

Town of Bourne
Conservation Commission
Meeting Minutes
Zoom Meeting Platform
April 21, 2022

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TOWN CLERK BOURNE

I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday April 21, 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, Peter Holmes, Thomas Ligor, Rob Palumbo, Paul Szwed

Excused members: Greg Berman, Elise Leduc-Fleming

Others in attendance: Stephanie Fitch, Mike Borselli, Janine Harvey, Peter Valeri, Chris Southwood, Mark Kolonoski, Marissa Seifert, Darren Meyer, Carrie Yepsy, Michael Turgeon, Jim Filbin, Zac Basinski, Jeff Hassett, Jennifer Libin, Janet Towle, Michael, Rausch, "JDF", Glenn Wood, Stacy Minihane, Jamy Buchanan Madeja, Esq., "Janine's iPad", Paul Bushueff, Richard Irving, Melissa Ferretti, Tamra Mahey

Continuances (Notice of Intent):

1. Applicant: Padraig Duncan
Address: 9 Wallace Point Road, Buzzards Bay
Representative: John S. Chuckran
File Number: NOT AVAILABLE
Continued to May 5, 2022
2. Applicant: Town of Bourne
Address: 0 Shore Road, Pocasset
Representative: Zachary L. Basinski
File Number: SE7-2197

Continued to May 19, 2022

3. Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
Representative: Cape and Islands Engineering, Inc.
File Number: SE7-2172

Continued to August 4, 2022

Abbreviated Notice of Resource Area Delineation:

1. Applicant: MassDOT Highway Division
Address: Cape Cod Canal Area
Representative: HNTB Corporation
File Number: SE7-2181

Proposal to develop transportation alternatives in Bourne and Sandwich, MA in the area of the Cape Cod Canal. Additionally, this project will consider alternatives for the Bourne and Sagamore Bridges, which are under the US Army Corp of Engineers stewardship and jurisdiction. The reason for filing this ANRAD is to aid in the development of preliminary design alternatives and to formally establish the boundaries and type of Wetland Resource Areas within the project limits.

Ms. Marissa Seifert addressed the board, introduced Mr. Mark Kolonoski and Mr. Mike Turgeon, and reviewed the information regarding the Wetland Resources in the area for the future proposed project. She addressed changes that were made and have been submitted to the Commission since the January 20, 2022 meeting:

- Some of the retention ponds that were previously called “ILSF” were constructed in 2004. Those have since been removed from the collected information, as they were constructed November 18, 1996.
- Two features that were previously believed to be ILSF have been changed to “BVW” because Colvert connections from the Canal were discovered.
- There were features that previously had no standing water at the time of delineation, and are now considered to be “ILSF”
- Two certifiable vernal pools have been noted on the plans as ILSF

Two additional questions that were asked prior to this evening’s meeting were also addressed:

- “A few years back, MassDOT gave a presentation on the bridge project. They mentioned installing a new connector road between areas 1 and 3. Is that still being considered?”

Ms. Seifert questioned if that question was regarding a third canal crossing, and if that is the case, that option is no longer being considered. Ms. Stephanie Fitch clarified that there may have been a proposal for a connection to go through the Bournedale area. Mr. Kolonoski responded stating that they cannot speak to a presentation that was previously made to the Commission, but in the current status of the planning process, he is not aware of the potential of there being a

connection on the northern side of the canal. Ms. Fitch appreciated this response. Mr. Holmes commented regarding a previous meeting regarding the proposed plans for the bridge project. He expressed concern regarding the potential for the town of Bourne losing conservation land due to piecemeal development of the project. Mr. Kolonoski responded stating the project is still very much in the data collection phase, and appreciated the concern expressed by Mr. Holmes. Mr. Ligor questioned if the projects for both bridges would go on simultaneously. Mr. Kolonoski responded stating at this time, the project is nowhere near the point of being able to outline the timing of any part of the plan construction. Ms. Seifert addressed the second question that was brought up prior to tonight's meeting:

- "Would MassDOT be willing to move forward with a certification process for the two vernal pools that are eligible for Natural Heritage Certification?"

