department to see if they are aware of a rating on the bridge.

No further board comments.

Lelito moved and seconded by Holmes to close the public hearing. Unanimous vote.

Brendan Mullaney – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to MGL, Chapter 131, Section 140 numbers 1-6,9,10,12-13; 16-24 and Special Conditions to the Bylaw 4,6,7,8,9. Special Conditions 20 and 24 to continue in perpetuity.

Weston moved and seconded by Holmes to move Draft Order of Conditions to Final Order of Conditions. Unanimous vote

Applicant: Richard & Tamar Irving
DEP File Number: SE7-1903
Project Address: 5&12 Prospect Avenue, Pocasset
Representative: Bracken Engineering
Proposed Project: Raze and rebuild of existing single-family dwelling with a plan of landscaping, utilities and appurtenances within 100 FT of the Wetland Resource Area
CONTINUED FROM 7/24/14

Chm. Gray recused himself from discussion and vote as he has a working relationship with Bracken Engineering. Paul Lelito to chair the meeting.

Mr. Zac Basinski representing – most of the work being done at 12 Prospect Avenue. Looking to do also perform work on the right of way between 5 & 12 Prospect Ave. Raze and rebuild house within 75 FT of wetland area. Proposing to rebuild new structure and install new septic with denitrification within the 150 FT buffer to the wetland. The new house will have an overall reduction in nitrogen loading with the alternative system as well as reducing the bedrooms from 6 to 4 bedrooms. All disturbance will be done on the existing property.

Brendan Mullaney – met with Mr. Basinski to move wetland delineation slightly closer to the project based on vegetation. It is an isolated wetland area. There are some steps on the paper street between 5 & 12 that will be replaced. Nitrogen removal system will be a vast improvement over the existing conditions, which is a cesspool. No other concerns with the project.

No board comment and no public comment.

Palumbo moved and seconded by Holmes to close the hearing. Unanimous vote.

Brendan Mullaney – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to MGL, Chapter 131, Section 140 numbers 1-6,9,10,12-13; 16-24 and Special Conditions to the Bylaw 4,6,7,8,9. Special Conditions 20 and 24 to continue in perpetuity.

Holmes moved and seconded by Kiebala to move Draft Order of Conditions to Final Order of Conditions. Unanimous vote.

Chm. Gray back to chair the meeting.

CERTIFICATE OF COMPLIANCE

<u>Applicant:</u>	Walter Federow
<u>DEP File Number:</u>	SE7-1864
<u>Representative:</u>	Field Resources, Inc.
<u>Project Address:</u>	69 Bellavista Drive, Pocasset
<u>Proposed Project:</u>	Construct an addition, garage and driveway to existing single-family dwelling within 100 FT of a Wetland Resource Area

Brendan Mullaney – conducted a site visit and has determined compliance with the order. He recommends to grant.

Holmes moved and seconded by Kiebala to grant Certificate of Compliance. Unanimous vote.

Other Business

► 13A River Road – update on Restoration Plan to address Enforcement Order

Brendan Mullaney – Mr. Agrillo not able to make it tonight. There are revised plans with additional planting in the buffer zone and showing a pathway going through the vegetation down to the water. Change of plant list per the Commission. The criteria is what was asked and there is some planning on the planting in September.

► 2,8,10,12,18,22 Indian Trail, Sagamore Beach – request by homeowners for authorization to file a Notice of Intent requesting to perform work on Town of Bourne property under the care and custody of the Conservation Commission.

Chm. Gray removed himself from the meeting tonight. Paul Lelito to conduct the remainder of the meeting. For the record, Paul stated he left LEC, the company who is here tonight as consultants for the homeowners, seven years ago and has no affiliation with the company. There is no financial interest with the company.

Atty. Troy – handed out his memo to the board tonight. He was asked by the TA Guerino and Brendan Mullaney to answer any legal questions the board may have. He is not here to insert himself into of the deliberations of the board. The determination to be made is the board's decision.

He was asked whether or not there is a prohibition of the construction of revetments on the town parcel based on the Order of Conditions for 4 of the 6 properties in question. He answered in the negative and that it is a burden on the existing properties, not the adjacent property. This is his legal opinion and he has submitted this opinion to the board and town administrator.

Kiebala – asked if the Order of Conditions still apply for the town who owns the property. Atty. Troy said his opinion is predicated on a fact that the revetment will be done on the town's property and not the property owned by the individual homeowners. If it turned out the work was going to be done on part of the private properties, his opinion may not be the same because it is a different question.

Atty. Troy – this is a difficult project to accomplish and there are a lot of hurdles to climb. The big hurdle was Town Meeting when this whole matter originally came to his attention, he urged everyone to get this on the Town Meeting warrant. For Town Meeting to grant a permanent easement, this will require a 2/3 vote. He suggested to the town and property representatives for a Special Town Meeting to know if the town is interested. If an easement is granted, the proponents would still be required to file a Notice of Intent with the Commission. One of the decisions the board has to make is to decide if work proposed on town property is consistent with Wetlands Protection Act and what the statute says.

