

Town of Bourne Conservation Commission Meeting Minutes of November 17<sup>th</sup>, 2022

- I. 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 November 17, 2022, held in the Bourne Veteran's 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. Mr. Gray asked if anyone was recording at this time, other than the Conservation Department.
- Members present:** Bob Gray, Robert Palumbo, Greg Berman, Peter Holmes and Tom Ligor
- Excused members:** Paul Swzed, Susan Weston
- Others in attendance:** Stephanie Fitch, Zac Basinski, Brian Madden, Don Bracken, Doug Schneider, Chip Coen, Marcy Jackson, Annie Griffinberg and Maryfrances Galligan
- Present by remote access:** Tom Ligor, Peter Holmes, Don Bracken, Scot Horsley and Glen Wood

**Continued Hearing:**

1. **DEP File No. SE7-2053 James Diede c/o Bracken Engineering, Inc.** has filed an Amended OOC to include a beach access path to Buttermilk Bay. Located 60 Lewis Point, Buzzards Bay in an AE flood zone and within 100 ft. of a wetland resource area. **Continued to 12/01/2022.**

**Notice of Intent:**

1. **DEP File No. SE7-2219 Marcia Jackson c/o Holmes & McGrath** has filed a Notice of Intent to raze two (2) existing dwellings, construct a new single-family dwelling, garage, in-ground swimming pool and Title 5 sewage disposal system. This project is located at **20 & 21 Starboard Road, Mashnee Island** in an AE flood zone, V Flood zone and within 100 ft. of a wetland resource area. **Continued from 11/03/2022.** Doug Schneider from Holmes and McGrath represented on behalf of the applicant, along with landscape architect, Annie Griffinberg. He stated they continued the last hearing because there was a question about the delineation of the coastal dune on the water side. There was a discrepancy in the delineations to a previous filing. They held a site visit with Ms. Fitch and Brad Holmes who did the original delineation six years ago. They ended up with a new delineation and soil samplings to align with the prior delineation. They have adjusted the pool fence to follow along the delineation of the dune and modified the landscape plan showing more detail in those areas. Ms. Griffenberg said the intention is to use hand removal to remove invasive plants on the coastal bank and they would be cutting and swiping with herbicides using a licensed herbicide applicator. They would come back in with a variety of native plants: Rosa Rugosa, Sweet Fern, Bearberry, and American Beach Grass to fill in areas that are currently bare and potentially where it would become bare after the removal of the invasive plants. They will ensure the proposed plants go in places where they are most needed.

**Member comment:** Mr. Berman asked if there is much Rosa Rugosa out there currently. Ms. Griffenberg said yes Rosa Rugosa is out there and that's why it was chosen over another plant.

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**Agent comment:** Ms. Fitch asked the representatives to talk a little bit more about the pool fence at the toe of the bank and dune. Ms. Griffinberg said there is an existing fence that runs through a hedge along Starboard Road and then they will be picking up that fence and going down to the coastal bank right at the base. The fence follows the line of the toe of the coastal bank, with a gate across the path going down to the beach and then comes back up toward the north boundary line. There is a maximum of a 2" gap at the bottom of the fence. Ms. Fitch also asked the Commission if they were satisfied with the dune stairs and asked if there are going to be risers. Mr. Schneider said they are open and noted there are 4 posts to support the stairs.

**No public comment.**

Motion made by Mr. Palumbo to close the public hearing and seconded by Mr. Holmes.  
Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm. Gray-yes.

Ms. Fitch read the draft Order of Conditions to include: *All general conditions and special conditions pursuant to 131 40 include:* 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 26, 27, 28 and 29.

*Special conditions pursuant to the Bourne bylaw article 3.7 include:* 4, 5, 6, 7 and 9.

**ASC-1)** Herbicide application must be performed by a licensed Massachusetts herbicide applicator only.

Motion made by Mr. Palumbo to move the draft to the final and seconded by Mr. Berman.  
Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm. Gray-yes. All in favor. **Motion carried. 5-0-0.**

*Chm. Gray recused himself from the next hearing.*

2. **DEP File No. SE7-2222 Robin Mallove c/o Bracken Engineering, Inc.** has filed a Notice of Intent for the installation of a 3,000-gallon tight tank and all utilities, grading and appurtenances. The project is located at **4 Kennebec Ave, Pocasset** within an AE flood zone and 100 ft. of wetland resource area.

Zac Basinski P.E. from Bracken Engineering, Inc. represented on behalf of the applicant. They are back before the Commission with a new buyer for the property who is looking to maintain the cottage as is. There is a mandate under the Health Department that the septic had to be upgraded. The potential buyer is looking to replace the old cesspool and taking the nitrogen pretty much down to zero on the lot which is a great thing for salt marshes.

