

## Conservation Commission

### Meeting Minutes

Zoom Meeting Platform

February 3, 2022

#### I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday February 3, 2022, held via Zoom Platform. 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. Chapter 131 § 40, Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. If the Act or the Bylaw don't mutually apply to the review, it will be indicated at the time of review which instrument of law they will be reviewed under.

Note: The meeting was being held via the Zoom platform, and was being recorded, as noted per the "Recording in Progress" icon that was displayed. 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 due 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:** Bob Gray, Greg Berman, Peter Holmes, Elise Leduc-Fleming, Rob Palumbo, Paul Szwed, Associate Member Steve Solbo

**Excused members:** Tom Ligor

**Others in attendance:** Stephanie Fitch, Zac Basinski, Bradley Bertolo, Jay Boeri, Michael Borselli, "Brian", Jamy Buchanan Madeja, Esq., Barbara Connolly, Cheryl Champin, Keith Champin, Cara DeAngelo, Paul DeAngelo, Jim Filbin, Jeff Goldstein, "JDF", Richard Libin, Jared MacDonald, Thomas O'Connor, Tracey Peyler Goldstein, Joe Roy, George Sala, "tmacdonald", Glen Wood, "Zoom User", "774-313-9864"

#### Continuances:

1. Cape Club Building, Inc  
96 Megansett Road, Cataumet  
File Numbers SE7-2171 and SE7-2172  
*Both file numbers continued to February 17, 2022*
2. Applicant: Michael Kenny  
Address: 3 Red Brook Pond Drive, Cataumet  
File Number: SE7-2185  
*Continued to February 17, 2022*

RECEIVED  
2022 FEB 24 AM 10:18  
TOWN CLERK BOURNE

**Request for Determination:**

1. Applicant: Eversource Energy  
Address: Line 107-340 Otis Substation 915, Bourne  
Representative: Tighe and Bond  
File Number CC22-00

The installation of a new utility pole structure within the existing right-of-way off of Canal View Road at Substation 915 within Joint Base Cape Cod, Bourne. This project is within 100 feet of a Wetland Resource Area.

Ms. Amanda Houle addresses the board and shares the proposed plan. She reviews the plan, and goes into detail of the location of the plan. Ms. Houle reviews a maintenance plan that is proposed for the location as well. She specifically discusses a "Structure 34B" and its relation to the project. The Wetland Resource Area is noted, and Ms. Houle makes mention that this filing is only under local filing, as it does not fall under the Wetlands Protection Act. The Wetland Resource Area is however, regulated under the Town Bylaw. Specific placement of the proposed pole is discussed, and is noted to be installed three feet off of the edge of the Wetland. More specifications of the plan are reviewed. Ms. Houle notes that there is no proposed excavation or grading of the Wetland. She opens the discussion to questions and comments.

Ms. Stephanie Fitch comments regarding the possibility of removing the existing fence to carry out the installation of the pole. She notes that it was discussed that this alternative was not possible, but the plan does include an alternative to protect the Wetland Resource Area. The area is listed as a Priority Habitat, but no rare species have been identified in the area. Ms. Houle responds, noting the best management practices will be utilized to comply with the Priority Habitat requirements.

*Member comment:* None.

*Public comment:* None.

Motion made by Mr. Holmes, and seconded by Mr. Szwed to approve the request with a Negative Two Determination. **Motion carries 6-0-0.**

Ms. Houle requests to be able to start the work tomorrow. Chm. Gray reviews the definition of an approval with a Negative Two Determination. Ms. Houle verbalizes understanding.

**Notice of Intent:**

1. Applicant: James W. Swent III  
Address: 52 Baxendale Road, Cataumet

Representative: David R. MacLean, Architect  
File Number: SE7-2187

Vista prune all Sumac to a height of five feet high to match existing hedge along top of banks and to remove existing invasive Bittersweet on entire bank in perpetuity. This project is within 100 feet of a Wetland Resource Area, and in a V Flood Zone.

Mr. David MacClean addresses the board and reviews the plan. He notes that all of the work will be done by hand, and discusses the access points to the banks.

