

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

February 1, 2018

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on February 1, 2018. 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. c. 131, § 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rule; which allows the applicant / representative five minutes to make a presentation to the Commission members, Commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. He asked for all to silence their cell phones.

Note: The meeting was being recorded anyone in the audience who was recording, or videotaping was asked to acknowledge such to the Commission. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

Members Present: Robert Gray, Rob Palumbo, Susan Weston, Paul Szwed, Melvin P. Holmes and Elise Leduc.

Excused Members: Tom Ligor and Associate Member, Greg Berman.

Also Present: Sam Haines, Carol Mitchell, Mike Borselli, Theresa Sprague, Joe Agrillo, Jim Mulvey, Shawn MacInnes, Joseph Agrillo Jr., David Curtin, Joseph Agrillo, Sheryl Strother, Paul Barre, Cathy Vincuilla, Paul Xavier, Davyd Roskily and Judith Skillman.

Request for Determination of Applicability:

1) Patrick Curran

File # CC18-02

Representative: Joseph Agrillo, Jr.

104 Rocky Point Road, Bourne

To remove concrete stairs and build two sets of stone stairs inside the existing revetment footprint within an AE Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping.

Joseph Agrillo, Jr. addressed the board and discussed the proposed project.

Board Comment – Ms. Weston asked if any work is being proposed on the wall. Mr. Agrillo stated there is not.

Mr. Haines asked if the stairs will be dry fit or will concrete be used. Mr. Agrillo stated they do not anticipate having to use concrete. They are proposing to use a small amount of crushed stone.

Agent Comment – Mr. Haines stated this was first presented to him as replacement of the existing stairs but then the representative requested a second set of stairs. The existing set of stairs are deteriorating and there are voids in the cement as well. Mr. Haines noted that although the RDA process does not require Natural Heritage & Endangered Species Program notification, the applicant should be aware that the site is within mapped habitat for rare species. If the Commission issues a Negative Determination, Mr. Haines recommends two conditions; 1) the stairway stones must be dry fit, no concrete may be used for the construction of the stairs or to fill voids within the revetment, 2) all equipment must remain on the upland portion of the property, no equipment is allowed on the Coastal Bank or Beach.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded a Negative Two Determination with the two conditions recommended by the agent.** With no discussion, the motion carried. 6-0-0.

Chm. Gray explained the determination to the applicant.

Chm. Gray changed the sequence of the agenda.

3) Judith Skillman

File # CC18-01

Representative: Shawn MacInnes, PE

6 Peninsula Circle, Pocasset

To repair and upgrade a failed septic system to include installation of concrete leaching chambers within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record and DEP Wetlands Change Mapping.

(Continued from January 18, 2018)

Shawn MacInnes addressed the board stating he continued the previous hearing because the health director had comments on the plan and Mr. Haines asked for more definition of the Flood Zone and the top of the Bank. He revised the plan adding a Flood Zone delineation and he adjusted the leaching area as requested by the health director.

Board Comment – None.

Agent Comment – Mr. Haines believes the revised plan meets the setbacks outlined in M.G.L. c. 131, § 40 and it can be presumed that it meets the interest of the Act if the Board of Health deems it compliant with Title V. Although the project requires the removal of some mature trees, Mr. Haines recommended a Negative Determination.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Weston seconded a Negative Two Determination.** With no discussion, the motion carried. 6-0-0.

Chm. Gray recused himself from discussion and vote. Mr. Palumbo chaired the next four hearings.

2) Steven and Nancy Candela

File # CC18-03

Representative: Bracken Engineering, Inc.

7 Cove Lane, Pocasset

To upgrade to a new Title V septic system within an AE Flood Zone.

(Under State Act Only)

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping.

Brendan Mullaney addressed the board and discussed the proposed project. He stated the project will be coming back before the commission for work to the house but at this time they are only requesting approval for the septic upgrade.

Board Comment – None.

Agent Comment – Mr. Haines noted the property is in Pocasset not Buzzards Bay as stated on the agenda. Also, it is being heard under the state act only. In terms of the project, it's a flat site within an AE Flood Zone only. He has no issues with the project.

Board Comment – None.

Public Comment – None.

Mr. Palumbo entertained a motion. **Ms. Leduc moved, Ms. Weston seconded a Negative Two Determination.** With no discussion, the motion carried. 5-0-0.

