

Bourne Conservation Commission Meeting Minutes 1/19/2023

Meeting called to order:

Chm. Robert Gray called to order the meeting of the Conservation Commission at 6:30 p.m. conducted in person and via remote access on Thursday, January 19, 2023, held in the Bourne Veterans Community Building, 239 Main Street Buzzards Bay, MA 02532. 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 Section 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Chm. Gray asked if a member of the public wishes to comment they will first clearly state their full name for the record. Chm. Gray also reviewed the 5-5-5 Rule which allows the applicant or representative to make a five minute presentation to the Commission Members, Commission Members will then take five minutes to seek additional information if necessary, and then the public will be allowed five minutes for comment. If the matter is more complex, more time will be allotted. Chm. Gray asked if anyone was recording at this time, other than the Conservation Department.

Commission Members in attendance: Chm. Gray (RG), Greg Berman (GB), Paul Szwed (PS), Susan Weston (SW) & Melvin Peter Holmes (MPH)

Excused members: Rob Palumbo and Tom Ligor

Professional staff in attendance: Stephanie Fitch, Wayne Tavares, Mark Dibb, Brad Holmes & Matthew Watsky

Present by remote access: Melvin Peter Holmes (MPH), Matthew Watsky

Continuances:

140 Wings Neck Road, Pocasset continued to 2/16/23
122 Wings Neck Road, Pocasset continued to 2/02/23
134 Wings Neck Road, Pocasset continued to 2/02/23
83 Elgin Road, Pocasset continued to 2/02/23
68 Elgin Road, Pocasset continued 2/02/23

RDA File No. CC22-40
DEP File No. SE7-2227
DEP File No. SE7-2217
DEP File No. SE7-2226
DEP File No. SE7-2223

Request for Determination:

1. **80 Captains Row, Mashnee Island Peter Gassan % Wet Tech Land Design, Wayne Tavares**
File Number: CC23-1 Proposed Project: Invasive species eradication and replanting of native species. This project is located on a coastal bank, within the 50' buffer to a coastal bank, and within the V flood zone.

Wayne Tavares represented on behalf of the applicant Mr. Gassan. Mr. Tavares flagged the site and explained that no topography will be changed during this project. He identified the resource areas which are located within coastal bank and velocity zone. There are five locations on the property where invasive species will be removed. He noted a revetment and an existing set of stairs on the property. The invasive species to be removed are: bittersweet, porcelain berry and bush honeysuckle. Mr. Tavares shared photos with the Commission and explained the first item is the removal of a hedge that contains all three of the invasive species to be replaced with sweet

Bourne Conservation Commission Meeting Minutes 1/19/2023

fern which has the benefit of a lower hedge. The second item on the right side down the slope next to the existing stairs is a dead black pine with nothing growing around it. The dead black pine will be cut down leaving the root system and replaced with a group of native species. The third item is Rosa Rugosa which is holding the soil really well in that location. They will prune after the summer and after it flowers to keep the hips from creating more fruit. The fourth item proposed is to plant a considerable amount of native species on the bare part of the slope. The fifth and final item is an area of bittersweet which will take the most time to remove and get ahead of. Mr. Tavares said this is a positive conservation project; everything will be done by hand with no heavy equipment.

Agent comment: Ms. Fitch said that planting around the existing seawall will capture runoff before it hits the existing structure and prevent erosion or any sinkhole developments. She asked if any native grasses would be included which would help near the seawall with any wave scour. She also said that most of the native plantings could be growing about 5-7 ft. and asked if any vista pruning would be sought in perpetuity. Mr. Tavares sought to maintain the max height in perpetuity and said that they would be planted strategically with the natural topography and they are looking for the 4-5 ft. max on the slope. There will be no loss of wildlife habitat and the plantings will create more stability. Ms. Fitch asked about erosion control at the base of the seawall and if there were phases of removal that would be done first in regard to the stability of the bank. Mr. Tavares assured it is a non-eroding bank and that the project would take place at once and that the two year monitoring report will capture the success of the bittersweet removal.

