

CONSERVATION COMMISSION MINUTES

Thursday, November 19, 2015 ~ 7 pm ~ Lower Conference Room, Bourne Town Hall

Chm. Gray called meeting to order at 7:00 pm and explained the Commission's procedure pursuant to the Wetland Protection Act M.G.L. c. 131, s. 40 and the Bourne Wetland Protection Bylaw Article 3.7.

Note: Chm. Gray addresses the audience in regards to recording a public hearing. If anyone wishes to record a public meeting, they are free to do so, however, it must be known by the Board and the public. All cell phones are to be placed on vibrate or turned off during the meeting.

Members present: Chm. Gray, V. Chm., Martha Craig Rheinhardt, Peter Holmes, Betsy Kiebala, Rob Palumbo, Susan Weston and Thomas Ligor

Members not present: Paul Szwed

Request for Determination of Applicability:

1) Applicant:	John Cuff	File Number: CC15-55
Representative:	Barbara Frappier, Warwick & Associates, Inc.	
Project Address:	1 Richmond Road, Pocasset	
Proposed Project:	Replace a failed cesspool with a tight tank septic system within an AE Flood Zone	
	Hearing Under State Act Only	

Ms. Frappier representing – applicant seeks to replace failed septic system and proposing to replace with a tight tank (2,000 gallon tank). Due to proximity of excavation to the road, the contractor will use straw bales at the limit of work.

Brendan Mullaney – tight tank is the last option but there is no other choice. This will be an improvement over existing conditions. No concerns with the project.

No board comments. No public comments.

Holmes moved and seconded by Kiebal for a Negative Two Determination. Unanimous vote.

Notice of Intent:

1) Applicant:	Thomas Lyons	DEP File Number: SE7-1930
Representative:	Michael Borselli, Falmouth Engineering, Inc.	
Project Address:	71 Wamsutta Avenue, Pocasset	
Proposed Project:	Raze and rebuild an existing single family dwelling including all grading,	

landscaping and appurtenances within an AE Flood Zone and within 100 feet of a Wetland Resource Area

Mr. Borselli representing – applicant seeks to raze and rebuild an existing single family dwelling. The lot is pork chop shaped. Existing house isn't in the flood zone which is a one bedroom cottage and doesn't meet current building codes. Applicant would like to improve to enjoy year round by adding a second story. It will continue to be a one-bedroom dwelling. There will be some minor excavation and a silt fence will be installed. The new footprint is wider than the original footprint, but it is the second story above the first story.

Brendan Mullaney – this is a small lot with tight configuration due to the property lines. The footprint will remain basically the same and not move any closer to the resource areas than currently exists. Septic is in the lot configuration. Erosion controls will serve to prevent sediment from migrating towards resource. Relatively standard raze and rebuild. Wetland lines were provided and coastal bank is shown in the plans based on the slope.

No board comment. No public comment.

Holmes moved and seconded by Palumbo to close public hearing. Absention by Weston. Unanimous vote.

Brendan Mullaney – Draft Order of Conditions: All General Conditions, Special Conditions pursuant to MGL, Chapter 131, Section 40 numbers 1,2,3,9,10,12,13,14,16-24 and Special Condition pursuant to the Bylaw 4,7,8,9 and Special Conditions 20 & 24 to continue in perpetuity.

Kiebala moved and seconded by Ligor the Draft Order of Conditions to Final Order of Conditions. Unanimous vote.

At this time Chm. Gray recused himself from discussion and vote and turned the meeting over to Mr. Rob Palumbo.

2) Applicant:	Pinnacle Site Contractors, LLC	DEP File Number: SE7-1915
Representative:	JC Engineering, Inc.	
Project Address:	0 Crab Rock Way, Sagamore Beach ("The Strand" below Indian Trail)	
Proposed Project:	Construct a stone revetment and perform coastal bank stabilization within a VE Flood Zone and within a Wetland Resource Area (Continued from October 15, 2015)	

Mr. Palumbo – thanked applicant for providing additional documents which the board has reviewed ahead of time.

Atty. Kathleen Connolly – on behalf of the applicant and property owners, we have responded to the questions to the board that came about from the discussion at the last hearing. She deferred to Mr. Don Perry who reviewed the latest plans.

Mr. Perry- items we have addressed:

1) Sand analysis for beach nourishment – proposing to take physical samples from coastal bank and the pit where the sand will be coming from and submit for approval at the time beach nourishment is taking place. Craig Rheinhardt – is this beach nourishment or bank nourishment? Perry – it will be going onto the stone revetment and will be compatible with bank material.

2) Maintenance of the cobble berm – constructed above high tide line, will minimize wave deflection, when 75% has been lost the berm will be replenished per plans.

