

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

February 15, 2018

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on February 15, 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 rules; which allow 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, Paul Szwed, Susan Weston, Thomas Ligor and Elise Leduc.

Excused Members: Rob Palumbo, Melvin P. Holmes and Associate Member, Greg Berman.

Also Present: Sam Haines, Carol Mitchell, Darren Meyer, Davyd Roskilly, Anne Ford, and Eileen Jackson.

Request for Determination of Applicability:

- 1) George Jenkins
File # CC18-04
Representative: Darren Meyer, Meyer & Sons
131 Mooring Rd., Mashnee Island

To upgrade a septic system within a Velocity Flood Zone.

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

Darren Meyer addressed the board and discussed the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines asked if the 5’ distance between ground water was achieved and if this will be a flat system. Mr. Meyer stated yes, and it will be a flat system.

Mr. Haines explained the property is located within a V Flood Zone, it is an upgrade of a failed cesspool on this developed lot. He stated that he spoke with the Health agent who feels the proposed system is appropriate for this site. There are no issues with this project.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Ms. Leduc moved, Mr. Ligor seconded a motion for a Negative Two Determination.** With no discussion, the motion carried. 5-0-0.

- 2) Anne K. Ford
File # CC18-05
Representative: Same
221 Shore Rd., Monument Beach

To perform seasonal mowing, landscaping and patio replacement within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

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

Anne Ford addressed the members and provided a brief history of the property. She stated there is debris that's accumulated over the years that she'd like to remove along with some invasive species. She'd also like to remove a tree that fell on her barn and the adjacent concrete pad that was installed by the previous owner which served as a kennel. She explained that the concrete directly abuts the barn and allows rain water to wick up the side of the barn, damaging the shingles.

Board Comment – Mr. Ligor asked if the concrete pad will be removed entirely. Ms. Ford stated yes. Mr. Ligor asked what she'll replace it with. Ms. Ford stated something that's more aesthetically pleasing. Mr. Ligor stated it appears the concrete pad protrudes into the Coastal Bank. Mr. Haines stated it's a historical feature and it does extend into the Bank. Mr. Ligor asked if the 50-foot setback applies in this instance. Mr. Haines stated based on past precedence, this is a pre-existing feature, so in the past there hasn't been a setback requirement. However, that is something for the Commission to consider.

Mr. Haines asked if the replacement will be in the same footprint. Ms. Ford indicated it will be.

Ms. Leduc asked how the pad will be removed. Ms. Ford stated a contractor will have to use a machine to dig the pad out.

Chm. Gray asked what will replace the pad. Ms. Ford stated at-grade pavers or similar.

Ms. Leduc asked for clarification on the location of the seasonal mowing. Ms. Ford referred to the plan to pinpoint the location of the seasonal mowing.

Ms. Leduc asked if that area is traditionally an area that the Commission would want to keep at a 3-foot height. Mr. Haines explained this filing is the result of a violation. He visited the site and observed mowing had occurred.

Mr. Haines stated the idea of the filing is to allow the property owner use of the property, allow the Coastal Bank to regrow to a mature height, allow for seasonal mowing of the buffer zone and to remove debris from the invasive species area. He suggested conditioning the determination to restrict the use of herbicides and pesticides in the mowed area, that the mowing may occur only in a specific area and that the Coastal Bank be allowed to regrow to a mature height.

A discussion transpired regarding the location of the Coastal Bank which is not depicted on the plan that was submitted by the applicant. The plan is a partial plan that was drafted for a previous septic system project.

Ms. Leduc asked how often the applicant is planning to mow. Ms. Ford stated she would like to weed whack the area three to four times per year.

Ms. Leduc expressed concern that the property owner will have to cross over the Bank to access the proposed mowing area. A discussion ensued.

Mr. Ligor asked the agent if he has any suggested conditions for the proposed project. Mr. Haines stated he recommends that no mowing or clearing of the vegetation is allowed on the Coastal Bank and the vegetation on the Bank must be allowed to grow to a mature height.

The members discussed establishing a buffer zone off the Bank.

Mr. Haines suggested additional conditions for the proposed project; mowing of the buffer zone as shown on the attached plan should be conducted no more than three to four times per year to control invasive bittersweet and allow the area to be utilized; this Determination does not allow for the proposed mowed area to be converted to turf grass; commercial fertilizers, herbicides and pesticides shall not be utilized in this area; erosion controls in the form of staked straw wattles must be placed on the seaward side of the concrete path prior to any work being conducted in that area and no equipment is allowed on the Coastal Bank.

Ms. Weston asked if these conditions will be recorded with the deed. Mr. Haines stated an Order of Conditions is recorded with the deed; that is not the case with this filing. Ms Weston feels that due to the number of conditions, a Notice of Intent should be filed. Chm. Gray feels that will be costly for this landscape project.

