

**BOURNE CONSERVATION COMMISSION
PUBLIC MEETING MINUTES
AUGUST 31, 2023**

Chm. Robert Gray called to order the meeting of the Conservation Commission at 3:00 p.m. conducted in person on Thursday, August 31, 2023, held in the Bourne Veterans Community Building, 239 Main Street Buzzards Bay, MA 02532. Note this meeting was audio recorded by Bourne Conservation Department.

Commission members present: Chm. Gray, Sarah Butler (remote), Greg Berman, Peter Holmes, Paul Szwed, and Joseph Soares.

Excused members: Susan Weston and Rob Palumbo

Professional staff in attendance: Stephanie Fitch, Conservation agent and Amalia Amado, secretary II.

Called to order 3:00PM.

1. The Bourne Conservation Commission closed the public hearing for DEP file number SE7-2172 at 96 Megansett Road, Cataumet on 8/17/2023. Therefore, the public comment period has ended. The Commission members will vote to move the draft Order of Conditions under the State Act and draft denial under the Town Bylaw to the final Orders of Conditions.

Chm. Gray explained the agenda item is to review the final draft and Ms. Fitch will read the draft Order reviewed under Massachusetts Wetlands Protection Act, M.G.L. Chapter 131 Section 40 and then a vote will be taken. Ms. Fitch will then read the draft denial decision under the Bourne Bylaw Article 3.7.

Ms. Fitch read the draft order being issued under the State wetlands protection act *only* which is to include all general conditions and special conditions pursuant to M.G.L. Ch. 131, S. 40: 1, 2, 3, 7, 8, 9, 10, 12, 18, 19, 20, 27, 28 & 29. Included in the special conditions: as-built plan and on site pre-construction meeting.

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

Roll call: Mr. Berman-yes, Mr. Holmes-yes, Ms. Butler-yes, Mr. Szwed, Chm. Gray-yes. Motion carried.
5-0-0.

Ms. Fitch read the draft pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Reason for Denial under Bourne Wetland Protection Bylaw Article 3.7

The application for a walkway, dock, ramp and float system at 96 Megansett Rd, Bourne MA (map 54, parcel 15) was originally filed with the Bourne Conservation Commission (BCC) by Cape and Islands Engineering on behalf Cape Club Building, Inc. on September 21, 2021. Due to BCC turnover and failure to meet the requirements of the Mullin Rule Statute, MGL C. 39 s. 23D, the project was re-advertised and abutters were re-notified in order to restart the hearing process on July 20, 2023. The hearing was opened and the applicant presented on July 20, 2023 and August 17, 2023. The hearing was closed and a vote was taken on August 17, 2023. A vote was taken to move the draft denial under Article 3.7 and the Bourne Wetlands Regulations to the final and thus issue a denial Order of Conditions on August 31, 2023.

The BCC voted unanimously (6-0-0) to approve the proposed project (file number SE7-2172) under the Massachusetts Wetlands Protection Act, MGL C. 131, s. 40 and issue an Order of Conditions.

The BCC voted unanimously (6-0-0) to issue a denial under the local Bourne Wetland Protection Bylaw, Article 3.7. The reasons for the denial are based on noncompliance with the local Bylaw (BL 3.7) and the Bourne Wetlands Regulations (BWR 1.00). The specific reasons for denial are listed below:

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Failure to design the project in a manner that protects one or more of the wetland resource values listed in BL Section 3.7.4.

The BCC determined that the applicant failed to meet the “Burden of Proof” as defined in BWR 1.03(1)(a) and 1.03(1)(b) and did not properly demonstrate that the proposed project area does not play a role in the protection of any wetland resource values or that the proposed work would contribute to the protection of the *wetland resource values*. Instead, the BCC determined that the project would likely have an adverse effect and/or a cumulative adverse effect upon the wetland resource values protected under BL 3.7.

