

**Town of Bourne
Conservation Commission
Meeting Minutes
August 04, 2022**

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TOWN CLERK BOURNE

I. Call to Order

Chm. Robert Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday August 04, 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 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, Greg Berman, Paul Szwed, Thomas Ligor

Members excused: Rob Palumbo, Susan Weston, Peter Holmes

Others in attendance: Stephanie Fitch, T. Roux, Jim Byrne, Doug Schneider, Scott Harlow, Greg Wirsén

Continued:

Request for Determination

1. **File Number:** CC22-26

Applicant: Christopher Codeanne

Representative: Same

Project Address: 0 Circuit Ave, Bourne

Proposed Project: Vista pruning of saltmarsh elder in upper border of salt marsh. This project is in the V flood zone and within 100 ft. of a wetland resource area. **Continued to 8/18/22.**

Notice of Intent

1. **DEP File Number:** SE7-2213

Applicant: Linda Kokoszka

Representative: JC Engineering, Inc.

Project Address: 77 Puritan Road, Buzzards Bay

Proposed Project: The tear down and rebuild of a single family dwelling, septic system, and associated utilities in the buffer zone of a coastal bank and salt marsh. This project is located within 100 ft. of a wetland resource area. **Continued to 08/18/2022**

2. DEP File Number: **SE7-2208**

Applicant: The Long Point Trust

Representative: Brian T. Madden, LEC Environmental

Project Address: 176 Scraggy Neck Road, Cataumet

Proposed Project: Proposed demo of existing dwelling and construction 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 in an AE flood zone and within 100 ft. of a wetland resource area. **Continued to 08/18/2022**

3. DEP File Number: SE7-2172

Applicant: Cape Club Building, Inc.

Representative: Cape & Islands Engineering, Inc.

Project Address: 96 Megansett Road, Cataumet

Proposed Project: Construction, licensing and maintenance of an access ramp leading to a walkway, Pier, Ramp and Float in the waters of Squeteague Harbor. Additionally, perform dredging to regain water depth adequate for boating access to and from the proposed float pier at 96 Megansett Road.

Continued to 09/15/2022

Request for Determination

1. File Number: **CC22-23**

Applicant: Susan Haigh

Representative: Thomas Roux

Project Address: 10 Stackpole Circle, Bourne

Proposed Project: Proposed existing cesspool to be abandoned and a new tight tank installed. This project is in an AE flood zone and within 100' of a wetland resource area. **Continued from 7/21/22**

Thomas Roux introduced himself and explained that they initially proposed to install the septic system in the front of the property. There would need to be a retaining wall and that would have been an eyesore. Mr. Roux explained after talking with the Board of Health Agent, he learned that the Town of Bourne allows tight tanks and that's the direction they went to next. Currently the plumbing comes out of the back of the house with a cesspool in the ground. The plumbing will remain in the same location coming out of the back of the house, and put in this proposed tight tank. The proposed tight tank has a 3,000 gallon capacity. The Health Agent marked the plans with revisions and after he addressed the agent's comments, he resubmitted the plans to the health dept., which would need the approval of conservation beforehand.

Agent comment- Ms. Fitch gave her report and cited the location of the property and shared a photo. Ms. Fitch explained this is a replacement of a cesspool and the proposed tight tank would be landward of the cesspool's location, further away from the salt marsh, which are both improvements. She asked Mr. Roux if there is ground water when digging, and what is the plan for a dewatering basin. Mr. Roux explained they would use a frac tank; that is a truck onsite and as they are digging if the water became an issue they could pump the water into the truck to keep the water level down enough to place the tank in the hole. The frac tank is essentially a tractor trailer which could be parked in the driveway, which is on the other side of the house and not visible in the photo. When they are done pumping they can just drive it away to where it needs to be processed, Mr. Roux stated it should still be pretty clean water.

No public comment.

Motion made by Mr. Ligor for a Negative two determination and seconded by Mr. Berman.

All in favor. **Motion carried. 4-0-0**

Notice of Intent

1. **DEP File Number: SE7-2212**

Applicant: Scott Harlow

Representative: Holmes and McGrath

Project Address: 179 Clipper Road, Bourne

Proposed Project: The proposed project includes the renovation, construction and maintenance of two additions and deck on an existing single- family house, driveway reconfiguration, the relocation of a septic tank and all associated excavation, grading and landscaping. This project is located in the AE flood zone and the V flood zone.

Doug Schneider from Holmes and McGrath explained the plan proposed on Mashnee Island. He also detailed the proposed additions to the house and locations with the driveway and identified the only resource areas as the V and AE flood zones. There are two sheds on the property that will be removed, to keep under the 25% lot coverage requirements for zoning. They will be installing some drywells to help pick up the roof runoff from the addition and the house. There is currently an open deck that wraps around and they are proposing a covered porch in front. The homeowner has been in contact with the building inspector to ensure the additions fully comply with the FEMA and building requirements for the flood zones. There is a fairly new septic system that was installed for three bedrooms and they are proposing to move the septic tank a couple of feet to be 10 ft. away from the proposed addition but the remainder of the system will stay in place.