A discussion transpired regarding the need for a more detailed plan since the one submitted does not depict the Coastal Bank. Chm. Gray questioned whether a section of the plan was cut off when it was copied and thinks there may be an additional section of the plan. He asked the agent to research whether a larger, more detailed plan of the property exists.

Mr. Szwed asked if the purpose of the mowing is to control the invasive species. Ms. Ford stated it is.

If approved, Ms. Leduc questioned whether the conditions under either an RDA or an NOI, would have to be adhered to by new property owners should the property be sold in the future. Chm. Gray stated no. He explained that even if the conditions were included in an Order of Conditions, the Order is only valid for three years; unless it's continued. Even then, it can only be continued for a certain amount of time and if the property changes hands, most likely the new owners will not know about the Order or

even adhere to it. Any new violations would be addressed accordingly. Ms. Weston stated regardless, a new plan depicting the top of the Coastal Bank, the property boundaries and the proposed mowing area needs to be submitted.

Mr. Ligor asked who will be performing the work. Ms. Ford stated that hasn't been determined yet.

Mr. Haines provided two options; either issue a Positive Determination which will require an NOI or allow the applicant to continue the matter and return with a revised plan for the patio. He stated to obtain a proper delineation of the Bank, an official survey would have to be performed. Chm. Gray stated in this case, 90% of the survey is complete. There may be an additional section of the plan because it appears that a section of it was cut off when it was photocopied. Mr. Haines will call to see if there's a full plan that identifies the Coastal Bank for this property. If the Coastal Bank is identified, then a proper vegetated buffer off the Coastal Bank can be set.

A brief discussion transpired regarding additional information needed from the applicant.

Chm. Gray opened a brief discussion regarding the submitted plan.

Public Comment – Eileen Jackson, the former property owner, addressed the board. She provided history of the cement patio which was installed prior to her purchasing the property and expressed her support of the project.

Mr. Ligor moved, Ms. Leduc seconded to continue the matter to March 1, 2018, to obtain additional information and an updated plan. With no discussion, the motion carried. 5-0-0.

Notice of Intent:

Chm. Gray recused himself from discussion and vote. Ms. Leduc chaired the next three hearings.

- 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.

(Continued from February 1, 2018)

Materials Reviewed – Site Photographs, revised Site Plan of Record, letter from The Natural Heritage & Endangered Species Program and DEP Wetlands Change Mapping.

Mr. Haines stated the representative could not attend and asked for a continuance. This matter was continued from February 1, 2018 because neither a DEP file number nor a response from The Natural Heritage & Endangered Species Program had been received. Mr. Haines stated a file number has been received and a no take letter was received from The Natural Heritage & Endangered Species Program.

Ms. Leduc questioned whether a construction access agreement from the neighboring properties was received. Mr. Haines stated he does not know if the owner of property # 7 received an access agreement from the owner of property # 9. He stated if the board wants to move forward, that could be a condition. Another issue is that the Chapter 91 access stairs were to be constructed within the existing footprint of the deck as opposed to what the plan currently shows. This could be an additional condition. Mr. Haines stated he has other additional conditions.

Ms. Leduc suggested the matter be continued. A discussion ensued.

Public Comment – None.

Ms. Leduc entertained a motion to close the public hearing. **Ms. Weston moved, Mr. Szwed seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

Mr. Haines recommended the following Special Conditions; ASC (1) the permitted saltmarsh walkway does not allow for the attachment of floats and cannot be used as a boat dock, slip or mooring, no storage or mooring of watercraft is allowed on the saltmarsh. (2) no refueling in the Resource Area and secondary containment is required within the 100-foot buffer; spill containment materials must be kept on the site at all times, (3) any areas of disturbed saltmarsh vegetation or destabilization of the Coastal Bank as a result of this project must be restored immediately after the work is completed, dead or damaged vegetation must be replanted with similar native plants, (4) the Conservation agent must be notified of the start of work date and perform an on-site inspection to ensure that the equipment used on the salt marsh is not adversely impacting the saltmarsh vegetation, (5) the Chapter 91 access stairs must be constructed within the existing footprint of the existing deck and revised plans must be delivered to the

Conservation Department prior to construction, (6) the stairs at the seaward end of the structure must be removable, the stairs must be removed from the structure between November 1st and April 1st and stored in an appropriate upland location, (7) an access agreement from # 9 Little Bay Lane is required prior to construction of the saltmarsh stairway. Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 7, 9, 10, 12, 15, 18-20, 22, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 4-7, 10, 12, 14-16, 18, 20-22, 25 as well as the seven Additional Special Conditions stated previously.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Ms. Weston seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

2) Sheryl Strother
File # SE7-1997
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.