Member comment: Mr. Berman asked when the hedge is pulled out if there will be any anticipation with large areas of bare earth for the first season. Mr. Tavares said they plan to start this spring and hopes the system will establish root and they'll have the whole growing season for that to substantiate. They further discussed possible erosion control. Mr. Szwed added to retain the 5 ft. existing buffer and to be mindful of the potential runoff from the top. Chm. Gray asked what the timeline of the project would be and Mr. Tavares said it would take about a week to complete.

The conditions imposed on the project are the following:

1. Wet Tech Land Design and/or CMS Landscape will provide an annual report on the health of the new plantings to the Conservation Agent annually for two years.
2. A 5' vegetative strip landward of the top of coastal bank must be maintained in perpetuity.
3. All work approved under this DOA must be done by hand.
4. Erosion controls must be kept on site and utilized if there is a threat of severe weather or other elevated risk of erosion.
5. The pruning requests as outlined in this Request (black pines and red cedars to 8' and woody shrubs to 4') are granted in perpetuity.

Motion made by GB for a Negative Two Determination with conditions seconded by SW.

Roll call: SW-yes, GB-yes, PS-yes, MPH-yes and Chm. RG-yes.

Motion carried. **5-0-0.**

Notice of Intent:

1. **124 Wings Neck Road, Pocasset Christopher and Donna Kent % Wet Tech Land Design, Wayne Tavares DEP File No.: SE7-2228 Proposed Project:** A proposed Phragmites management plan to be reviewed as an Ecological Restoration Limited Project. The work will take place within the V flood zone and within a salt marsh. **Continued from 1/05/2023.**

Wayne Tavares represented the project on behalf of the Kents. This was filed with the DEP as

Bourne Conservation Commission Meeting Minutes 1/19/2023

an Ecological Restoration Project for Phragmites removal. The size of this project is 5,900 SF. The process is to cut and remove which will maintain starvation of the green leaf of the Phragmites from growing. The cutting will be done by backpack mowers and continued cutting every two weeks in the growing season (September). The first phase would begin this winter whenever the Order is issued. They will cut and remove all of the Phragmites on the property then it would be maintainable as it starts to grow come May. There will be no heavy equipment, it will be by foot and weed whacker style. They are seeking permission for a phase two only in the case they may need it, which involves a plastic covering.

Unsteady Wifi connection which delayed the meeting for a moment.

Agent comment: Ms. Fitch explained that the DEP reviewer cited 310 CMR 10.32(5) which states that a project that will restore or rehabilitate a salt marsh or create a salt marsh, is called an Ecological Restoration Limited Project. This supports the restoration of any salt marsh with the interests of the Act and minimizes any impacts to the resource areas and includes best management practices. Mr. Tavares further explained that by cutting the Phragmites back it prevents photosynthesis and it will die off and he noted herbaceous plants are the hardest to do because they are like grass plants. They are waiting on the DMF comments.

Member comment: Ms. Weston confirmed that the cutting would take place twice a month over 6 months for two years. Mr. Tavares said it will be by observation saying that the second year may only need once a month, they will know if they are winning by monitoring whether or not the salt marsh returns. Mr. Berman asked how low the Phragmites will be cut with the backpack style trimmer. Mr. Tavares said it will be really low on the first cut and the soft growth will come back for the weed whacking. Mr. Berman said it is hard to keep ahead of the Phragmites cutting because the rooted mass has so much energy and he said you might not need to go as low as the ground and maybe put that into a condition. Mr. Szwed said this area looked like it spans more than one property and they will have the continual battle on the property line. Mr. Szwed explained because it is a multiyear effort they need to make sure appropriate conditions are made for each of the phases. Mr. Holmes said the Agent would have to work closely with the project to monitor and photo log whether it is a success or not. Chm. Gray asked what percentage of Phragmites coverage is in the area and if there were any salt marsh grasses. Mr. Tavares said salt marsh growth is trying to happen near the beach but there is an overgrowth of Phragmites that has over taken and there is no organic mix. In order to beat the strong overgrowth of Phragmites it has to be broken down completely so it can turn into that organic mix of salt marsh. Chm. Gray said that the technique of the cutting schedule should zap the Phragmites and produce some positive results. Chm. Gray said that a progress report would be helpful since this is the first NOI for this type of project under an Ecological Restoration Limited Project. There will then be a record from beginning to end of the first growing season to fall back on. Mr. Gray then asked about the restoration planting that is shown on the plan. Mr. Tavares said that was a mistake and there is no mitigation planting proposed for this project, aside from salt marsh grasses if necessary. Mr. Tavares is going to revise and correct the notes on the plan.