3) Square footage of entire project – Brad Bertolo stated overall footprint itself is 41,000 square feet of area. Also looked at the slope area and numbers used as a guide for beach nourishment

4) Installation of sand chute – installation is shown at #8 Indian Trail with the property owner's permission. Most likely will be a 18" ADS pipe with wood braced legs- a temporary platform will be built at the top of the bank for the mini- excavator when loading sand down to the beach, will be distributed by a small loader on the beach.

5) Cost of sand – numbers are fair market value, \$25/cubic yards supplied and installed. Projection of cost increase of sand – over the next five years .0045% increase. Availability is not an issue from beach nourishment suppliers.

6) Annual monitoring – Mr. Perry read into record the monitoring plan –initial coverage of the revetment will consist of 780 cubic yards spread across the stone revetment. Post construction photos will be taken every 50 feet at monitoring stations. Planting of the cover material is optional. An as-built plan will be submitted to the board within two weeks after completion. Quarterly photographs will be submitted along with a report detailing the cover. Each monitoring station will be surveyed in September and the loss at each station will be calculated and the final volume for each property will be submitted by November 1st. Equipment and access shall be approved by the board. A total depth of 3 feet of nourishment will be in place by Thanksgiving of each year, with a total volume not to exceed 780 cubic yards in any given year. Annual monitoring reports will be submitted in triplicate. Property owners will have options of planting more beach grass and shrubs.

Tom Ligor - asked about the cuts at the top of coastal bank and how will those be addressed. Mr. Perry explained the coastal bank is a moving target but vegetation will be replaced and treated on an area by area basis annually. Once the toe is secured, the top can be stabilized.

Weston – asked about the access issue. Mr. Perry explained individual agreements would be made with property owners as required. Weston requested to see before moving forward with the project. Atty. Connolly – stated they would need a permit approving the project before they can negotiate with property owners. Mr. Perry stated they are exploring options of coming from the north in Plymouth as well - there is an agreement in place now and we use the chute to get material onto the beach.

Palumbo – where in Plymouth? Perry – Kingsbridge Shores, about 500-1000 feet further than from the south. Palumbo - asked how many properties would be crossed if coming from Plymouth. Mr. Perry explained the landing is on private property, but Town of Plymouth owns the rest, after that it is all Town of Bourne property.

Weston – asked about nourishment proposal that states “not to exceed 780 yards in a year” - when some years there is more than the average amount, what if they need 1500 yards?

Stanley Humphries – the owners want to have an amount they can rely on each year, so this is what they’re proposing.

Weston – well this is not acceptable. Holmes – also concerned about the potential hardship on the owner due to costs.

Palumbo – explained the 780 cubic yards is a pertinent part of this project. The maintenance and liability and other issues are important, but the 780 yards is a decision of the Commission to ensure there will not be impacts on the Resource Areas, which we are charged to protect. The other issues will be sorted out with the Selectmen and the Town after we’re done with the project. We should be concerned about the amount of sand, not who is going to pay for it.

Atty. Connolly – Town Counsel has drafted a condition that will address all of the other provisions that will be required before we can start the project.

Palumbo - The position on the number of 780 yards has not changed. There can’t be an adverse effect if the sand is used up.

Ligor – at the last meeting, it was stated that some years 780 yards may be enough, some years it may not all be needed, and other years you may need more, so this is an average. Palumbo asked Jim O’Connell if he agreed with this statement and he stated yes, this is an average. O’Connell stated that 780 yards at a minimum should be put on the revetment annually.

Weston – what if there is a really bad winter and all the cover is gone in the spring – will they wait until the fall to replace it? O’Connell – most Commissions require a once a year placement and this is a decision you will have to make. The revetment should have some cover at all times.

Palumbo – if the cover is gone, does this have an adverse effect on the restricted beach?
O’Connell – yes, the restricted beach has a requirement for no adverse impact and this would be very difficult to meet with no sand cover on the revetment.

Holmes – should we revise this language to say they have to put down a minimum of 780 yards for a depth of three feet? Palumbo – it is not up to us to design the project – this is what they have put forward and we have to decide if this is appropriate. They made it clear this is what they’re proposing.

Perry – finishes going over specs of project and how they arrived at beach nourishment figures. Brad Bertolo explains how they came out with approximate depth of 3 feet.

Palumbo – some of the homes are planning to do plantings. Mr. Perry confirmed homeowners will do it on an as-needed basis. They are all committed to installing plantings to stabilize. It was confirmed that no plantings discussion was held per Jim O’Connell. Plantings on the cover material likely will not last - it is to the advantage to the homeowner to plant the bank itself. Mr. Palumbo’s other question is what is the effect of the elimination of envelopes at #2 and going withal cobble. O’Connell believes the cobble is beneficial and positive for the resource function.