*Member comment:* Mr. Szwed requests clarification of where the sumac is located in the area. Mr. MacLean provides requested clarification. Mrs. Leduc-Fleming questions how the Bittersweet will be removed. Mr. MacLean reviews the proposed plan to remove the Bittersweet, stating that the work will be done by an arborist and in a sensitive manner. Mrs. Leduc-Fleming questions whether the arborist is a licensed herbicide applicator. Mr. MacLean provides requested information. Mrs. Leduc-Fleming questions if there is a plan for disposal of any Bittersweet that is removed via cutting. Mr. MacLean reviews the requested clarification. Mr. Berman comments regarding the removal of Bittersweet, stating the timing of the removal may of greater importance than where it is being disposed. Mr. MacLean responds. Discussion ensues regarding the phrasing of the proposed maintenance of the height of the Sumac. Clarification was provided. It was noted that a site visit was conducted. Mrs. Leduc-Fleming requests the approximate amount of invasive species noted at the time of the site visit. Requested information provided. Duration of the project is discussed. Request for the Notice of Intent to be in perpetuity is discussed as well. No additional member comment.

*Public comment:* None.

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to close the hearing. **Motion carries 6-0-0. The hearing is closed.**

***Draft Order of Conditions:***

*All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:*

*1, 2, 3, 7, 12, 19, 22, 27, 28*

*Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:*

*4, 7*

*Additional Special Conditions:*

*The arborist must be a licensed herbicide applicator if herbicides will be used during invasive species removal.*

Motion made by Mr. Holmes, and seconded by Mr. Palumbo to move the Draft Order of Conditions to final. **Motion carries 6-0-0. Order of Conditions is issued.**

2. Applicant: John Sweeney  
Address: 198 North Road, Pocasset  
Representative: Falmouth Engineering, Inc.  
File Number: SE7-2182

Re-align existing driveway, adjust parking, construct a roofed-over patio, install a low-profile landscape wall, fill and re-grade lawn area. This project is within an AE Flood Zone, and within 100 feet of a Wetland Resource Area.

Mr. Mike Borselli addresses the board and shares the proposed plan, and introduces Ms. Barbara Connolly, Architect. Mr. Borselli reviews the site, and Wetland Resource Areas:

- Land under the ocean,
- Beach grass and dune area
- Vegetated area
- Non-eroding Coastal Bank
- AE Flood Zone

Mr. Borselli reviews the main elements of the project:

- Resurface and realign the driveway, changing it from crushed stone to a different surface.
- Eliminate an encroachment to an abutting property. This area will be restored with vegetation.
- Construction of a roofed-over patio area, within the 100 foot Buffer Zone, but outside of the 50 foot Buffer Zone. Minor grading is being proposed in this area.
- Installation of a matching landscape wall to the existing landscape wall, along with regrading for passive recreational use. No proposed vegetation removal in this area.
- Extensive landscape plan, which includes native species planting.

Ms. Connolly addresses the board, and shares additional parts of the plan in detail. She also elaborates on the previously discussed elements of the project. Specifics regarding the proposed plantings are reviewed.

*Member comment:* Mr. Szwed requests further discussion regarding the impact of the proposed landscape wall on the Coastal Bank. Mr. Borselli provides requested clarification, stating the landscape wall will provide enhanced stability for the Coastal Bank. Mr. Berman requests clarification as to how roof runoff from the proposed covered patio will be addressed. Mr. Borselli provides requested

clarification in detail. Mr. Berman questions whether a site visit was performed. Ms. Fitch confirms a site visit was performed. Mr. Berman questions the clarity of the boundary of the coastal dune. He also requests clarification of the location of the landscape wall in relation to the coastal dune. Mr. Borselli reviews the requested information. Mr. Berman questions whether anything is being proposed to be done with the existing vertical wall. Mr. Borselli states that nothing is proposed to be done with the existing vertical wall, as it is stable and has existed in the current location for some time. Photos are reviewed. Mrs. Leduc-Fleming questions if there is any current activity going on at the site. Mr. Borselli confirms there was work unknowingly being done on the site, but has since been discontinued. Ms. Fitch questions whether the roof-over patio is only a patio and does not include any proposed bathrooms, foundations, etc. Ms. Connolly provides clarification that a bathroom is proposed, but all of the work for the bathroom is proposed to be outside of the 100 foot Buffer Zone. No additional member comment.