Ms. Seifert responded stating that MassDOT does not have a policy in place to certify vernal pools that are within private property, and both vernal pools are within private property.

Additional member comment: Mr. Holmes questioned if MassDOT had returned to the previously delineated vernal pools to ensure they either do or do not contain organisms. Ms. Seifert stated that an additional visit has not been made to the aforementioned sites, and there are no current plans that she is aware of to revisit the sites. Mr. Kolonoski confirmed this information as well.

Public comment: None.

Motion made by Mr. Ligor and seconded by Mr. Palumbo to close the hearing. Motion carried 5-0-0. Motion is closed.

Hearing is continued to May 5, 2022 pending a Draft Order of Conditions with consent of the representative and the Commission.

Request for Determination:

1. Applicant: Jessica Murphy
Address: 130 Mashnee Road
Representative: Peter Valeri
File Number: CC22-10

Proposed septic upgrade within an AE Flood Zone.

Mr. Peter Valeri addressed the board and reviewed the proposed plan. Ms. Fitch shared the plans. The current conditions reviewed include an existing cesspool that is proposed to be removed and replaced with a 1,500 gallon tank, and two 500 gallon chambers with a rubber membrane. Lot line setbacks are reviewed as well. Mr. Valeri noted that the goal is to attempt to complete all of the proposed work without removing a large oak tree that lies within the property. He reviewed

where the construction equipment will be entering the property. He opened the discussion to questions.

Ms. Fitch noted that the property is within an AE Flood Zone only, but a small portion of the corner of the property may lay within a V Flood Zone. She noted vast improvement over existing conditions. She requested that the representative be mindful of sediment track out onto the road. Mr. Valeri is amenable to this request.

Member comment: None.

Public comment: None.

Motion made by Mr. Palumbo and seconded by Mr. Ligor to approve the request under a Negative Two Determination. **Motion carried 5-0-0. Request for Determination is approved under a Negative Two Determination.**

2. Applicant: Janine Giambarresi
Address: 21F Nautical Way, Buzzards Bay
Representative: Morse Engineering, Co., Inc.
File Number: CC22-11

Proposed reconstruction of a cottage on existing foundation. This project is in a V Flood Zone and within 100 feet of a Wetland Resource Area.

Mr. Jeff Hassett addressed the board and shared his screen. The site plan is reviewed. The property currently includes an existing foundation, a deck, a gravel driveway, as well as lawn and landscaped areas. Mr. Hassett reviewed the Wetland Resource Areas located on the property:

- Buttermilk Bay
- Land subject to coastal storm flowage (V Flood Zone)
- Salt marsh

Due to the reconstruction being proposed on the existing foundation, there will be no disturbance to the land or to any Resource Area. Mr. Hassett addressed the proposed erosion controls in the form of a siltation fence. It is also noted that all material storage will be in the front yard, and the material that is currently located in the back yard will be moved to the front yard. He opened the discussion to questions.

Member comment: Mr. Szwed questioned if there are any alterations proposed to the existing gravel drive. Mr. Hassett confirmed there are not any alterations proposed. No additional member comment.

Ms. Fitch reviewed rationale behind the submission of a Request for Determination as opposed to a Notice of Intent. She appreciated the plan for a siltation fence. She believed it will meet the Performance Standards at this time.

Public comment: None.

Motion made by Mr. Holmes and seconded by Mr. Ligor to approve the request under a Negative Two Determination. **Motion carried 5-0-0. Request for Determination approved under a Negative Two Determination.**

3. Applicant: Geoff Harvey
Address: 50 Tahanto Road, Pocasset
Representative: Meyer and Sons, Inc.
File Number: CC22-12

Proposed septic upgrade. This project is in an AE Flood Zone.

Mr. Darren Meyer addressed the board and shared his screen. The existing Title V septic tank and leech pit failed inspection. The proposed plan includes a new 1,500 gallon tank and leeching chambers. He noted the entire system is within the AE Flood Zone only. He opened the discussion to questions.

Ms. Fitch reviewed this plan with the Board of Health due to multiple Board of Health variances being requested. She is pleased to see the proposed system further away from the Resource Area. Ms. Fitch requested that the representative be mindful of sediment track out onto the road. Mr. Meyer is amenable to this request.