Agent comment- Ms. Fitch shared photos and explained this is a lateral addition with the majority in the flood zone as Doug mentioned and the proposed addition location is flat, landscaped turf grass. The proposed project doubles the impervious surface with the roof and driveway, but there are proposed drywells to collect roof runoff. There unfortunately is no proposed storm water infrastructure on the road where the driveway is connecting. The removal of three trees in the yard will further diminish the ability to uptake surface ground water but there are no performance standards for this project at this time.

Member comment- Mr. Ligor asked about the two proposed driveways, one being a shell driveway. Mr. Schneider explained the shell driveway currently exists and will be removed and turned into grass. The proposed paved driveway is on the other side of the property. Mr. Ligor asked if there are any catch basins in case the proposed driveway dumps storm water onto Clipper Road. Mr. Schneider was not aware of any and none on the plan. Mr. Berman asked if this is a 50% reconstruction. Mr. Schneider said it will be below the threshold.

Public comment: Attorney James Conner made a statement on behalf of abutter James Byrne. He is opposing the project as it sits before the commission, some issues are not within their jurisdiction. One of them being property value. He is concerned with the doubling of the roof size, runoff and the removal of trees and paved driveway which increases the impervious surface. He stated the project as a whole does not fit the character of the neighborhood and that the average house size is 675 sq. ft. Mr. Schneider commented they meet the standards of the wetlands protection act to work within the flood zone. Mr. Harlow commented in Mashnee Island that over half of the homes have added on over the years and are at least 1,500 to 2,000 sq. ft.

Member comment- Mr. Ligor noted the houses on Mashnee Island are small cabin like homes and he does not know how many years that goes back, roughly 1940's.

Public comment- James Byrne said most of the houses on Mashnee Island that have expanded went up, they've made two stories out of one story. He said that the proposed project is a giant land grab, he is an abutter on the right side of 179 Clipper and he will lose most of his separation and the view he has enjoyed for many years will be replaced by a garage.

Member comment- Chm. Gray stated most of the issues that have been addressed are not in the purview of the commission. As much of a concern as it is to you, the commission has absolutely no authority to protect anyone's view shed; even if it's something in a deed, that is not something that is in the wetlands protection act or in the town bylaw. The placing of the asphalt in terms of the driveway at this time; the wetlands protection act recognizes land subject to coastal storm flowage as a wetland resource area. They have failed to include it in the regulation booklet with performance standards. Essentially that falls under the building inspector and if the building inspector says that it meets the building code and by virtue of that statement also meets the state building code. The Commission then has no real authority to say no building in the flood zone. They have been told the flood zone regulations may come for some time now and Chm. Gray stated that he has been patiently waiting for flood zone regulations to come along. The concerns are concerns that some of us share but if they were to say no to the project because of the asphalt driveway because it will increase runoff into Clipper Road, on appeal the state would come back and say why did you include that and where you are getting that from the regulations. Chm. Gray recommended some of the issues that were raised be looked into by other departments, because it's just not in the purview of the Conservation Commission.

Agent comment- Ms. Fitch did bring up to Holmes and McGrath the 50% substantial improvement rule and they are aware of it, they have done the math. That's typically why people build up rather than out. The Building and Engineering Department are paying attention to it and if they get close to the 50% they will start that conversation. Mr. Schneider said the homeowner has been in contact with the building inspector several times to make sure they stay within that 50%.

Member comment- Mr. Ligor asked about the tree removal. Mr. Harlow can commit to doing some landscaping around the front to help absorb some of the water and minimize the problem. Drywells will also help mitigate.

Motion made to close the public hearing by Mr. Ligor and seconded by Mr. Szwed. All in favor.

Ms. Fitch reads the draft order of conditions to include: *All general conditions and special conditions pursuant to 131 40 include:* 1, 2, 3, 4, 5, 7, 9, 10, 12, 15, 16, 19, 27, 28

Special conditions pursuant to Bourne bylaw article 3.7 include: 5, 6, 7

Motion made to move the draft to the final and approve the order of conditions moved by Mr. Ligor and seconded by Mr. Berman. All in favor. **Motion carried. 4-0-0**

Request for Certificate of Compliance

1. **DEP File Number: SE7-1778**

Applicant: R. Hunter & Elousie C. Scott

Representative: N/A

Project Address: 290 Barlows Landing Road, Pocasset

Project: Certificate of compliance requested for order of conditions issued on 5/9/2011. The work included to construct a single family dwelling, driveway, septic system, and associated grading. This project is located in the in AE flood zone, 200 ft. of a river front and 100 ft. of a wetland resource area.

Agent comment- Ms. Fitch visited the site and determined there was compliance with the order. SE7-1778 expired in 2011, they then came back in 2021 asking for a new project and found that the previous order was not closed and further they found some work that didn't conform to the Order, in particular the lawn was bigger than permitted, the driveway differed from the 2011 site plan, and there was an unpermitted wooden deck. So SE7-2166 was broken into two phases, phase one was restoration work done by Brad Holmes in order to close out SE7-1778. The work has been done and the plantings are in, now the certificate of compliance is recommended for the 2011 OOC, including a post facto approval of deck and driveway, which was also mitigated by plantings. The Conservation Department will include a cover letter that if any plants do not survive over the next two years they will need to be replanted, per monitoring plan from SE7-2166.