Notice of Intent:

- 1) Cathy Vincuilla and Paul Barnes
File # SE7-1996
Representative: Bracken Engineering, Inc.
7 Little Bay Lane, Buzzards Bay

To construct a saltmarsh boardwalk on helical piles within an AE Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Response from DMF and DEP Wetlands Change Mapping.

Brendan Mullaney addressed the board and discussed the proposed project. He stated the next this property and the next two filings are all directly adjacent to one another. He stated the goal for all three projects is to gain safe access to egress from the water. Currently there is no access without traipsing through the existing salt marsh. He explained the previous owner had installed an unpermitted stair and deck on the Coastal Bank, but it's his understanding that matter has been resolved and rectified within the

past year. This project seeks to extend a raised saltmarsh boardwalk from the existing deck out to the seaward edge of the saltmarsh. Mr. Mullaney provided details about the construction of the boardwalk. He is also seeking permission to install a set of removable, aluminum access stairs at the terminus of the structure.

Next, Mr. Mullaney discussed access options.

Board Comment – Mr. Holmes asked if any plantings are being proposed to help speed up the recovery of the damaged marsh. Mr. Mullaney stated plantings are not being proposed at this time.

Ms. Leduc asked how the equipment will access the site and what type of equipment it will be. Mr. Mullaney stated some contractors have a small walk behind machine to install this type of structure. If the contractor that's selected has that type of machinery, they will carry it down the steps. If that's not an option, then access from the neighboring property will be needed with a small excavator machine at the upper limit of the saltmarsh and the edge of the bank. Swamp mats or heavy-duty plywood will be utilized as necessary. He stated once a contractor has been selected, he is willing to work with the agent to decide on a least impactful means of access. A brief discussion transpired regarding the site's topography.

Mr. Mullaney mentioned they are proposing steps be added onto the small deck structure. Signage stating public lateral access will be posted as required by the DEP Waterways Program, Chapter 91.

Agent Comment – Mr. Haines asked if it's at all possible that the helical structures be installed by hand. Mr. Mullaney stated potentially, he discussed possible options. Mr. Haines voiced concern that based on aerial photos, areas of the saltmarsh on this property are starting to degrade. There is the potential, in those areas for equipment to cause a lot of damage. He stated it is low marsh and gets a lot of inundation, so he has concern about equipment on the marsh.

Mr. Palumbo asked if the agent would feel comfortable conditioning the Order that he must be consulted regarding access. Mr. Haines stated yes, he'd like to be on site for this property especially.

Ms. Leduc questioned whether a Condition could be added that will require planting mitigation post construction should there be any adverse impacts to the marsh caused by the construction equipment. Mr. Haines stated yes, the Condition will state that the applicant is responsible for replanting any damaged saltmarsh vegetation or Coastal Bank vegetation and areas of ground disturbance are immediately stabilized and revegetated.

Mr. Haines discussed the need for access agreements from the adjacent properties.

Mr. Haines noted the vegetation on the site is being trimmed aggressively without a permit. He suggested conditioning the Order that the bank vegetation be allowed to grow to maturity and any future cutting would have to be approved under a separate filing.

Mr. Haines recommended cutting out a small portion of the deck to install the step rather than expanding the footprint of the deck. After a brief discussion, Mr. Mullaney stated that is acceptable.

Mr. Haines recommended a continuance because they have not received a response from The Natural Heritage & Endangered Species Program as this property is within rare species habitat. He also stated DMF sent an email with no recommendations for the project.

Additional Board Comment – None.

Public Comment – Mr. Mulvey expressed concern over potential damage to the marsh during installation. He questioned whether the work could be performed prior to the start of the grow season. Mr. Haines stated he will be recommending a condition that states the structure is not to be utilized as a mooring, this is a saltmarsh walkway, not a dock or pier. Boats will not be allowed to attach to the walkway or on the saltmarsh. Ms. Leduc stated it's possible that Natural Heritage will request a time of year restriction.

Ms. Leduc requested that a revised plan be submitted accounting for the change with the steps. Mr. Mullaney will submit a revised plan.

Ms. Weston asked that access agreements be submitted. Mr. Haines agreed.

Mr. Palumbo stated at the applicant's request, the matter will be continued to February 15, 2018.

2) Sheryl Strother

File # SE7-

Representative: Bracken Engineering, Inc.