Public comment: John York spoke about a past permitted Phragmites removal project that he was involved with off Grasslands Lane at Squeteague Harbor Beach, Cataumet.

This project was continued to 2/02/23.

Bourne Conservation Commission Meeting Minutes 1/19/2023

2. **490 Scraggy Neck Road, Cataumet William Murphy, NW Holdings, LLC % Cape & Islands Engineering, Inc. DEP File No. SE7-2230 Proposed Project:** The installation of a proposed seasonal ramp and bottom-anchored float. The work will take place within a V flood zone and wetland resource areas.

Mark Dibb PE of Cape & Islands Engineering, Inc. represented on behalf of the Murphy's along with Brad Holmes of ECR. Mr. Dibb described the proposed project which will be located on an existing developed single family parcel. He identified Scraggy Neck Road to the South and Northwest Cove which is part of Buzzards Bay to the North. There are two residential dwellings located to the east and west. The resource areas at the site consist of: Land Under the Ocean, Land Subject to Tidal Action, Coastal Bank, Small area of Salt Marsh at the corner of the property, and an existing stone groin licensed by Chapter 91. The proposal consisted of a seasonal float extending off the existing groin which is in a velocity zone. They believe this area of NW Cove and Buzzards Bay is in the proximity of other such piers and moorings and does meet the initial criteria for piers in a velocity zone. It is in a harbor of safe refuge and not susceptible to storm damage as well as the existing docks and moorings in the area. The proposal itself consisted of a 22 ft. long aluminum ramp and two 8 x 16 ft. floats connected together. Those floats will be bottom anchored using conservation bungee moorings to limit any dragging of the chains for the anchors. The floats will also contain float stops that will keep the bottom of the float at 48" above the ground which is why it is proposed for that location. The design of the float has been achieved for the owner who has health conditions, which is described in a letter provided with the Notice of Intent, and is the basis for the floats being 8 x 32 feet long. The narrative provided an analysis of the Town's submission requirements, performance standards for the project and Brad Holmes conducted the shellfish study for the property. The report found no shellfish, however the eelgrass survey did find dense areas of eelgrass beds as well as areas containing eelgrass sprigs. They have outlined that on the plans and have shown separation to the beds in excess of the 25 ft. required setback. They measured 82 ft. from the eelgrass beds that were located, however the ramp and pier are within 19 ft. of the sparse eelgrass sprigs. For that reason based on the performance standards they felt the need to meet the requirement of a 48" separation to the bottom, which is why they proposed the float stops. Lastly, he concluded they do believe they meet the performance standards and he turned it over to Brad Homes. Brad Holmes from ECR performed the eelgrass study and shellfish survey. This site was a little odd to Brad Holmes because he hasn't seen many sites with a cobble bottom in a sense where you can't get a good break in the ground because it's so hard. They covered the area but the only area where you can get any sediment is closer to mean high waterline where there is more gravely sand and that area is also higher up and doesn't get much tidal action and there was no shellfish located there. As far as the eelgrass he said they were able to wade out just about to the end of the existing stone jetty, from there it gets above your chest. They performed the eelgrass study in a kayak where they used an extendable pole with a go-pro camera on the end to record video and it transmits the video to their goggles. This system is made to thoroughly search the ocean bottom from a kayak. They found sandier parts with eelgrass sprigs out further from the cobble-like bottom covered with seaweed. They did find eelgrass beds further out that aligned with what DEP has published in their eelgrass mapping. Brad Holmes said it's hard to tell the migration of the eelgrass from just one review whether or not it is receding and photos were provided with examples in the report. They are able to get fairly accurate measurements from the stone jetty. They have looked at bottom anchors and if the anchor chains would cause any scour. They looked at the potential of pile supported and as he said that area is very cobbled which would be difficult. They designed the float to be parallel to the shore to get it farther away from the eel grass and designed float stops for low tide so that they do not sit on the bottom.