**Agent Comment:** Ms. Fitch said the Commission had no issues with the prior Order that was issued in March, and she had no concerns with the new proposed project.

**No public comment.**

Motion made by Mr. Berman to close the public hearing and seconded by Mr. Holmes.  
Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes.

Ms. Fitch read the draft Order of Conditions to include: *All general conditions and special conditions pursuant to 131 40 include:* 1, 2, 3, 5, 7, 10, 12, 14, 15, 18, 19, 27 and 28.



*Special conditions pursuant to the Bourne bylaw article 3.7 include: 4, 5, 6, 7 and 9.*

Motion made by Mr. Ligor to move the draft to the final and seconded by Mr. Holmes.

Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray abstained. **Motion carried. 4-0-1.**

3. **DEP File No. SE7-2223 Timothy Bernard c/o Bracken Engineering, Inc.** has filed a Notice of Intent for construction of a single family dwelling, Title V septic system, and all associated landscaping, grading, utilities, and appurtenances. The project is located at **68 Elgin Road, Pocasset** within an AE flood zone & 100 ft. of wetland resource area.  
**Continued to 12/01/2022.**

Zac Basinski P.E. from Bracken Engineering, Inc. represented on behalf of the applicant. He asked for a continuance on behalf of Timothy Bernard. Mr. Basinski said they talked with staff about locating some trees on the plan and they also received some comments back from the Health Department. He said the intent for opening up the meeting was to present the project and have the Commission vote on the resource areas. They will then go before the Board of Health and come back to the Conservation Commission. He explained this is a vacant 18,000 sq. ft. lot in the AE flood zone. The proposed project is a three bedroom house that will be a flood compliant structure. Mr. Basinski said because of the topography of the site there is a non-eroding fragmented coastal bank. He said they have designed the project to mitigate possible flood waters. They will be installing a nitrogen reducing septic system and soil absorption system that will be greater than 150 ft. from the resource areas. He believes that the project could be approved under the wetland bylaw and that the coastal bank is a fragmented bank and doesn't provide any significant storm damage prevention or flood control. It doesn't add any sediment to other resource areas because it is non-eroding and he believes that this project will not impact any shellfish or wildlife habitat and does not impact any ground water supplies.

**Agent comment:** Ms. Fitch said it is recommended that the Commission determine whether the bank is significant to storm damage prevention and flood control. If it doesn't have functions or values then it doesn't have any performance standards and just the AE flood standards would need to be met. The DEP wrote technical comments that stated the proposed project must meet the performance standard for Coastal Bank, 310 CMR 10.30(6). Ms. Fitch agreed that the resource areas are appropriately delineated.

Motion made by Mr. Berman to approve the delineation on the site plan and seconded by Mr. Holmes.

Roll Call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray abstained. **Motion carried. 4-0-1.**

**The hearing was continued until December 1<sup>st</sup>, 2022.**

4. **DEP File No. SE7-2224 CNB Bristow, LLC c/o Bracken Engineering, Inc.** have filed a Notice of Intent for the installation of a tight tank with all associated grading, landscaping and appurtenances. The project is located at **85 Salt Marsh Lane, Pocasset** within an AE flood zone, V flood zone & 100 ft. of wetland resource area.

Zac Basinski P.E. from Bracken Engineering, Inc. represented on behalf of the applicant. The house was built in 1956 and the lot was created in 1939. This project is to update the onsite septic system. There is currently a Title 5 septic system and leaching system at the front of the property to be abandoned. The applicant seeks to install a new tight tank due to high ground water on the site. Mr. Basinski said that dewatering would potentially take place and has spoken to

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contractors. The dewatering would be through dirt bag with a surround silt fence. They would also coordinate with contractors to do this during low tide. All work will take place in previously disturbed areas and the use of a tight tank septic system will eliminate the nitrogen associated with the existing septic system on the property.

**Agent comment:** Ms. Fitch said she was happy to see they were able to keep everything out of the priority habitat and she said the erosion controls are key, especially if they have to do dewatering. As a part of the Order of Conditions she will ask that they notify the Conservation Department five days ahead of the start of the project, as she and the Health Agent may stop by for a site visit.

**No public comment.**

Motion made Mr. Holmes to close the public hearing and seconded by Mr. Ligor.

Roll Call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray abstained.

Ms. Fitch read the draft Order of Conditions to include: ***All general conditions and special conditions pursuant to 131 40 include:*** 1, 2, 3, 5, 7, 9, 10, 12, 13, 18, 19, 21, 22, 27 and 28. ***Special conditions pursuant to the Bourne bylaw article 3.7 include:*** 4, 5, 6, 7 and 9.

Motion made by Mr. Ligor to move the draft to the final and seconded by Mr. Holmes.

Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray abstained. **Motion carried. 4-0-1.**

5. **DEP File No. SE7-2208 The Long Point Trust c/o Brian T. Madden, LEC Environmental** have filed a Notice of Intent to demo the existing dwelling and the construction of a new dwelling with associated appurtenances, including a new driveway, attached garage, decks, upgraded septic system, utilities, regrading, storm water management, lawn/landscaping, and restoration/mitigation plantings. This project is located at **176 Scraggy Neck Road, Cataumet** in an AE flood zone and within 100 ft. of a wetland resource area. **Continued from 11/03/2022.** Brian Madden, from LEC Environmental represented on behalf of the applicant. Mr. Madden explained that there were some questions they addressed that came up at the last meeting regarding the adverse effects on the wildlife habitat. They submitted additional materials including a geotechnical review letter. Mr. Madden said for the record they are proposing temporary shoring during the construction of the foundation to provide further protection of the downgradient bank. They feel the proposed project has been successfully redesigned and complies with the state act and local bylaw and provides an improvement over existing conditions.

**Agent comment:** Ms. Fitch said at the last meeting they spoke about vehicular access along Scraggy Neck Road. Ms. Fitch said that would not be in the jurisdiction of the Commission and if this project passes it would go through the review of other departments such as the Fire Department, who will talk about access and sign off on the building permit. She doesn't believe the Commission needs to look at it. There are other homes on this road that receive maintenance, trash pickup and septic service.

**Member comment:** Mr. Berman replied that the onsite inspector could observe the road too, and that occasional road inspections could catch something before it happens in the case of roads weakening anywhere. Mr. Berman appreciates the alterations made to the original proposal and believes it is an improvement over existing. Mr. Madden said that is certainly doable and



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contractor education would be important with routine inspections to ensure everything is above board. Mr. Ligor asked how many truckloads of fill were determined. Mr. Bracken said it would be estimated about 14 truckloads.

**Public comment:** Abutter Maryfrances Galligan said in terms of the truckload coming down the road, there is a Fire Department issue with that particular address.

Elizabeth Pyle attorney at Hill Law represented the abutters. She said in the bylaw 3.7.4 'Adjoining Land Areas' which states that no habitable dwelling or accessory thereto or roadway/driveway shall be allowed any closer than 50 feet from the boundary of a wetland resource area unless permitted under this bylaw. The house and the driveway would be within 50 feet of both coastal bank number 2 and 3 in violation of this provision. Ms. Pyle said there would have to be something in the bylaw that would allow the Commission to override that, such as a hardship for example. There is no other section in the bylaw that would allow the house to be constructed here. Ms. Pyle asked that the Commission enforce the bylaw and deny the project.

Scott Horsley of Horsley Witten Group, addressed the group via Zoom and said that the project does not meet the minimum septic system setback, and that the nitrogen loading calculation is not in compliance. He also said a hydrological study would be useful to the Conservation Commission. Mr. Horsley shared his concerns and shared slides on screen.

Mr. Bracken said that many of these points were brought up at previous meetings. Mr. Bracken said that the 50 ft. setback is measured from the landward edge of the coastal bank. He said common sense should prevail if you have been out to see that coastal bank. Typically a coastal bank is a steep slope and when Title 5 was written nobody was thinking about this policy with a 10% slope related to septic systems. He said in this case the septic system is located at the bottom and the installation and construction of the septic system has no impact on this coastal bank. He also shared that a hydrological study would not be required under the definition because they are over 100 ft. from the water course. Mr. Bracken finalized by saying that they will present and address all of this to the Board of Health.

Glenn Wood, attorney for the applicant, explained that the project that they have presented shows no adverse impacts to the coastal bank and is hoping the Commission closes the hearing tonight.

Scot Horsley had a rebuttal regarding the interpretation of the Board of Health regulations and the wetland delineations not meeting the 50 ft. setback.

**Member comment:** Mr. Berman said it is certainly a coastal bank but has reduced performance standards as opposed to other costal banks. Although he pointed out that regardless of where you are measuring from, the septic system is still entirely below the bank. He further explained it will not leak out up- hill, no matter where it is measured from. He believes it still an improvement over existing conditions and if the Board of Health wants to kick it out for other reasons he is fine with that, but he was ready to make a decision. Mr. Palumbo expressed that this project looked to be an improvement to him as well. He stated again that there is an existing dwelling currently hanging over the bank and they haven't allowed them to go any closer to the bank. There is a cesspool to be removed too. The Commission asked them to pull the project back from the bank which they have done. *The Commission further discussed and were ready to vote.*

Motion made by Mr. Berman to close the hearing and seconded by Mr. Ligor.  
Roll Call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray abstained. **4-0-1.**

Ms. Fitch read the draft order of conditions to include: *All general conditions and special conditions pursuant to 131 40 include:* 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 14, 15, 16, 17, 18, 19, 21, 27, 28 and 29. *Special conditions pursuant to the Bourne bylaw article 3.7 include:* 3, 4, 5, 6, 7 and 9.