9 Little Bay Lane, Buzzards Bay

To construct a saltmarsh boardwalk on helical piles within an AE Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Response from DMF and DEP Wetlands Change Mapping.

Mr. Palumbo asked if a file number has been issued. Mr. Haines stated one has not yet been issued.

Brendan Mullaney addressed the board and discussed the proposed project, which is the same basic premise as the project previously discussed for 7 Little Bay Lane. He discussed the length of the proposed structure and the proposed location for the structure. He stated it is the same basic design as the walkway proposed at #7. He explained that the structure will be close to the neighboring property line; therefore, they'll have to obtain a letter of consent from that property owner for the project to be approved by both Chapter 91 and the Army Corps of Engineers. He discussed options for public lateral access as well as the construction methodology. He stated the property falls within priority habitat and is awaiting a response from The Natural Heritage & Endangered Species Program. He discussed the possibility that a time of year restriction will be placed on the project because it falls within Diamondback terrapin habitat.

Board Comment – None.

Agent Comment – Mr. Haines stated like the adjacent property, the saltmarsh is degrading; however, as you move north, the saltmarsh begins to stabilize. He doesn't feel access will be an issue. He feels similar conditions should be set as those placed on 7 Little Bay Lane and DMF stated in an email they do not have any recommendations for this project. The matter will need to be continued because a DEP file number has not been issued yet nor has a response from The Natural Heritage & Endangered Species Program been received.

Board Comment – None.

Public Comment – None.

Board Comment – Mr. Holmes asked if the same conditions will apply to this project as for the similar project at 7 Little Bay Lane. Mr. Haines stated all three projects will have very similar conditions.

Mr. Palumbo stated at the applicant's request, the matter will be continued to February 15, 2018.

3) Paul E. Xavier & Davyd Roskilly

File # SE7-

Representative: Bracken Engineering, Inc.

11 Little Bay Lane, Buzzards Bay

To construct a saltmarsh boardwalk on helical piles within an AE Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping.

Mr. Palumbo asked if a file number has been issued. Mr. Haines stated one has not yet been issued.

Brendan Mullaney addressed the board and discussed the proposed project, which is the same basic premise as the two projects presented previously. He discussed the length of the proposed structure, the proposed location of the structure and the access point for the equipment. Mr. Mullaney described the layout of the site and the public lateral access options. He stated the property falls within priority habitat and is awaiting a response from The Natural Heritage & Endangered Species Program.

Board Comment – None.

Agent Comment – Mr. Haines briefly discussed the proposed material that will be used to construct the boardwalk. He stated access will not be a problem at all and the Conditions will mirror those of the previously discussed filings.

Board Comment – None.

Public Comment – None.

Mr. Palumbo stated at the applicant's request, the matter will be continued to February 15, 2018.

Chm. Gray returned to chair the meeting. Mr. Palumbo and Ms. Leduc recused themselves from discussion and vote.

4) Wings Neck Trust

File # SE7-

Representative: Falmouth Engineering, Inc.

99 South Road, (Parcel 75), Pocasset

To repair an existing steel bulkhead and to shift an existing swim float seaward within a V Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Letter from DMF and DEP Wetlands Change Mapping.

Michael Borselli and two members from Wings Neck Trust were present to discuss the proposed project. Mr. Borselli stated they are awaiting a DEP file number and a response from The Natural Heritage & Endangered Species Program; therefore, they would like to continue the hearing to March 1st but will present their information that evening.

Mr. Borselli described the layout of the site and explained the steel bulkhead has deteriorated over the years. The existing stone and concrete groin/pier system is licensed and has been in existence for decades. In addition, there's a licensed float system. He discussed the construction access and the location of the property; which is mapped as shellfish habitat. It also has some mapped Eelgrass beds, a Coastal beach and is located within a Velocity Zone.

Next, Mr. Borselli described the deterioration of the steel bulkhead; which is now spalling, causing an adverse impact to the environment as well as safety concerns to those who use it. He discussed the plan to encapsulate the steel bulkhead with a new vinyl sheet piling system, not demolish it. Mr. Borselli stated the construction methodology is limited in the narrative; however, there's additional notes on the construction drawings and the design drawings. Mr. Borselli stated at the next hearing, he'll submit a written construction methodology that supplements what's existing. Mr. Borselli stated there's existing concrete rubble between the concrete pier and the steel bulkhead which is proposed to be temporarily removed and stockpiled above Mean High Water. He briefly discussed construction access and timeline for construction.

