

## Conservation Commission

### Meeting Minutes

Zoom Meeting Platform

February 18, 2021

#### Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday February 18, 2021, held via Zoom Platform. 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, Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. If the Act or the Bylaw don't mutually apply to the review, it will be indicated at the time of review which instrument of law they will be reviewed under.

Chm. Gray also reviewed the 5-5-5 Rule which allows the applicant or representative to make a five (5) minute presentation to the Commission Members, Commission Members will then take five (5) minutes to seek additional information if necessary, and then the public will be allowed five (5) minutes for comment.

Note: The meeting was being held via the Zoom platform, and was being recorded, as noted per the "Recording in Progress" icon that was displayed. 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 due 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:** Bob Gray, Elise Leduc, Paul Szwed, Tom Ligor, Rob Palumbo, Peter Holmes, Associate Member Steve Solbo

**Excused members:** Greg Berman

Others in attendance: Sam Haines, Michael Borselli, Don Bracken, Lou Scott, Hunter Scott, Nathan Goshgarian, Susan Bodington, Mary Francis, Jack Keenan

#### Request for Determination:

1. Applicant: Peter H. Cressy, Trustee  
Address: 2 Mill Pond Circle, Cataumet  
Representative: Cape & Islands Engineering  
File Number: CC21-05

RECEIVED  
2022 FEB -7 PM 12: 26  
TOWN CLERK BOURNE

To upgrade septic system to a Title V system and abandon existing septic according to Title V regulations within an AE Flood Zone, and within 100ft of a Wetland Resource Area

Mr. Raul Lizardi addresses the board and reviews the proposed plan. He reviews the distance that the plan is proposed to be from the Coastal Bank, as well as the distance from the vegetated Wetland. Mr. Sam Haines comments, stating that the proposed location for the plan is the only portion of the lot that is appropriate for the project. He does state there will be a variance required from the Board of Health.

*Member comment:* None.

*Public comment:* None.

Motion made by Ms. Leduc, and seconded by Mr. Palumbo to move for an approval with a Negative 2 Determination. **Motion carries 5-0-0.**

2. Applicant: Paul Langdon  
Address: 90 Old North Road, Pocasset  
Representative: Farland Corp.  
File Number: CC21-06

To construct a detached garage in an AE Flood Zone.

Mr. Chris Gilbert addresses the board and shares his screen with the plan. He reviews the Resource Areas on the property, as well as the Flood Zone elevations on the property. He states that the proposed garage will sit outside of the 100ft Coastal Bank Buffer Zone. Mr. Gilbert states there is no proposed grading, and that all of the excavated soil will be removed from the site. He reviews erosion control plans as well. Mr. Haines comments, stating that the work will only be subject to Chapter 131 § 40, not Article 3.7, as it will be done in an AE Flood Zone.

*Member comment:* None.

Mr. Peter Holmes joins the meeting. Six members now present.

*Public comment:* None.

Motion made by Mr. Palumbo, and seconded by Ms. Leduc to move for an approval with a Negative 2 Determination. **Motion carries 5-0-1.**

**Notice of Intent:**

1. Applicant: Brian Gegan  
Address: 132 Emmons Road, Monument Beach  
Representative: J.E. Landers – Civil-Environmental Engineering  
File Number: NOT AVAILABLE

To construct a new garage with second floor bedroom guest house, upgrade to a Title V septic system, and landscape, grade, loam, and seed all disturbed areas within 100 feet of a Wetland Resource Area.

Chm. Gray notes that this hearing will need to be continued to the next meeting, as there is no file number available.