*Public comment:* None pertaining to Conservation concerns.

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to close the hearing. **Motion carries 6-0-0. Hearing is closed.**

*Draft Order of Conditions:*

*All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:*

1, 2, 3, 4, 7, 10, 12, 14, 15, 18, 19, 24, 26, 27, 28, 29

*Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:*

4, 6, 7

Motion made by Mr. Holmes, and seconded by Mr. Palumbo to move the draft Order of Conditions to final. **Motion carries 6-0-0. Order of Conditions is issued.**

Chm. Gray recuses himself for the remainder of the public hearings. Mr. Palumbo steps in.

3. Applicant: Thomas P. and Diane O'Connor  
Address: 9R Main Street, Buzzards Bay  
Representative: JC Engineering, Inc.  
File Number: NOT AVAILABLE

Construction of a two-family dwelling within an AE Flood Zone, and within 100 feet of a Wetland Resource Area.

*Application will be automatically continued due to a pending File Number.*

Mr. Brad Bertolo addresses the board shares the plan and reviews the Resource Areas:

- Coastal Beach
- Coastal Dune
- Coastal Bank
- AE Flood Zone

Proposed site plan as well as proposed use of the property is reviewed. Access to the property is discussed. Plan for waste water removal is discussed. Photos of the retaining wall area are viewed, and grade of the existing retaining wall is discussed. There is a plan for installation of a catch basin and sub-surface leeching to catch roof run-off. Mr. Bertolo opens the discussion to questions.

*Member comment:* Mrs. Leduc-Fleming questions if there are erosion controls, or a limit of work proposed for the plan. Mr. Bertolo provides clarification, noting a proposed limit of work. Mr. Berman notes a fair amount of gravel fill that was discovered during a site visit, questioning if that material was permitted to be placed. Mr. Bertolo responds, stating that work was permitted in 2014, but that work was done under a different permitting company. He cannot speak to the timeframe that the gravel was actually placed. He does not believe it was recent, but does believe it was permitted. Mr. Berman expresses concern regarding the flow of surface run-off, the proposed placement of fill redirecting the flow, and the effect of this proposed change on surface run-off. Mr. Bertolo reviews upgrades that were made to the proposed plan regarding this concern. Additional questions are asked, with concerns pertaining to scour under the wall due to potential surface run-off. Mr. Bertolo responds to this concern. No additional member comment.

Ms. Fitch comments regarding the previous Order of Conditions that was approved in 2014, stating that there has not been a Certificate of Compliance issued for that Notice of Intent. Mr. Bertolo responds, stating that he was not involved in the permitting at that time, but can look into that. Ms. Fitch makes comment in regard to the amount of fill proposed to come into the property, creating a great elevation change. Mr. Bertolo discusses the reasoning behind the proposed amount of fill.

*Public comment:* Cara DeAngelo has questions regarding a request made by the Planning Board for an amendment to the plan. Mr. Bertolo responds, stating that there are no granted easements on the property. Ms. Fitch confirms there are no easements recorded with the Registry of Deeds, but understands the public concern. Discussion ensues, and is discontinued as the comment does not pertain to environmental impacts.

Continued to February 17, 2022 with the consent of the board and the representative.

4. Applicant: Martin Raynor  
Address: 15 Bay Drive, Bourne  
Representative: Bracken Engineering  
File Number: SE7-2183

The construction of a single-family dwelling and attached garage with any and all associated utility work, grading, landscaping, and appurtenances. This project is within an AE Flood Zone.

Mr. Zac Basinski addresses the board and shares his screen with the proposed plan. The lot was not previously considered buildable due to former Flood Zone mapping. With the change in Flood Zone to an AE Flood Zone, the lot is now considered buildable. The plan for construction is discussed in detail.