Motion made to by Mr. Szwed and seconded by Mr. Berman to grant certificate of compliance. All in favor. **Motion carried. 4-0-0**

2. DEP File Number: SE7-2166

Applicant: R. Hunter & Elousie C. Scott

Representative: N/A

Project Address: 290 Barlows Landing Road, Pocasset

Project: Certificate of compliance requested for order of conditions issued on 10/29/2021. The work included proposed landscaping, installing of a swimming pool, patio and appurtenances. This project is located in the in AE flood zone, 200 ft. of a river front and 100 ft. of a wetland resource area.

Agent comment- Ms. Fitch recommends issuance of an invalid COC, no new work was done.

Motion made by Mr. Berman and seconded by Mr. Ligor to grant the certificate of compliance. All in favor. **Motion carried. 4-0-0**

3. DEP File Number: SE7-0312

Applicant: Robert Nakashian, Trustee

Representative: N/A

Project Address: 23 Mariners Lane, Pocasset

Project: Certificate of compliance requested for an order of conditions issued on 01/09/1985. The work included reconstruction of a licensed pier, piles, float, as well as installation of piles along an existing seawall and the construction of a timber deck inland of the Mean High Water Line extending shoreward from the existing house. Located within an AE flood zone and Land Under Ocean. NOI filed November 26, 1984. **Continued from 07/21/2022.**

Agent comment- Ms. Fitch visited the site and on her first visit there was a third, unpermitted float. The homeowners worked with her and have removed that third float. Ms. Fitch stated everything is as close as possible to the plan from 1984.

Motion made by Mr. Ligor and seconded by Mr. Berman to grant the certificate of compliance. All in favor. **Motion carried. 4-0-0**

Request to Extend Order of Conditions

1. DEP File Number: SE7-2076

Applicant: 21 Hunters Brook Road LLC

Representative: Green Seal Environmental, LLC

Project Address: 21 Hunters Brook, Bourne

Proposed Project: To construct a 16 Residential Duplex 26 x 30, 12,600 sf Medical Office Building, 22,061 sf Assisted Living Facility and associated access, parking and infrastructure within 100 feet of a wetland resource area.

Greg Wirsen from Green Seal Environmental LLC explained the request for extension being made and the impact of the pandemic, specifically financing for assisted living, stating there really wasn't much for it. They still intend to proceed further with this project, hoping to start clearing sometime in the Fall.

Motion made to by Mr. Ligor and seconded by Mr. Berman for a three year extension.

All in favor. **Motion carried. 4-0-0**

Approve minutes

Motion to approve with corrections June 16, 2022 minutes by Mr. Ligor and seconded by Mr. Berman.

Paul Szwed Abstained- **Motion carried. 3-0-1**

Discussion and vote to move the meeting time

Motion made by Mr. Szwed and seconded by Mr. Berman to move the meeting time to 6:30pm.

All in favor. **Motion carried. 4-0-0**

Report of the Conservation Agent

Ms. Fitch updated the commission on the culvert project at 68 Rocky Point Road on Mashnee Island. The culvert has shared access between 68 Rocky Point Road and 69 Mashnee Road. The previous agent was working on obtaining an easement for the Town of Bourne to access the culvert and he was working on finding funding to get water flow to the northern marsh (marsh 2). There was a report done back in 2008 by Fuss and O'Neil, these marshes have been on a lot of reports for Cape Cod resiliency and mitigation as a known issue. The marsh 2 has very little to no tidal influx and is surviving mainly on runoff and rain water. The clay pipe itself maybe shattered so there is no tidal flow coming in. As it turns out these are all private, marsh 2 is owned by the Bourne Conservation Trust and Marsh 1 is owned by 68 Rocky Point Road and the neighbor at 69 Mashnee has no interest in going in on an easement. Then you have culvert that connects the marsh 1 to the canal, which is under the public road and Ms. Fitch is still figuring out if it's an Army Corps of Engineer responsibility or Town of Bourne. There have been several complaints that have come in to both the Conservation Department and the Town Administrator's office. They had a meeting with town counsel and it was determined that the town cannot participate in any work done on the culvert between the two private properties, unfortunately. Chm. Gray recommends asking about the culvert that runs under Mashnee road, if the town can convince the Army Corps to take that on as their responsibility and the benefit would be they would not have to do a filing because they are exempt from the wetlands protection act. If the town takes it on there would have to be a filing or deemed an emergency filing.

II. Adjournment

Motion made by Mr. Ligor to adjourn and seconded by Mr. Berman

All in favor. **Motion Carried. 4-0-0**

Minutes typed by: Amalia Amado, Administrative Assistant

Recorded and Edited by: Stephanie Fitch, Conservation Agent