Lelito – if the board votes in the positive, the board would sponsor the article. Atty. Troy said this does not obligate the Commission. The board is not taking any position whatsoever. It has to be approved on its technical merit. Atty. Troy said he cautioned the town to be careful of

“gifts”. The town itself should have looked down the road to see this happen. Brendan Mullaney said the person who gifted the land should have done research before offering to the town as a gift.

Kiebala – asked what happens to the homeowners who are not on the application. Atty. Troy said people impacted by the applicants, they would represent themselves. Listen what is involved and take action as appropriate.

Mr. James Mulvey – asked who has powers over the Conservation Land? It is the Conservation Commission. In his opinion, he gave clarification that if the work is approved and conditions set; the wording on the agenda doesn’t reflect that. The agenda doesn’t imply there is a procedure that needs approval and conditions set.

Brendan Mullaney – this discussion tonight has nothing to do with approval of the work; it is a paper request allow the Commission to determine whether or not they will authorize the filing of a Notice of Intent for work on town property. Atty. Troy said it is correctly stated in the agenda; the land is under the care of the town, not the work. The property is under the care and custody of the Conservation Commission and not the work to be done.

Lelito – this discussion is not on the technical merit of the project, but rather allowing the proponents to seek permission through an application.

Weston – she was on the board when the Order of Conditions were made for these properties and did see issues down the road. Based on that, the homeowners knew when they were building the houses that there would be issues with the bank and that a revetment could not be built to protect it. In summary, the board is entrusted of protection of our resources, which is the beach. It is ludicrous to allow someone to build revetments as the beaches will go. The revetments disrupt the natural happenings of the beach. We are wasting their time and money and the board’s energy. She feels the board should not allow the proposed work.

Kiebala – feels the board should allow the homeowners to file and to take their chances.

Ligor – he agrees with Ms. Weston with focusing on saving the beach, but the board should concentrate on the bay itself. Lelito said this is not up for discussion tonight.

Public comment

Mr. Don Perry – the homeowners are interested in saving the embankment and to reduce erosion of the beach. Mr. Stan Humphries is here tonight to discuss design. We also have North Sagamore Water Commissioners letter addressing their concerns as well and supporting the project.

Palumbo – is conflicted as the board has regulations to go by. Hearing from Mr. Humphries and others is great, but he has to follow the regulations. He feels the homeowners are going to have a hard time getting through the regulations.

Brendan Mullaney – at the last meeting there was questions that needed Atty. Troy to clarify. At this point, the only real crux of the discussion is the decision of the board to authorize a Notice of Intent. In his opinion it is a yes or no question. Anything else would have to be discussed at another meeting.

Mr. Mulvey – other than town land being used, simple questions as to whether or not to allow the homeowners to file a Notice of Intent. Palumbo said to Mr. Mulvey that is the second step; the first step is the Commission to propose a project on our land.

Lelito – this is a decision based on what Atty. Troy has said tonight.

Barbara Sullivan – for the Jones family. She clarified that the deed restriction did not attach to the town land. The town land is free and clear of all encumbrances. We have a history battle stabilizing the bank and it is successful. This is not brand new and has been tested on our beach and something we feel strongly about.

A member from the North Sagamore Water District is in support of this project as stated in the letter written.

Abutter from Indian Trail worries about the septic tanks falling further down the cliffs; having on the beach will condemn the beach.

Abutter from Indian Trail is in support of the project. He said the issue will just get worse.

Ms. Horne – asked how the town received the land. Atty. O'Connor, for the applicants, explained the land was given to the Bourne Conservation Trust in the 1980's and to the town in 2005.

COMMISSION VOTE:

Holmes moved and seconded by Kiebala to allow homeowners to file the Notice of Intent. Vote 3-1. Weston opposed. The motion carries.

► Approval of Minutes – June 19, 2014 & July 24, 2014

Lelito moved and seconded by Weston to approve minutes of 6/19/14 as submitted. Unanimous vote.

Weston moved and seconded by Lelito to approve minutes of 7/24/14 as submitted. Unanimous vote.

► Vote – Excuse Absent Members, if necessary

Palumbo moved and seconded by Weston to excuse absent member Martha Craig Rheinhardt. Unanimous vote.

- ▶ Any other business that may legally come before the Commission
 - ▶ Report of the Conservation Agent
 - ▶ Questions and Answers re: MGL Chapter 131 §40 and 310 CMR 10.00-10.99
 - ▶ Questions and Answers re: Town of Bourne Wetland Protection Bylaw (Article 3.7) and BWR 1.00-1.16

Adjourn

Kiebala moved and seconded by Weston to adjourn. Meeting adjourned at 8:00 pm.
Unanimous vote.

Respectfully submitted - Lisa Groezinger, sec.