Craig Rheinhardt – asked about the survey and difference in toe of slope. Brad Bertolo - Survey conducted in March 2014 determined where the bank was at that time, we conducted another survey in October 2015 that showed what has happened in the interim time. No additional survey was conducted at the top of the bank. O’Connell – Google aerials show a large difference in the face of the bank in the last two years and that the toe of the bank has slumped. The elevation fluctuates greatly depending on the season and the amount of material coming from the bank as well as material coming into this area from the north. A discussion should be had on where the toe is at the time of construction.

Ligor – why is the vegetation stable in certain areas vs. the scoured out area. Google images were viewed from two prior years.

Craig Rheinhardt – what if the property owner who gives permission for the chute (#8 Indian Trail) and the new owner doesn’t want the chute. Atty. Connolly explained the Order of Conditions would need to be addressed with Town Counsel.

Palumbo – we had a meeting yesterday with Town Counsel regarding a lot of the issues that have come up regarding perpetuity, liability, etc. In order for the Selectmen to grant an easement, they will put a lien on their land. My concern was if the project doesn’t work and is a failure, then the lien will be worth nothing. Town Counsel has said in order for Selectmen to even consider an easement, regardless of what the Commission decides, they will want a passbook savings with an amount of money the Town will hold out, which will be used at the Town’s discretion if the property owners don’t comply with what they’ve agreed to and what is in the order of conditions. This is separate from the board’s obligations and decision and is not

for the Commission to decide per Town Counsel. This will be up to the Selectmen to determine what is going to take to ensure compliance with the project.

Craig Rheinhardt – if everyone bailed on the project, would the town use the money to continue the project or remove the wall? Palumbo – that will be up to the Selectmen to decide.

Don Perry – this project is well-designed and will enhance this property. The financial implications to the town are greater if nothing is done and the bank continues to erode and the houses are destroyed.

Palumbo – I take exception to that and we're not going to go down that road again. I wanted to make sure Commission members are aware of the position of Town Counsel so this does not cloud their decision.

Public Comment

Joe Corn – lives just south of the project area and would need to cross his property to get to the site. Commented on the improvements of the Pinnacle proposal and has come around that something needs to be done soon. He raised issue that the stairs which serve as public access are being exposed and are no longer getting protection. Raised questions about the cobble berm and how it will function. Lastly, he is worried about how the proposal will be executed and everything will be done as proposed.

Mr. Perry – briefly explained what the berm will look like and its function for the project - have also eliminated the coir logs and eliminated the berm in front of the stairs.

Richard Ragnante – commented on the cobble berm being temporary and it could be wiped out in one storm. Would like some assurance to remove and repair the cobble berm to get it back to where it was. Concerned it will no longer be protecting the stairs.

Marcia Rothwell – asked about the cobble stone and the placement of it – will it end up on the beach? Brendan Mullaney – there is a potential for that, absolutely.

Jim O'Connell - commented on the design of the cobble berm and what it is designed to do. He is not supporting or opposing it, simply showing that it is a possibility.

Weston – will the cobble berm be replaced every year? Don Perry – will be replaced when 75% of the cobble berm is gone. Mr. Perry explained seemed the most logical way for the board to have control of the structure. He feels there are controls in place. Perry explained checks and balances of seasonal inspections by the homeowners is fair and reasonable. Craig Rheinhardt asked what would trigger an inspection – it seems an event should trigger an inspection. Perry explains the homeowners will be very diligent in monitoring this since it is in the best interest for protection of their homes.

Mike Powers - the stones are there and buried under six feet of sand, it comes and goes. You cannot guarantee what is going to happen. Right now we are losing sand.

Atty. Connolly - requested a two minute recess on behalf of the applicants at this time.

Marcia Rothwell – asked if the cobble berm was falling apart, could we call Brendan Mullaney or the engineer? Mullaney replied yes, you can call anytime you want.

Palumbo asks if everyone has read the condition from Tonw Counsel regarding liability and other issues. All members answer yes.

Weston moved and seconded by Kiebala to close the public hearing. Unanimous vote.

Roll call vote to either approve or not approve the project:

Weston – deny, Holmes – deny, Kiebala – deny, Ligor – approve, Craig Rheinhardt - deny

Palumbo -The vote is 4-1 to deny the project. We will be issuing an Order of Conditions at the next meeting in two weeks.

Brendan Mullaney – Once a Public Hearing is closed the Commission has 21 days to issue an Order of Conditions. An Order will be issued at the next meeting on December 3, 2015. At that time it will be officially voted upon by the members of the board which will include findings of Commission and why the project did not meet the performance standards. There will be no further discussion or input on the project.

Chm. Gray back as Chair at this time.

Public comment

None.

Approval of minutes

Ligor moved and seconded by Holmes to approve minutes of July 16, 2015 as submitted. Unanimous vote.

Adjourn

Ligor moved and seconded by Weston to adjourn. Meeting adjourned at 9:10 PM. Unanimous vote.

Respectfully submitted – Lisa Groezinger, sec.