Ms. Fitch states this is a straightforward project with a completed site visit completed January 24, 2022. She does not identify any issues with the filing as proposed.

*Member comment:* None.

*Public comment:* Mr. Joe Roy comments, as an abutter to the proposed project, he had some questions regarding the plans, but the presentation has provided clarification. No additional public comment.

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to close the hearing. **Motion carries 5-0-1. Hearing is closed.**

Draft Order of Conditions:

*All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:*

*1, 2, 3, 4, 7, 10, 12, 15, 16, 18, 19, 27, 28, 29*

*Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:*

*Not applicable as the project is located in an AE Flood Zone only.*

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to move the draft Order of Conditions to final. **Motion carries 5-0-1. Order of Conditions is issued.**

5. Applicant: Brian and Tracy MacDonald

Address: 805 Scenic Highway, Bournedale  
Representative: Bracken Engineering, Inc.  
File Number: SE7-2184

The construction of a proposed single-family addition onto an existing pre-1996 single-family dwelling, along with the associated site grading, utility upgrades, landscaping, and Title V septic system installation. This project is within 100 feet of a Wetland Resource Area, ACEC Area, and within 200 feet of a Riverfront.

Mr. Zac Basinski addresses the board and shares his screen with the proposed plan. He reviews the Resource Areas on the site as well as the proposed project in detail. Work is proposed within the 200 foot Buffer Zone, with no impact on the Resource Area.

Ms. Fitch comments regarding the project, stating a site visit was completed February 2, 2022. She notes the area is highly developed and has been greatly altered by human activity. She sees the proposed project as an upgrade to existing conditions, and expresses no concerns.

*Member comment:* Mr. Palumbo questions clarification of where the existing dwelling is located on the property. Mr. Basinski provides requested clarification.

*Public comment:* None.

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to close the hearing. **Motion carries 5-0-1. Hearing is closed.**

***Draft Order of Conditions:***

*All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:*

*1, 2, 3, 4, 5, 7, 10, 12, 14, 15, 16, 18, 19, 27, 28, 29*

*Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:*

*5, 6, 7, 8, 9*

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to move the draft Order of Conditions to final. **Motion carries 5-0-1. Order of Conditions is issued.**

6. Applicant: David E. and Robert H.  
Address: 724 MacArthur Boulevard, Bourne  
Representative: Bracken Engineering, Inc.  
File Number: SE7-2186



A proposed building addition, expanding and reconfiguring the parking lot, upgrading the onsite utilities, installing a proposed pool and associated hardscape, and implementing a new proposed rain garden along with associated grading and landscaping. This project is within 100 feet of a Wetland Resource Area.

Mr. Basinski addresses the board and shares his screen with the proposed plan. He notes this project was before the Conservation Commission in 2017 to clean up and grade the site. That part of the project has been completed, as well as the installation of a retaining wall. The project of installation of a gravel parking log was initiated, and discontinued by the previous Conservation Agent. The plans have since been permitted by the Planning Board. Current proposed plan is reviewed in detail, including maintaining the existing block retaining wall. Storm water treatment is reviewed and has been approved by the Planning Board.

Ms. Fitch reviews the plans and property, and notes that the Wetland Resource Area has potential to support amphibian breeding per the previous Conservation Agent. That Agent recommended a 50 foot "no touch" Buffer Zone, which has been accomplished by the proposed plan. There was mention of placement of a "Frog Log" at the time of the original plans from 2017. Site visit completed. Ms. Fitch requests clarification regarding grading that is proposed to be done on the site. Mr. Basinski provides requested clarification.

*Member comment:* None

*Public comment:* None.

Motion made by Mr. Holmes, and seconded by Mrs. Leduc to close the hearing.  
**Motion carries 5-0-1. Hearing is closed.**

***Draft Order of Conditions:***

*All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:*

*1,2,3,7,9,10,11,12,14,15,18,19,21,26,27,28,29*

*Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:*

*2, 3, 4, 5, 6, 7*

***Additional Special Conditions:***

*Inclusion of a "Frog Log" in the proposed fresh water pool.*

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to move the draft Order of Conditions to final. **Motion carries 5-0-1. Order of Conditions is issued.**

### **Certificate of Compliance:**

1. Applicant: Dave Hobaica  
Address: MacArthur Boulevard, Bourne  
Representative: Bracken Engineering, Inc.  
File Number: SE7-1989

The proposed project includes clearing for the future installation of an in-ground pool.