Mr. Jack Landers-Cauley addresses the board and shares his screen. He reviews the proposed plan for the building, as well as the plan for vista pruning. He discusses that due to the fact that the plan is proposing an additional bedroom to the property, the Board of Health is requiring compliance with the local Board of Health Regulations by way of alternative technology. Mr. Landers-Cauley discusses the proposed plan for a denitrification system, bringing the plan into compliance with Massachusetts State Title V regulations. He reviews the applicants' plan for the proposed use of the addition as well. He goes on to review the rest of the proposed layout of the addition, and surrounding structures (elevated deck and stairs) as well as proposed drywells to collect water runoff. He also reviews the limit of work noted on the plan. Mr. Haines comments on the project. He states that the proposed plan is an improvement over the previously proposed plan. He requests clarification regarding removal of trees in the limit of work. Mr. Landers-Cauley provides clarification, stating that he will discuss it with the applicant, but he believes there will need to be 12 trees removed. Mr. Haines suggests to the board that they consider mitigation for the proposed tree removal, especially for any trees that need to be removed within the 50' Buffer Zone. He makes note that tree removal is not typically allowed in within the 50' Buffer Zone for new structures. He recommends also possibly redesigning the stairs to prevent them from moving closer to the 50' Buffer Zone. He otherwise does not believe the proposed structure will have a negative impact on the Coastal Bank. Mr. Haines requests clarification regarding the construction of the stairs. Mr. Greg Jones explains the plan for construction of the stairs and deck. Mr. Haines questions whether the plan for the stairs would require excavation. Mr. Jones clarifies that there would be excavation required, only enough to place pre-cast piers in place for the footing of the stairs and deck.

*Member comment:* Mr. Ligor agrees with Mr. Haines' comments regarding the location of the structures that are close to the 50' Buffer Zone, suggesting they be moved back away from the Buffer Zone by three feet. He then expresses concern regarding the removal of 12 mature trees, suggesting the possibility of not taking all 12 down. Mr. Landers-Cauley states that he will discuss with the architect to work on identifying, noting the size, and labeling trees that are not within the footprint of the house. Mr. Landers-Cauley also states that the applicant has

expressed that they would like to limit the impact on the footprint of the property. Chm. Gray questions whether there would be a possibility to relocate the stairs coming off of the deck. Mr. Jones states that can be looked into. Ms. Leduc comments regarding the number of trees that are proposed to be removed, stating that on the plan, it looks like there may be more trees proposed to be removed than previously stated, counting 20 trees on the plan as opposed to 12. She also requests a more definitive line on the plan that represents the 50' set-back. Chm. Gray suggests an addendum to the plan with focus on the proposed building with the deck, and increased to a ten-scale representation, allowing focus on the trees and to potentially address additional concerns. Mr. Landers-Cauley is amenable to that suggestion. Mr. Szwed suggests clarifying the limit of work on the plan, in addition to the 50' Buffer Zone clarification.

*Public comment:* None.

With consent of the applicant's representative and the board, continued to March 4, 2021 meeting.

2. Applicant: Jeffrey Lang, Scallop Bay Marina  
Address: 18 Wings Neck Road, Pocasset  
Representative: Falmouth Engineering  
File Number: SE7-2034

To upgrade two septic systems, one for house, one for boatyard, within an AE Flood Zone, within 100 feet of a Wetland Resource Area, and within 200ft River Front Area

Mr. Michael Borselli addresses the board and shares his screen. He reviews the plan, the Resource Areas, and updates made to the plan. He reviews both septic systems, starting with the boat yard facility, noting that the existing septic system has failed Title V inspection. He reviews the proposed plan to replace the existing system, as well as the new proposed location for the system, which moves the system away from the Wetland Resource Area, and elevates it above the water table. He notes part of the plan will require dewatering, and reviews the specifics of that part of the plan, including erosion and ground water control. Additional specifics of the plan for the boatyard septic are explained. Mr. Borselli then goes over the proposed plan for septic system for the house, which he notes is less complicated. He addresses the fact that this system has also failed Title V inspection, so it will be brought into compliance with Title V. He opens the discussion to questions. Mr. Haines comments regarding the dewatering plan, stating he has concern regarding freezing causing sheet flow, as the project is likely planned to be completed during winter. He suggests a more detailed plan for how the dewatering basin will look. He states that he sees no issue with the septic system for the house, but due to the size of the boatyard septic, he expresses that he would have preferred to see a plan for an advanced treatment system. He does go on to explain that there is an exemption in the Wetlands

Protection Act: "for onsite sewage disposal systems in existence, on August 7, 1996 in the repair or upgrade of existing systems in compliance with 310 CMR 15." Mr. Borselli comments, stating that the project can be done during either early spring, or at least not in winter conditions, and the erosion control can be doubled as well. He expects the process to be fairly quick as well.