**ASC-1)** All planting areas must be monitored for three years and an annual monitoring report must be submitted to the Conservation Department. Any plants that do not survive must be replaced.

**ASC-2)** Temporary shoring must be installed to protect the coastal bank during foundation construction.

**ASC-3)** Vehicular access routes to the site must be inspected weekly to ensure no road or vegetation damage occurs. If damage is observed, the area must be restored.

Motion made by Mr. Ligor to move the draft to the final and seconded by Mr. Holmes.

Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray abstained. **Motion carried. 4-0-1.**

#### **Request for Certificate of Compliance:**

1. **DEP FILE No. SE7-2136 Brian & Martha Gegan c/o J.E. Landers Cauley, P.E.** have requested a Certificate of Compliance for Order of Conditions issued on 5/14/2021. The construction of a new garage; construct apartment above new garage and install new Title V System. The project is located **132 Emmons Road, Monument Beach** within 100 ft. of a wetland resource area. **Continued from 11/03/2022.**

**Agent comment:** Ms. Fitch made a site inspection and recommended issuance of the COC.

Motion made to grant the COC by Mr. Palumbo and seconded by Mr. Holmes.

Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray-yes. **Motion carried. 5-0-0.**

2. **DEP File No. SE7-1998 David Roskilly & Paul Xavier c/o Bracken Engineering, Inc.** have requested a Certificate of Compliance for Order of Conditions issued on 3/01/2018. The construction of a salt marsh boardwalk on helical piles. This project is located at **11 Little Bay Lane, Buzzards Bay** in an AE flood zone and 100 ft. of a wetland resource area.

**Agent comment:** Ms. Fitch made a site inspection and recommended issuance of the COC.

Motion made to grant the COC by Mr. Holmes and seconded by Mr. Ligor.

Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray- abstained. **Motion carried. 4-0-1.**

3. **DEP File No. SE7-1895 Charles Bristow Jr. c/o Bracken Engineering, Inc.** have requested a Certificate of Compliance for Order of Conditions issued on 3/01/2018. An addition of approximately 6" to 9" of fill and regrade and install proposed drainage system; remove and replace a portion of the existing slab and repair/replace existing pier footings. This project is located at **85 Salt Marsh Lane, Pocasset** within 100 ft. of wetland resource area, V flood zone & AE flood zone.

**Agent comment:** Ms. Fitch received an as-built plan and made a site inspection, she recommended issuance of the COC.



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Motion made to grant the COC by Mr. Holmes and seconded by Mr. Ligor.

Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray- abstained. **Motion carried. 4-0-1.**

**Discussion/Business:**

**Vote on 2023 hearing schedule:** Motion made to accept the 2023 hearing schedule by Mr. Ligor seconded by Mr. Holmes. Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, Mr. Ligor-yes and Chm Gray- yes. **Motion carried. 5-0-0.**

**Discussion and possible vote on amendments to the BWR 1.16:**

The Commission continued an extended review of the eelgrass definition & setback.

**Public comment:** Mark Burgess of Shore Front Consulting, specializes in permitting docks & piers. He has done work in multiple Towns and provided comments to the Commission. The Commission discussed and addressed Mr. Burgess's comments.

*Discussion continued to the next meeting and a final vote of amendments will be taken on 12/01/22.*

**Approve minutes from 9.15.2022 & 10.06.2022:**

- a. Motion made to approve the minutes of 9.15.22 by Mr. Palumbo and seconded by Mr. Berman. Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, and Chm Gray- yes. **Motion carried. 4-0-0**
- b. Motion made to approve the minutes of 10.06.22 by Mr. Holmes and seconded by Mr. Palumbo. Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, and Chm Gray- yes. **Motion carried. 4-0-0**

**Report of the Conservation Agent:** Ms. Fitch asked the Commission if they were okay with the signage location at ISWM.

**Vote to excuse absent members:** Motion made to excuse absent members by Mr. Berman and seconded by Mr. Palumbo. Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, and Chm Gray- yes. **Motion carried. 4-0-0**

- I. **Adjournment:** Motion made to adjourn by Mr. Palumbo and seconded by Mr. Berman. Roll call: Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes- yes, and Chm Gray- yes. **Motion carried. 4-0-0**

**Submitted by:**

Minutes Typed by Amalia Amado- Conservation Secretary II

Audio recorded and edited by Stephanie Fitch- Conservation Agent

Recorded by Zoom.