Mr. Basinski provides clarification regarding work that was completed under this Certificate of Compliance, being

Comment by Ms. Fitch commending the plan. She makes note of two dumpsters located on the property, expressing concern regarding both trash and water pollution with the tops of the dumpsters being open. Suggestion made by Ms. Fitch as well to adjust the proposed erosion controls prior to beginning construction, pending that the plan is approved.

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Holmes to issue the Certificate of Compliance. **Motion carries 5-0-1. Certificate of Compliance is issued.**

### **Approval of Meeting Minutes:**

- February 18, 2021
  - Motion made by Mr. Szwed, and seconded by Mr. Holmes to approve the minutes as written. **Motion carries 6-0-0. Minutes approved.**
- January 20, 2022
  - Motion made by Mr. Holmes, and seconded by Mr. Berman to approve the minutes as written. **Motion carries 5-0-1. Minutes approved.**

Chm. Gray rejoins the meeting.

Attention is then turned to proposed amendments to the Bourne Wetland Regulations. Mr. Mike Borselli joins the Commission in this discussion. Present for the discussion are Atty. Jamy Buchanan Madeja, Atty. Glen Wood, and Mr. Michael Borselli, along with the board members. Mr. Borselli initiates the proposition. He provides reasoning behind proposing the amendments, as well as supporting examples. Atty. Jamy Buchanan Madeja reviews the proposed language of the amendments. Atty. Glen Wood reviews additional supporting information.

*Public comment:* Mr. Palumbo agrees with the proposed plan to amend the Regulations. He discusses in further detail his reasoning as to why he agrees. Mr. Szwed shares specific parts of the amendments that he finds positive, as well as parts that may need

further attention. Mrs. Leduc-Fleming comments, requesting further clarification and specification of certain parts of the amendment. Discussion ensues. Chm. Gray notes that this process is in the early stages, and will likely involve additional departments and committees at a later time. Mr. Berman continues the discussion. Atty. Madeja provides clarification of certain portions of the amendment that were reviewed. Mr. Holmes expresses concern regarding specific language, and suggests that it should be reviewed more closely. Mr. Solbo states that he agrees with Mr. Palumbo's comments, as well as Mrs. Leduc-Fleming's comments, and provides additional commentary. Chm. Gray discusses seasonal vs. permanent commentary that was brought up by Mr. Berman. Additional information is provided and conflicts that have arisen in the past are discussed.

*Public comment:* Mr. Jeff Goldstein provides comments and concerns regarding his personal property. Chm. Gray questions Mr. Borselli what Flood Zone Mr. Goldstein is in. Flood Zone provided by Mr. Borselli. Mr. Richard Libin from the Shore and Harbor Committee addresses the board, and agrees with the potential amendment. Mr. Szwed questions if there would be a specific committee, or persons, that may serve as a resource to research the public benefit of the potential amendment. Atty. Madeja provides requested information. Discussion re-ensues. Mr. Libin discusses potential benefits to the Town that may result from the amendment. No additional public comment.

Further discussion ensues regarding permitting and inspection of docks. Potential language pertaining to permitting and inspection is also discussed.

Discussion continued to March 3, 2022 meeting.

#### **Vote to Excuse Absent Members:**

- Motion made by Mr. Palumbo, and seconded by Mr. Holmes. **Motion carries 6-0-0.**

#### **Report of the Conservation Commission:**

- Ms. Fitch reviews administrative information and updates with the board. Brief discussion ensues.

## **II. Adjournment**

- Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Holmes to adjourn the meeting. **Motion carries with a unanimous vote.**

Meeting adjourned at 10:39PM.

Minutes submitted by Fallon Doyle