*Member comment:* None.

*Public comment:* None.

Motion made by Mr. Holmes and seconded by Mr. Ligor to close the hearing.  
**Motion carries 6-0-0. Hearing is closed.**

*All general conditions would be included in the Draft Order*

*Draft Order of Conditions pursuant to Chapter 131 § 40 include:*

1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 18, 19, 21, 27, 28, 29

*Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:*

None.

Ms. Leduc questions whether there should be anything added related to the dewatering plan and control. Mr. Haines believes that one of the standard conditions states that all runoff should be contained, so that concern should be addressed by that condition.

Motion made by Mr. Ligor, and seconded by Ms. Leduc to move the Draft Order of Conditions to final. **Motion carries 6-0-0. Order of Conditions issued.**

3. Applicant: Stephen and Marybeth Bisson, Trustees  
Address: 176 Scraggy Neck Road, Cataumet  
Representative: Bracken Engineering  
File Number: NOT AVAILABLE

To fill, grade, and relocate driveway within an AE Flood Zone, and within 100 feet of a Wetland Resource Area.

Chm. Gray notes that this hearing will need to be continued to the next meeting, as there is no file number available.

Chm. Gray then recuses himself as he does work with Bracken Engineering, and turns the hearing over to Mr. Palumbo.

Mr. Don Bracken addresses the board and shares his screen. He reviews the plan and the Wetland Resource Areas on the property, including an AE Flood Zone.

He notes specifically, the limit of the salt marsh on the plan. He also makes note that the entire property falls within the 100' Buffer Zone, so no specific Buffer Zones are noted on the plan. He reviews that the applicants are planning, with no definitive plans as of yet, to raze the existing dwelling, and construct a new structure closer to the existing driveway, further from the Coastal Bank. The current proposed plan is to create an area for future site development outside of the AE Flood Zone. He confirms that any future structures would meet the 50' set back from the Coastal Bank. Mr. Bracken reviews the plan for proposed grading, noting that there will be no slopes steeper than 10:1. He also details the grading and loam and seeding plan. He notes there will be additional information regarding proposed tree removal and plan for mitigation. Mr. Haines comments regarding the driveway, stating that it does not seem to be designed with the contours of the possible new property, and questions whether there may be an option to move the driveway further from the Coastal Bank. Mr. Bracken states that can be addressed, but the existing driveway will be removed at the time of the construction of the new structure. Mr. Haines requests that the 50' setback be added to the plan. He also comments that he is concerned about the erosion control plan, and that he would prefer to see something sturdier, suggesting silt fence, or a double roll of BNPs. He notes that in an AE Flood Zone, structural fill is permitted, so this would not be a FEMA issue.

*Member comment:* Mr. Ligor questions if a wildlife survey has been done to the property. Mr. Bracken states that a wildlife survey has not yet been done as the area does not fall into a Natural Heritage Area. Mr. Ligor expresses concern regarding tree removal having an effect on the Osprey population. Mr. Palumbo notes that there are Osprey stands in that area. Mr. Bracken responds, stating that the mitigation plan proposes to replant trees, not shrubs and lawn. Ms. Leduc requests adding trees to the plan, specifically within the 50' Buffer Zone, and notation of the ones that would need to be removed. Mr. Bracken states that the plan can be updated with those requests added. Ms. Leduc notes that she would like to visit the site. No additional member comment.