Mr. Borselli referred to the plan to pinpoint the location of Eelgrass as identified in the DMF letter. He also discussed the existing float, which at the landward end, is bottoming out at low tide. He stated as a remedy, they considered dredging rather than shifting the float seaward but because of the additional environmental impact and cost, it seemed more logical to get permission to shift the float location out 10 feet and install a new, prefabricated aluminum ramp that would connect to the new, encapsulated bulkhead and onto the float. Mr. Borselli briefly discussed how the float will be anchored.

Mr. Borselli discussed the public benefit of the float and how it will be anchored. He referred to the DMF letter and discussed their recommendations.

Board Comment – None.

Agent Comment – Mr. Haines stated he has asked for additional construction methodology; what equipment will be used, access information, what staging areas will be used on the site, etc. An Eelgrass bed is shown on the plan but there's no mention of how it was surveyed. Up until 2010, the area was mapped as Eelgrass habitat; however, mapping from 2010 to 2016 no longer shows the area as Eelgrass habitat. Mr. Borselli stated they subcontracted the Woods Hole Group to perform a bathymetry survey. When

the Woods Hole Group completed that survey, they included the Eelgrass mapping. Mr. Haines asked for a copy of that survey from Woods Hole Group. Chm. Gray suggested conditioning the Order to demarcate the Eelgrass bed. Mr. Borselli stated they will mark the area with a floating boom.

Chm. Gray asked how much larger in square feet the new encapsulated structure will be vs. the existing structure. Mr. Borselli stated he is not expanding the existing structure. He said the plan is deceiving because it appears that the size is being increased. Chm. Gray referred to the second bullet of recommendations in the letter from DMF and suggested Mr. Borselli clarify to DMF that there's no increase because they are seeking mitigation.

Chm. Gray opened a discussion regarding the applicant's choice to anchor the float instead of securing it with piles and the reason behind the request to move the float further seaward.

Additional Agent Comment - Mr. Haines stated the site is mapped by DEP as Barrier Beach and a Variance will be required in terms of float storage on a Resource Area. The proposed work is within a Velocity Zone, so the Commission will have to determine whether the extension of the float will be a greater environmental or public benefit. In terms of the public benefit, he thinks the Commission should consider that this is a multi-use pier. He explained that the Commission has allowed extensions in the past to meet the 3' minimum ground clearance at low tide and asked the representative for a better detailed plan to show the 3' contour. This will avoid extending the float further than necessary. The project has not received a DEP file number or a response from The Natural Heritage & Endangered Species Program, so the matter will have to be continued. He encouraged the members to perform a site visit.

Mr. Borselli forget to mention they are also seeking to relocate an existing lamp post in the parking area. A discussion ensued.

Public Comment – Mr. Mulvey questioned whether this is a designated swim float, not to be used for mooring. Mr. Haines showed Mr. Mulvey the plan and explained that this float is part of the dock and pier system and connected to a ramp. Mr. Mulvey questioned if the bulkhead will be encapsulated in the front and back. Mr. Borselli stated yes.

Although a vote wasn't required, Chm. Gray entertained a motion to continue the matter to March 1, 2018. **Mr. Holmes moved, Mr. Szwed seconded.** With no discussion, the motion carried. 4-0-0.

Mr. Palumbo and Ms. Leduc returned to the meeting.

5) Alice Handy

File # SE7-

Representative: Falmouth Engineering, Inc.

284 Circuit Ave, Pocasset

To demolish existing dwelling and to construct a new dwelling within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, BVW Data Sheets, Landscape Plan and DEP Wetlands Change Mapping.

Michael Borselli along with Theresa Sprague of BlueFlax Design discussed the proposed project. Mr. Borselli stated they have not received a file number, so he'd like to present the project and continue the matter to March 1, 2018. The plans are proposing to demolish the existing single-family dwelling located on the lot and reconstruct a new single-family dwelling to replace it. He discussed the acreage of total land stating approximately $\frac{3}{4}$ of it is saltmarsh with a standing tidal pool in the middle of it. Interconnected through the marsh are ditches that connect through a culvert on Circuit Avenue to another small pond. Mr. Borselli stated the ditches are clogged and as a result, on a hot summer day, there's a strong sulfur odor.