Bourne Conservation Commission Meeting Minutes 1/19/2023

Agent comment: Ms. Fitch is waiting to receive DMF comments and asked for the location of the ramp storage to be on the plan. There was a note on the plan that said it would be in an upland area but she would like more clarification on that. Ms. Fitch would like the mooring number location and signage for passage to be on the site plan as well. Lastly, she needed more time to look into the ADA waiver request and to run that by Town Counsel. She said something to think about is that Conservation moorings are said to only work with regular maintenance.

Member comment: Mr. Berman asked if the number of eelgrass sprigs are less than the number for a bed. Brad Holmes said they are very sporadic and mixed in. Mr. Berman wanted them to confirm that it does not meet the density criteria defined by the regulations. He said it is an interesting project because of the float stops but he said you could slide the whole thing out to the proper depth and that float stops were never intended for people to go in eelgrass to get the 4 ft. separation and that's something for the Commission to think about. Mr. Szwed asked about the anchoring system and that they envisioned seasonal where it all gets removed but in this case it may not make sense to remove the anchors. Ms. Fitch said they did note anchoring separate from the seasonal requirement in the regulations.

No public comment.

Continuance requested to 2/02/2023.

3. **96 Megansett Road, Cataumet Cape Club Building, Inc. % Cape & Islands Engineering, Inc. DEP File No. SE7-2172 Proposed Project:** Construction, licensing and maintenance of an access ramp leading to a walkway, pier, ramp and float in the waters of Squeteague Harbor. **Continued from 1/05/2023.**

Mark Dibb PE from Cape & Islands Engineering, Inc. represented on behalf of the applicant. Mr. Dibb said he updated the project narrative at the request of Ms. Fitch. The revised narrative included the new proposed location of the dock and updated the WPA form 3 with the adjusted values; removed proposed dredging. One of the plan changes since the last meeting was to measure the water body width from mean low water to mean low water. The added red dash line with five tick marks shows the 1/5 across water body. They showed that this current configuration does meet the requirement of not being more than 1/5 across the water body and updated any length and distances shown on the plan. Mr. Dibb said with the current proposed plan they feel they do meet the requirements of the Bourne regulations with the exception of the water depth and distance to existing moorings. He explained there are two moorings in that area and they're currently showing a 76 ft. separation to those moorings. They have reached out to the license holders with no results to get those moved, however they feel if the project does meet all the other requirements the harbor master may be able to move the moorings at the expense of the applicant, as other towns do. He concluded his update.

Agent comment: Ms. Fitch appreciated the updated narrative and she said they also redesigned the walkway over salt marsh to meet the recommendation by DMF as a 1.5:1. She stated the harbor master will not relocate moorings because moorings are private property and made it very clear that it is at the discretion of the private owners. Ms. Fitch said her main concerns were the waiver requests. She said they not meet the setback to moorings and additionally in the narrative it said they needed to use float stops to meet the 18 inch water depth, which was the second waiver she felt was not permissible under the regulations at this time. She is concerned about water depth and clarified that float stops are not allowed to meet the minimum 18 inch required depth. Ms. Fitch said the use of float stops can only be to meet the 2.5 ft in land containing shellfish or 4 ft. for eelgrass.

Bourne Conservation Commission Meeting Minutes 1/19/2023

Member comment: Mr. Berman asked if this is under the current regulations or the old regulations. Ms. Fitch said this is under the new regulations because they relocated the entire structure into the velocity zone. She guessed that it was to meet water depth but they are still not meeting 18 inches. Mr. Berman wanted to make sure they weren't holding on to new regulations because they applied back before the revised regulations. Ms. Fitch said she discussed that with Attorney Watsky and since they moved into the velocity zone they wanted to be considered under the new regulations.

Mr. Watsky stated the point of their presentation was for them to get a sense of how many issues if any remain other than the setback from existing moorings. Ms. Fitch stated under the current regulations there isn't a provided waiver to meet the minimum required 18 inch water depth that must be met. Mr. Watsky asked Ms. Fitch if she had any other issues with the design that doesn't comply. Ms. Fitch said just the two main concerns she stated.