*Public comment:* Mr. Jack Keenan expresses concern regarding future plans for the property, stating that "a box is just being checked for a single-family dwelling" with no specification regarding size, etc. He believes that the Notice of Intent is very vague in explaining what is planned. He expresses concern regarding the road conditions leading out to the property as well. Mr. Haines questions whether there can be notation made on the plan if road improvements would need to be made for access. Mr. Bracken states that can be addressed. Mr. Bracken also notes that there are several steps involved in the process, providing explanation as to why they are going about everything the way they are. Ms. Mary Francis comments regarding the proposed plan for fill, stating that it appears that 600' of the Coastal Bank would be filled. She is also concerned about the amount of trees that are proposed to be cut down. She questions how many feet of Coastal Bank would be affected by the project, as well as what may happen if FEMA approval is not obtained after bringing in the fill. Mr. Bracken confirms that no fill will be brought in until the

approval is received by FEMA. He also clarifies that there will be no work done within the Coastal Bank, only in the Buffer Zone. Mr. Holmes questions whether the roadway that leads to the property can be elevated in some manner. Mr. Bracken states that they would not want to disturb that area as there are Resource Areas in that area. Additional questions are asked and answered regarding the proposed buildable lot size. Ms. Kate McCarey requests clarification regarding the process that would need to be gone through prior to work beginning. Mr. Bracken provides this clarification. No additional public comment.

With consent of the applicant's representative and the board, continued to March 4, 2021 meeting.

Chm. Gray returns to the hearing.

### **Request for Extension of Order of Conditions**

1. Applicant: James Halliday  
Address: 160 Red Brook Harbor, Cataumet  
Representative: Bracken Engineering  
File Number: SE7-2009

To construct a single-family dwelling, install a new Title V septic system, renovate an existing boathouse, and perform invasive species management and restoration, including all associated grading, landscaping, utilities, and appurtenances within AE and V Flood Zones, and within 100 feet of a Wetland Resource Area.

Mr. Haines states that the property was pending sale prior to the construction beginning, and the property has now sold. Mr. Haines recommends the extension be granted as this is the applicant's first request for extension. The applicant is requesting a three year extension.

Motion made by Mr. Palumbo, and seconded by Ms. Leduc to approve the extension. **Motion carries 6-0-0. Extension of Order of Conditions granted.**

2. Applicant: Silvia and Silvia Associates, Inc.  
Address: 829 Scenic Highway, Bourne  
Representative: Dunning, Kirrane, McNichols, and Gardner, LLP  
File Number: SE7-1572

Commercial housing development within 100 feet of a Wetland Resource Area, and an ACEC.

Mr. Haines states that there was a letter February 14, 2019 issued with the previous extension. Based on the letter, and the fact that the project is 15 years old, Mr. Haines does not recommend that the Commission grant the extension.

Atty. Christopher Kerrain addresses the board as representative for the applicant. He states that there have been title issues with the property, preventing the applicant from being able to complete the purchase of the property. Due to the COVID-19 pandemic, there have been additional setbacks as well. He notes that the Planning Board has granted continuances on a six-month basis for the applicant. Mr. Kerrain is amenable to a one year extension due to situations out of the applicant's control.

*Member comment:* Mr. Ligor suggests providing a six month extension. Mr. Haines states that a six month extension would not be feasible; a one, two, or three year extension could be provided. With previous language in the last extension stating that "substantial work" would need to be done, concern is also expressed as to how much work can be completed in six months. Mr. Solbo comments, stating that he saw an extension recently that was approved, making the original Order of Conditions 15 years old. With that extension, he noted that the technology that was being used on site was out of date. He suggests to ensure that today's standards are being met and reflected in the plans if this extension to move forward. Mr. Haines agrees, and also comments that 15 years is a long time not to review a project. Ms. Leduc states that she agrees with Mr. Haines, commenting that the plans would need to be reviewed by the Commission regardless, so she does not believe the extension should be granted. Mr. Szwed questions what the plan would be if the extension were granted, and also confirms whether the previous "roadblocks" that were in the way have since been resolved. Mr. Kerrain responds, explaining what the plan would be, and how the previous setbacks have been resolved. Mr. Holmes comments that he is in agreeance with Ms. Leduc and Mr. Solbo. He requests clarification whether the extension is being requested for one year or three years. No clarification provided, a motion is made:

Motion made by Ms. Leduc, and seconded by Mr. Ligor to not grant the Extension of Order of Conditions. **Motion carries 6-0-0. Extension is NOT granted.**

#### **Discussion of Conservation Restriction:**

##### **1. 0 South Road, Pocasset (Former Sweeney Property)**

Mr. Mark Robinson introduces himself and addresses the board. He reviews that the property owners purchased the lot to divide a portion to donate the property for conservation. This would entitle the owners to a tax credit. He opens the discussion to questions.

Mr. Haines requests confirmation of linear footage of the lot. Mr. Robinson states he does not have exact numbers, but it is "several hundred feet of salt marsh." Mr. Haines supports conservation of this area.



*Member comment:* Ms. Leduc questions what will happen to the remaining portion of the property. Mr. Robinson states that it will not be a buildable lot, but will be added to the property owner's square footage of their lot. Mr. Palumbo questions the acreage of the lot that is being donated. Clarification is provided as 2.5 acres. Mr. Haines questions whether this property will be open to the public, or closed access. Mr. Robinson states that the Bourne Conservation Trust, who will be the title holder of the property, has the discretion to provide public access. No additional member comment.

*Public comment:* None.

Motion made by Mr. Ligor and seconded by Mr. Holmes to approve the conservation restriction. **Motion carries 5-1-0. Conservation restriction granted.**

### **Violations:**

#### **1. 0 Lighthouse Lane**

Construction of a fence within a Coastal Beach

Mr. Haines states that confirmation has been received by Bracken Engineering that they have been put under contract for the property. He does not recommend further enforcement from the Commission at this time.

Mr. Malloy questions whether there are deadlines in place regarding the fence and when enforcement may be initiated, as well as concern regarding the fence being located within the 50' Buffer Zone. Mr. Haines responds, stating that at this time, as long as there is progress being made, enforcement not be recommended. As for the 50' Buffer Zone, Mr. Haines states that there are exemptions under the Wetlands Protection Act and the Town Bylaw for fencing. Mr. Malloy also comments that the fencing is impeding on deeded rights for beach, boat, and recreation in that area, and he is willing to provide that written information to the Commission as well. Mr. Haines states he would appreciate that information. Chm. Gray questions when this should be reassessed. Mr. Haines believes this should be reviewed the beginning of April.

#### **2. 210 Clipper Road**

Alteration of a Barrier Beach/Dune

Mr. Haines states that Bracken Engineering is under contract for this property in order to do a restoration on the dune. He believes he would see progress on this project sometime in April.

Ms. Leduc questions whether there would be a recommendation to suggest an interim plan for stabilization at this time. Mr. Haines states that there would not

be much to do at this time, except to lay down some fiber mats. Ms. Leduc states that should would also disagree with Mashnee Island being a barrier beach. Mr. Haines states that Mass DEP maps it as barrier beach, but agrees with Ms. Leduc's statement. He also states he believes that it is planned to have a Wetland scientist come in to review the property.

Mr. Ligor excuses himself from the meeting. Five members remain.

**Vote to Excuse Absent Members:**

Motion made by Mr. Holmes, and seconded by Ms. Leduc to excuse absent members.  
**Motion carries 5-0-0.**

**Report of the Conservation Agent:**

Mr. Haines states that the dock and pier meeting will be held on Tuesday. He also would like to set up a site visit for the Emmons Road project. Site visit set up with available members.

**Adjournment:**

Motion made by Ms. Leduc, and seconded by Mr. Palumbo to adjourn meeting.  
**Motion carries 5-0-0. Meeting adjourned at 9:27PM**