(Continued from February 1, 2018)

Materials Reviewed – Site Photographs, revised Site Plan of Record, a letter The Natural Heritage & Endangered Species Program and DEP Wetlands Change Mapping.

Mr. Haines stated a file number has been received, a no take letter was received from The Natural Heritage & Endangered Species Program and recommends the following conditions if an Order is recommended by the Commission. ASC (1) the permitted saltmarsh walkway does not allow for the attachment of floats and cannot be used as a boat dock, slip or mooring, no storage or mooring of watercraft is allowed on the saltmarsh. (2) no refueling in the Resource Area and secondary containment is required within the 100-foot buffer; spill containment materials must be kept on the site at all times, (3) any areas of disturbed saltmarsh vegetation or destabilization of the Coastal Bank as a result of this project must be restored immediately after the work is completed, dead or damaged vegetation must be replanted with similar native plants, (4) the Conservation agent must be notified of the start of work date and perform an on-site inspection to ensure that the equipment used on the salt marsh is not adversely impacting the saltmarsh vegetation and (5) the stairs at the seaward end of the structure must be

removable, the stairs must be removed from the structure between November 1st and April 1st and stored in an appropriate upland location.

Public Comment – None.

Ms. Leduc entertained a motion to close the public hearing. **Ms. Weston moved, Mr. Szwed seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 7, 9, 10, 12, 15, 18-20, 22, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 4-7, 10, 12, 14-16, 18, 20-22, 25 as well as the five Additional Special Conditions stated previously.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Ms. Weston seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

3) Paul E. Xavier & Davyd Roskilly
File # SE7-1998
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.

(Continued from February 1, 2018)

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

Mr. Haines stated a file number has been received, a no take letter was received from The Natural Heritage & Endangered Species Program and recommends the following conditions if an Order is recommended by the Commission. ASC (1) the permitted saltmarsh walkway does not allow for the attachment of floats and cannot be used as a boat dock, slip or mooring, no storage or mooring of watercraft is allowed on the saltmarsh. (2) no refueling in the Resource Area and secondary containment is required within the 100-foot buffer; spill containment materials must be kept on the site at all times, (3) any areas of disturbed saltmarsh vegetation or destabilization of the Coastal

Bank as a result of this project must be restored immediately after the work is completed, dead or damaged vegetation must be replanted with similar native plants, (4) the Conservation agent must be notified of the start of work date and perform an on-site inspection to ensure that the equipment used on the salt marsh is not adversely impacting the saltmarsh vegetation and (5) the stairs at the seaward end of the structure must be removable, the stairs must be removed from the structure between November 1st and April 1st and stored in an appropriate upland location.

Public Comment – the property owner, Mr. Roskilly, asked if an access agreement is required. Mr. Haines stated no, his property has direct access; therefore, no access agreement is required.

Ms. Leduc entertained a motion to close the public hearing. **Ms. Weston moved, Mr. Szwed seconded to close the public hearing.** With no discussion, the motion carried. 4-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers 1-3, 7, 9, 10, 12, 15, 18-20, 22, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 4-7, 10, 12, 14-16, 18, 20-22, 25 as well as the five Additional Special Conditions stated previously.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Ms. Weston moved, Mr. Ligor seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-0.

Chm. Gray returned to chair the meeting.

4) Tahanto Associates, Inc.

File # SE7-1999

Representative: Design Consultants, Inc.

0 Tahanto Road, Pocasset

To demolish an existing 30' wooden pedestrian bridge and replace it with a 35' aluminum pedestrian bridge within a V Flood Zone and within a Wetland Resource Area.

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

(At the request of the representative, this filing has been continued to March 1, 2018)

Other Business:

- Vote excused absent members, if necessary – **Ms. Leduc moved, Mr. Ligor 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 21, 2017 meeting. **After a brief discussion, Ms. Leduc moved, Mr. Ligor seconded to approve the minutes of the December 21, 2017 meeting as revised.** The motion carried. 5-0-0.

Chm. Gray questioned whether the matter pertaining to the causeway on Wings Neck will be heard at the March 1st hearing. Mr. Haines stated it will be heard on March 1st.

- Report of the Conservation Agent – Mr. Haines discussed a utility pole replacement notification received from Eversource. After a brief discussion, it was decided that the agent will perform an on-site visit and will report back to the Commission once it's been conducted.

- 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

Ms. Leduc moved, Mr. Szwed seconded to adjourn. With no discussion, the motion carried. 5-0-0. The meeting adjourned at 8:26 PM.

Minutes submitted by: Carol Mitchell