Member comment: Mr. Berman said they've done a great job revising and they've gotten very close but it still doesn't comply with the two concerns mentioned by Ms. Fitch. Mr. Szwed said now that they have shown the 1/5 distance it still doesn't meet the water depth and so it's boxed in between those two requirements. Ms. Fitch elaborated on that and said over time there has been a lot of discussion on that requirement in the Bourne regulations about the 1/5 across the water body. There has been a lot of confusion and she proposed the definition of land under water body which was where the mean low measurement between mean low water came from. Ms. Fitch said Mr. York submitted comments disagreeing with that and said that the definition of waterways 310 CMR 9.02 which is the chapter 91 regulations and not enforced by the Commission, says that definition extends from mean high tide line to mean high tide line and that's something the Commission should clarify. Chm. Gray said they cannot pull from the chapter 91 regulations and it would have to be under the Bourne regulations because chapter 91 is not their regulations.

Mr. Watsky stated they've designed the plan with the context of their set of rules under the comprehensive regulations and applied those standards. Chm Gray agreed with that. Mr. Watsky commented on the float stops. If the Commission's concern is the 18 inch between the docks at all times, does it make a difference if it's floating on the water or held up by float stops. He said it's the same distance and providing the same protection.

Member comment: Mr. Berman said the rationale is where the float may be the proper height if you have a boat tied to it will be lower than they want it. Mr. Watsky said then does one use a boat lift. Ms. Fitch reread the regulations which stated an 18 inch minimum is required for all docks without the use of float stops.

Public comment: John York said the definition of waterbody is not clear in the regulations and that's why he looked for the definition under chapter 91, 310 CMR 9.02. John York shared his screen and several definitions. Chm. Gray said now that dock applications have started and this is a perfect example for the additional need for clarification to wording. What should come out eventually will be the Commission's definition of a waterbody and how to measure it. Chm. Gray said in regards to the moorings, if you do not meet the separation requirement you can reach out to that private owner on your own to resolve the issue of the location. It will be a private matter only between the petitioners of the dock and the person who owns the mooring.

Mr. Watsky will respond in writing and requested a continuance to 2/02/23.

Bourne Conservation Commission Meeting Minutes 1/19/2023

Request for Certificate of Compliance:

1. **23 Mariners Lane, Pocasset Robert Nakashian DEP File No. SE7-041 Proposed Project:** Certificate of Compliance requested for Order of Conditions issued on 11/04/1976. Install four (4) permanent timber piles to secure exist. 20'X 7' float and for mooring purposes.

Ms. Fitch made a site visit on 1/18/23 and recommended issuance of the COC.

Motion made by Ms. Weston to issue the certificate of compliance seconded by Mr. Berman.

Roll call: SW-yes, GB-yes, PS-yes, MPH-yes and Chm. RG-yes.

Motion carried. **5-0-0.**

2. **12 Bryant Road, Gray Gables William Burchill % Bracken Engineering, Inc. DEP File No. SE7-1954 Proposed Project:** Certificate of Compliance requested for Order of Conditions issued on 8/23/2016. To raze the existing home; build a new home, deck, and garage; and install a new septic system and associated utilities within an AE Flood Zone and within 100 feet of a wetland resource area.

Ms. Fitch made a site visit on 1/18/23 and recommended issuance of the COC.

Motion made by Ms. Weston to issue the certificate of compliance seconded by Mr. Berman.

Roll call: SW-yes, GB-yes, PS-yes, MPH-yes and Chm. RG-yes.

Motion carried. **5-0-0.**

General discussion of Bourne Wetlands Regulation's definitions and consulting town counsel about a waiver. Members also discussed an amendment to the bylaw to be placed on the 2023 Spring Town Meeting. The Agent explained that they will need a vote at the next meeting to place an article on the warrant.

Report of the Conservation agent:

1. Ms. Fitch will meet with Mark Robinson, the Executive Director of the Cape Cod Conservation Trusts, Inc., to finally begin reviewing the Mashnee marsh situation.
2. The recycling committee is putting in CPC funding to install 3 water bottle refill stations around town and reached out to see if the Commission supports them. Ms. Fitch will draft a support letter for the Commission to sign at the next meeting.

Motion made to adjourn:

Roll call: SW-yes, GB-yes, PS-yes, MPH-yes and Chm. RG-yes.

Motion carried. **5-0-0**

Audio recorded & minutes edited by Stephanie Fitch- Conservation Agent
Minutes typed by Amalia Amado- Conservation Secretary II
Recorded by Zoom platform