Next, Mr. Borselli discussed the layout of the property. He stated they've delineated and flagged the saltmarsh. They've delineated and set stakes at the top of the Coastal Bank. A Bordering Vegetated Wetland on the opposite side of the street has been flagged and data sheets have been submitted. Mr. Borselli discussed the layout of the existing house stating part of the covered deck is right at or slightly over the top of the Coastal Bank.

He stated Mr. Haines raised concerns regarding the delineation of the top of the Coastal Bank, so there may be adjustments made. He will provide transects and analyze it further. Chm. Gray asked who conducted the saltmarsh delineation. Mr. Borselli stated his company did. A brief discussion transpired regarding the delineation.

Mr. Borselli provided an overview of the exiting conditions of the home as well as the proposed structure. He briefly discussed the proposed septic system as well as the property's setbacks. Another improvement they are contemplating is to apply for permission to clean the ditches out to try to eliminate the odor experienced at low tide.

Board Comment – Ms. Weston commented that the proposed house covers the entire upland of the lot. She stated it appears that part of the proposed structure encroaches closer to the Coastal Bank than the existing structure. She questioned whether there is sufficient lot coverage for this project. A brief discussion transpired regarding zoning

requirements for lot coverage. Mr. Haines stated her concern is out of the Commission's purview; however, he is willing to speak to the town planner about it.

Ms. Leduc thinks by installing a pervious driveway as opposed to a paved driveway might compensate for some of the much-increased impervious surface of the building structure. Mr. Borselli agreed. He introduced Theresa Sprague who briefly discussed the proposed landscape design which includes invasive species removal.

Mr. Palumbo exited the meeting at 8:50 PM.

Mr. Holmes questioned how she is proposing to remove the Phragmites. Ms. Sprague stated it's a small stand so they'll teepee it, cut it and drip it with an herbicide.

Ms. Leduc questioned how the proposed lawn area in the back will be created. Ms. Sprague provided detail.

Chm. Gray opened a discussion regarding the invasive species removal.

Chm. Gray asked if the home will remain in the family. Mr. Borselli stated yes.

A brief discussion transpired regarding the possibility that the site is habitat for Eastern box turtles and possibly Diamondback Terrapin as well.

Mr. Haines asked if equipment will be needed on the Coastal Bank. Ms. Sprague stated she doesn't think equipment will be needed.

A brief discussion transpired regarding potential impacts to the project should the re-delineation of the Coastal Bank change from the existing delineation.

Public Comment – None.

At the request of the applicant the matter was continued to March 1, 2018. A vote to continue wasn't necessary.

Certificate of Compliance:

- 1) MaryDavid McNamara
File # SE7-0800
Representative: Atlantic Design Engineers, Inc.
35 Pine Ridge Road, Buzzards Bay

Coastal Bank restoration and revegetation.

Mr. Haines stated a site visit was performed on January 31, 2018. The COC was denied last fall. Mitigation planting is now complete, and all other requirements have been met. Mr. Haines recommended issuing the Certificate of Compliance.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Weston seconded to issue the Certificate of Compliance.** With no discussion, the motion carried. 5-0-0.

Other Business:

- Vote excused absent members, if necessary – **Ms. Leduc moved, Ms. Weston seconded to excuse the absent members.** With no discussion, the motion carried. 5-0-0.

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the December 7, 2017 meeting. After a brief discussion, **Ms. Weston moved, Mr. Holmes seconded to approve the minutes of the December 7, 2017 meeting as revised.** The motion carried. 5-0-0.

- Report of the Conservation Agent – Mr. Haines stated a site visit for the Tahanto Bridge project needs to be scheduled. After a brief discussion, the board requested to schedule the site visit via email.

- Public Comment Period on Non-Agenda Items – None.

- Questions and Answers re: M.G.L. Chapter 131 §40 and 310 CMR 10.00-10.99 – None.

- Questions and Answers re: Town of Bourne Wetland Protection Bylaw (Article 3.7) and BWR 1.00-1.16 – None.

II. Adjournment

Mr. Szwed moved, Mr. Holmes seconded to adjourn. With no discussion, the motion carried. 5-0-0. The meeting adjourned at 9:12 PM.

Minutes submitted by: Carol Mitchell