Member comment: None.

Public comment: None.

Motion made by Mr. Palumbo and seconded by Mr. Ligor to approve the request under a Negative Two Determination. **Motion carried 5-0-0. Request for Determination approved under a Negative Two Determination.**

4. Applicant: Peter Way
Address: 0 Bell Buoy Road, Cataumet
Representative: Falmouth Engineering, Inc.
File Number: CC22-05

License existing seasonal pier, ramp, floats, and stone groin in Hen Cove. This project is in a V Flood Zone and within 100 feet of a Wetland Resource Area.

Mr. Mike Borselli addressed the board and shared his screen. He noted the reasoning for filing for Request for Determination is to hopefully proceed with the application for a Chapter 91 Water License. Mr. Borselli addressed the previous discussion with the Commission at the April 7, 2022 meeting regarding determining the age of the existing structure. Aerial photos were reviewed from

the Cape Cod Commission chronology viewer, and it has been determined that the structure has been in existence since at least 1984. He noted that the structure pre-dates the requirements under the town of Bourne regulations that were brought into effect in 2000. Mr. Borselli stated that he attempted to reach out to the Division of Wetlands and Waterways, but has not received a response as of yet. He opened the discussion to questions

Ms. Fitch stated she has nothing additional to add as the representative has reached out to the Division of Wetlands and Waterways with no response as of yet.

Member comment: Mr. Ligor requested confirmation that the pier is seasonal. Mr. Borselli provided clarification that the system, which includes a walkway, ramp, and floats, is seasonal. Mr. Ligor requested confirmation that the structures will be stored off-site in the off-season. Mr. Borselli confirmed the structures will be stored off-site at Cataumet Boat Yard. Mr. Palumbo commented stating that he had a conversation with a gentleman who lives in the neighborhood and is presently 57 years of age, and remembers being on this specific structure when he was eight years of age.

Public comment: None.

Motion made by Mr. Ligor and seconded by Mr. Palumbo to approve the request under a Negative Two Determination. **Motion carried 5-0-0. Request for Determination approved under a Negative Two Determination.**

Notice of Intent:

1. Applicant: Town of Bourne
Address: 789 Shore Road, Pocasset
Representative: Timothy Lydon
File Number: SE7-2196

Coastal access stairway installation on a Coastal Bank. This project is within 50 feet of a Salt Marsh, within an AE Flood Zone, within an ACEC, and within 200 feet of a Riverfront.

Mr. Timothy Lydon addressed the board and shared his screen. He addressed the concerns that were discussed at the March 17, 2022 meeting:

- Two foot separation of the infrastructure with the existing slope
- Removal of the risers on the stairs

Previously proposed Sonotubes that were proposed by the beach area have been removed and are proposed to be replaced with helical piles, or diamond piers. The final decision will be noted in the specifications of the final plan that will be generated by the contractor that the representative will be working with.

Mr. Lydon discussed the plan to bring in locally sourced fill, as well as erosion solutions. The previously proposed coir logs have been removed from the plan and replaced with waddles. He opened the discussion to questions.

Ms. Fitch stated a site visit was completed. She commented that with the proposed changes to the plan that it meets the Performance Standards and provides improvement over existing conditions.

Member comment: Mr. Ligor questioned whether the plan is to have visitors drag their kayaks down the proposed stairway. Mr. Lydon confirmed this is the plan. Mr. Ligor questioned if the piles that are proposed to be installed will disrupt the bank in any manner. Mr. Lydon confirmed that any disruption is planned to be remediated. Ms. Fitch also noted that the diamond piers would be hand dug at the base of the Coastal Bank. The other areas where the Sonotubes are proposed to be placed has already been immensely disturbed. Mr. Szwed requested clarification regarding the width of the stairs. Ms. Fitch reviewed the plan and confirmed the width of the stairs is proposed to be four feet. Mr. Lydon also responded stating that the specification can be discussed and confirmed with the contractor to ensure the width of the stairs would be four feet. No additional member comment.

Public comment: None.