Many public comments, both verbal and written, addressed the adverse effect this proposed dock would have on the *wetland resource value* of “Recreational and/or Commercial Use” of the various wetland resource areas impacted by the project. BL section 3.7.4 (i) states “recreational and/or commercial use means, but is not limited to, the purposes for which the Wetland Resource Area are used by the public such as navigation, fishing, hunting, shellfishing, water skiing, diving, walking, etc. *A project must be designed so as to not impair the ability of the Wetland Resource Area to provide for these public recreational and/or commercial uses.*”

Wetland Resource Areas are defined in BL section 3.7.4 and BWR 1.02 “Areas of Jurisdiction (Resource Areas),” section (1)(a-i).

Several members of the public testified (verbally or via email) with specific examples of how the dock design and location would “impair” the recreational and/or commercial use of the Commonwealth Tidelands within the Squeteague Harbor waterbody. Several comments highlighted the narrowness of the waterbody, particularly due to the existence of a substantial sand bar and its proximity to the proposed location of the float, and how that would negatively impact navigation and recreation within the waterbody. A butters sent in evidence that the float is proposed in the deepest section of the waterbody, significantly impacting navigation in the harbor especially at low tide. Examples of recreation and navigation that were brought up during the public hearing include the Cataumet Club sailing program, commercial kayak tours, fly fishing, striped bass sport fishing, and shellfishing.

Approximately 40% of the entire elevated walkway, ramp and float system is proposed within publicly protected Commonwealth Tidelands and thus not located on the private property at 96 Megansett Road, Bourne MA.

Failure to meet BWR 1.16(1)(e)16.b - 100’ mooring setback.

The proposed float is not located the requisite distance (100’) from all moorings. The float is proposed at 48.7’ from the closest mooring and 90.8’ from another mooring. BWR 1.16(1)(e)16.b specifies the required setback of “100’ from the location of any mooring anchor to the nearest edge of the float, or pier if no float.” The BL contains no provisions for a waiver or variance from the BWR. The “hardship” referenced at BWR 1.04 applies to a “particular piece of property” and not to property within the Commonwealth Tidelands, as is the case here. It was determined that this proposed project would affect navigation and, therefore, have a cumulative adverse effect on the wetland resource value of “Recreational and/or Commercial Use,” as referenced under BWR 1.16(1)(a).

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Failure to meet BWR 1.16(1)(e)2- the pier length across a water body.

BWR 1.16 (1)(e)2. states, “no pier shall be allowed where the length of the pier extends more than 1/5 of the way across the waterbody.” Several Commissioners and members of the public believe this requirement has not been met with the current plan design. The applicant only demonstrates compliance in one direction across the waterbody and does not take into consideration the many other angles that should be measured. The applicant must take into consideration the narrowest section at mean low water. In that situation, the proposed dock exceeds 1/5 of the waterbody. It was determined that this proposed project would affect navigation and, therefore, have a cumulative adverse effect on the wetland resource value of “Recreational and/or Commercial Use,” as referenced under BWR 1.16(1)(a).

Appeals:

The procedure for appealing this decision is outlined in the BL section 3.7.10 and BWR 1.10 (a) and (b).

Bourne Wetlands Protection Bylaw (BL) and Bourne Wetland Regulations (BWR):

The Bourne Wetland Protection Bylaw (BL) was initially passed at the Annual Town Meeting on May 11, 1987 (Article 58) and updated through May 2023 (Articles 14 and 15).

The Bourne Wetland Regulations (BWR) were issued on August 31, 2000, and last revised on June 15, 2023.

Motion made to move the denial with corrections to the final draft by Mr. Holmes and seconded by Ms. Butler. Roll call: Mr. Berman-yes, Mr. Holmes-yes, Ms. Butler-yes, Mr. Szwed-yes, Chm. Gray-yes.

Motion carried. 5-0-0.

2. Adjourned. 3:26PM

Audio recorded by the Bourne Conservation Department.

Typed by Amalia Amado, Secretary II.

Recorded by Zoom.