Motion made by Mr. Holmes and seconded by Mr. Ligor to close the hearing.
Motion carried 5-0-0. 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, 6, 7, 10, 12, 14, 19, 21, 27, 28

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

5, 6, 7

Motion made by Mr. Holmes and seconded by Mr. Ligor to move the Draft Order of Conditions to final. **Motion carried 5-0-0. Order of Conditions is issued.**

2. Applicant: Josephine B. Smith
Address: 4 Richmond Road, Pocasset
Representative: Bracken Engineering
File Number: SE7-2201

Proposed installation of a tight tank with associated grading, landscaping, and appurtenances. This project is within an AE Flood Zone.

Chm. Gray recused himself from this hearing. Mr. Palumbo stepped in to chair the meeting.

Mr. Zac Basinski addressed the board and shared his screen. The property was previously before the board for installation of a conventional septic system, but that system was not approved through the Board of Health. The current project proposes removal of existing cesspools with replacement of a 3,000 gallon tight tank. There will be dewatering required for the installation of the new tight tank. Mr. Basinski noted the new tank will be flood-compliant and buoyancy-compliant, and will provide a decrease in nitrogen loading. He opened the discussion to questions.

Ms. Fitch reviewed the proposed plan, and noted the proposed project is outside of the 100 foot Buffer Zone on all sides. She also discussed that the plan is within an AE Flood Zone only, and is an improvement over existing cesspools. Ms. Fitch has discussed the plan with the Board of Health, and the plan is expected to be presented to the Board of Health in May. She requested that the representative be mindful of sediment track out onto the road. Mr. Basinski is amenable to this request.

Member comment: Mr. Ligor and Mr. Holmes appreciated the proposed plan for removal of existing cesspools. No additional member comment.

Public comment: None.

Motion made by Mr. Holmes and seconded by Mr. Ligor to close the hearing.
Motion carried 4-0-1. Hearing is closed.

Draft Order of Conditions:

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

1, 2, 3, 5, 7, 10, 12, 19, 27, 28, 29

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

5, 6, 7, 9

Motion made by Mr. Holmes and seconded by Mr. Ligor to move the Draft Order of Conditions to final. **Motion carried 4-0-1. Order of Conditions is issued.**

Certificate of Compliance:

1. Applicant: Richard and Tamar Irving
Address: 12 Prospect Avenue, Pocasset

Representative: Bracken Engineering
File Number: SE7-1903

Raze existing dwelling and construct a new single-family house with associated grading, landscaping, and utilities. This project is within 100 feet of a Wetland Resource Area.

Ms. Fitch confirmed that a site inspection was made, and reviewed the work that was completed at the site. She recommended issuance of the Certificate of Compliance.

Chm. Gray recused himself from this vote as Bracken Engineering is the representative for the project.

Motion made by Mr. Palumbo and seconded by Mr. Holmes. **Motion carried 4-0-1. Certificate of Compliance is issued.**

Violation Updates:

- 81 Phillips Road, Sagamore:
 - Ms. Stacy Minihane addressed the board and shared her screen. She reviewed the previous request to maintain the existing in-out driveway on the property, as well as the mitigation plan. She reviewed the changes that were made to the property to bring it into compliance:
 - Changes made to grading
 - Changing paved driveway to pervious surface
 - Removal of existing boulder walls
 - Lawn areas that are proposed to be replaced with native dune plantings
 - Replacing the previously existing post-and-rail fence with crushed stone.
 - Ms. Fitch commented stating that the current planting plan does comply with what the Commission was requesting at the February 17, 2022 meeting. She did express concern about the inability to replace the Black Cherry trees that were previously removed from the site, but noted the lack of ability to obtain Black Cherry trees at this time.
 - *Member comment:* Mr. Ligor questioned when the planting is proposed to begin. Ms. Minihane stated the property owner is willing to begin planting as soon as possible. Mr. Szwed and Mr. Holmes commended the project. Chm. Gray stated he is pleased with the plan as well.
 - *Public comment:* None.
 - Motion made by Chm. Gray and seconded by Mr. Ligor to move the plan presented this evening forward, and to authorize the applicant's representatives to move forward with implementation of the plan. **Motion carried 5-0-0. Proposed plan is approved.**
- 198 North Road, Pocasset:

- Ms. Fitch shared her screen. She reviewed that there was an Order of Conditions approved in February 2022 for a landscape wall and a patio on the landward side of the Coastal Bank. She noted that a site visit was made and there was unpermitted work being done on a coastal dune, coastal beach, and land under the ocean. There was work being done on the groin, which is outside of the limit of work proposed in the Order of Conditions. There were also failed erosion controls, no copy of the Order of Conditions on site, the contractor working on the groin was not familiar with the Order of Conditions, or the limit of work, nor was there a Massachusetts DEP file number posted at the site. An Enforcement Order was issued, and ratification is now being requested.
 - Motion made by Mr. Ligor and seconded by Mr. Szwed to ratify the Enforcement Order issued by the Conservation Agent. **Motion carried 5-0-0. Enforcement Order ratified.** Discussion ensued regarding the requests being made to bring the site into compliance.
 - *Public comment:* Ms. Tamra Mooney questioned if the site will be restored back to its original form. Ms. Fitch responded stated that there will be a Notice of Intent required to carry out any work on the groin, as well as mitigation for the damage that was done on the dune. Chm. Gray commented that there will be further investigation done on the groin to confirm whether or not it is licensed, and if it is, if the work that has been done would void the license. No additional public comment.
- 14 River Road, Pocasset:
 - Ms. Fitch shared photos of previous condition, as well as existing conditions. There have been several attempts made to reach the homeowner or tenant with no response as of yet. Chm. Gray commented that work that was done may be considered an illegal outhaul. Discussion ensued regarding sending a formal Enforcement Order. Decision was made to give the property owner or tenant until the next meeting on May 5, 2022 prior to moving forward with a formal Enforcement Order.
 - *Member comment:* None.
 - *Public comment:* None.

Discussion on BWR 1.16 Dock and Pier Regulations:

Chm. Gray introduced Mr. Chris Southwood, Mr. Rich Libin, Ms. Jamy Buchanan Madeja, and Mr. Glenn Wood. He questioned if there are additional questions or concerns from the DNR director. Mr. Southwood addressed the board and initiated the discussion. He noted regulations from other towns were reviewed such as depths of the float, the distance out, if the structure is seasonal or permanent, and where the line is drawn. Mr. Rich Libin addressed the board and addressed specifications that were discussed including permanency, and reviewed certain parts of the discussion that have been determined, as well as parts that may need to be discussed further. Ms. Jamy Buchanan Madeja, Esq.

reviewed parts of the draft regulation including dock size, association with a residential setting, and public benefit with being able to apply for a dock and pier.

Member comment: Mr. Szwed commented that he believes there may be the possibility to reword some of the Preamble for the proposed regulations. He commented that it was previously discussed to determine what areas should be excluded from being considered for a dock/pier, and the present proposal attempts to define what should be included. He stated further definition may need to be discussed regarding specific language such as “areas near existing mooring fields”, “areas near existing permitted docks” and “harbor of refuge”. Ms. Madeja reviewed the specific language that is in the draft regulation. Further discussion ensued regarding the existing mooring fields, existing permitted docks, and permanency, as well as areas “not susceptible to significant storm damage based on already existing docks in those locations,” dock size, and “harbor of refuge”. Research will be done regarding a formal definition of a “harbor of refuge”. Mr. Palumbo commented that there are specifications that are already noted in the Town of Bourne regulations for docks and piers that are being discussed with the proposed updated regulations.

Public comment: None.

Discussion ensued regarding coordinating a follow up joint meeting with Shore and Harbor, and the Conservation Commission to further discuss this matter. Discussion of regulations continued to an undetermined date, time, and location, pending completion of a Shore and Harbor Meeting

Mr. Ligor left the meeting. Four members remain.

Vote to excuse absent members:

- Motion made by Mr. Palumbo and seconded by Mr. Szwed. **Motion carried 4-0-0. Absent members excused.**

II. Adjournment:

Motion made by Mr. Holmes and seconded by Mr. Szwed to adjourn meeting. **Motion carried unanimously. Meeting adjourned at 8:56PM.**