

**Town of Bourne
Conservation Commission
Remote Meeting Minutes
June 3, 2021**

The Conservation Commission meeting was called to order at 7pm via Zoom platform. Per the office of the Governor's Order suspending certain provisions of the Open Meeting Law Due to the Covid-19 outbreak public comment will be limited to remote accessed during the hearing. 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. Chm. Gray addressed the audience and explained the 5, 5, 5 rules; which allows the applicant or 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.

Remote members: Robert Gray, Melvin Peter Holmes, Paul Szwed, Thomas Ligor, Robert Palumbo, Greg Berman, and Elise Leduc.

Excused members: Steven Solbo Jr.

Professional staff present: Samuel Haines, Conservation agent

Request for Determination

Chair Gray recused himself from this review.

1. **File Number CC21-14, 35 Standish Road, Sagamore Beach.** Mr. Haines with permission presented on behalf of Bracken Engineering, Inc. and owner John Duggan. The proposed project is to construct a single family dwelling and installation of a new Title 5 septic system, including all associated grading, landscaping, utilities, and appurtenances within a 100 ft. of a wetland resource area. Mr. Haines explained this is a continued project that had an ILSF that the DEP had commented on in an earlier filing.

Mr. Haines said he had no issues with grading and landscaping in outer 50' buffer to an ILSF Mr. Haines recommended a Negative Two Determination.
No public comments.

Motion made by Mr. Holmes for a Negative Two Determination and seconded by Mr. Ligor.
Roll Call Vote: Mr. Szwed – yes, Mr. Ligor – yes, Mr. Holmes – yes and Mr. Berman - yes. Chair Gray abstained. **Motion carried 4-0-1.**

Chair Gray returned.

2. **File Number CC21-15, 17 Scotch House Cove Road, Cataumet.** J.E. Landers- Cauley represented on behalf of applicant Lawrence Coen. The proposed project is to construct a barn and install a slop sink, sanitary line to the Title 5 Septic; including associated grading and seeding within a 100 ft. of a wetland resource area. Mr. Landers explained the project was requested as a RDA because the entire project is outside of the 50 ft. buffer depicted on the plan. It is an open lawn area that will not require any tree removal.

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Mr. Haines said this is an accessory structure in outer 50' buffer to a well vegetated coastal bank and he had no issues with the proposed work.

Mr. Ligor asked what the slop sink is designed to do. Mr. Landers explained a slop sink is a deep basin to wash/clean up in outside before entering the main residence.

An abutter on Scraggy Neck Road asked to show the barn relative to their property. Mr. Haines shared on screen where setbacks are relative to their property and about 353 ft. from the neighbor. The site and barn were staked. Mr. Coen explained the style of barn is "antique post and beam" in accordance to the style of the house. The abutter asked about the protected title area and if any chemicals would be leaching from that area. Mr. Coen explained no intent or any request to do any such thing in that area. The abutter to the East asked how tall the barn is. Mr. Coen explained the height is 22 ft. and is a 1 1/2 story barn, with a second story storage loft. The barn is parallel to roof line of the house. The abutter asked the chairman for permission to ask about the lighting. Mr. Coen explained the lights in the barn will not be anything beyond traditional lighting.

Motion made by Mr. Holmes for a Negative Two Determination and seconded by Mr. Ligor.
Roll Call Vote: Mr. Holmes – yes, – Mr. Szwed, – yes – Mr. Ligor, – yes, Mr. Berman – yes, Mr. and Chair Gray – yes. **Motion carried. 5-0-0.**

Mr. Palumbo lost internet connect.

Notice of Intent

1. **DEP File No. SE7- 2148, 68 Rocky Point Road, Gray Gables.** Wayne Tavares professional wetland scientist represented on behalf of Johnathan and Carol Pettee Family Trustees. The proposed project is to landscape, construct a terrace, pool, pool deck, and fence within an AE Flood Zone and within a 100 ft. of a wetland resource area.

Mr. Tavares explained on the screen the setbacks for the proposed project connecting the patio to the pool and mitigation due to not meeting the 50' buffer rule. The proposed pool is 40 ft. from a coastal bank. They proposed 8 tree removals and 150 shrubs to be planted for mitigation. Mr. Tavares showed on the plan that the property is surrounded approximately 65% by wetlands and makes it a difficult lot to build on. He pointed out two wetland areas: Gray Gables Marsh #2 "lot 17" and another location below labeled "lot 13" which is owned by Mr. Pettee known as Marsh #1. In 2008 there was a plan/report by Fuss and O'Neil that showed uniting marsh #1 with marsh #2. They now have a flunked piped and the maintenance is substantial. The piping system is also located on the neighbor's property. The owner is willing to talk to the neighbor to get an easement and provide an access point through Rocky Point Road. There is no access through the neighbor's side of the property. There has been many complaints from abutting properties about the condition of the derogated marsh. A solution to the problem would be to update the system with a new engineered plan to make sure the sizing of the pipe is correct. The inlet on the uphill side is man made from years ago to the lower side which is marsh #1. It is approximately 85 ft. long and about 8 ft. of excavation in order to get a 36 inch pipe through there, which is reflected in the Fuss and O'Neil report. The proactive project is the pool and mitigation within the 50 ft. buffer and Mr. Pettee would like to participate in this type of mitigation restoring the culvert to accomplish his goals for the proposed pool on his property.

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Mr. Haines, Conservation agent, said ordinarily he would do everything within his power in order to avoid a swimming pool in the 50' setback, especially one in a naturally vegetated buffer. However, this parcel has a very unique mitigation opportunity that he hope will make sense to the Commission. If the Town can get an easement over this property then we would have access to a non-functioning culvert which would flush an area of saltmarsh approximately 10 acres in size. He recommended a site visit and approval of the project pending the Town easement. He was very interested in the Commission's thoughts on this one and before the applicant goes through the expense of additional survey and legal fees we are really looking at whether the Commission would be comfortable with this easement as mitigation. Chair Gray would like to see the saltmarsh (SM) labeling added on the plan to correspond with the resource area. Mr. Tavares answered another question about the placement of the pool and that the area is the only location they looked at for placement. Mr. Berman said this would be a very rare variance for a pool but the mitigation opportunity is something to talk about and a site visit would be helpful.

An abutter identified as John is in favor of replacing the pipe to the Saltmarsh. The smells can be pretty strong in the Summer and ecologically would be an improvement. Mike Dwyer, an abutter, said this plan is long overdue and he has a plan dated back from 2002. The marsh is disintegrating on both ends of the pipe. Mr. Haines said the connection between the two saltmarshes is a small flow but the connection is almost a completely collapsed culvert. He has been talking with the community and took complaints about the smell and also concerns about insects/mosquitos in the area. Chair Gray asked if the Town could undertake something like this. Mr. Haines said once they secure an easement that he could search for Grant or CPA funds to get this accomplished but it would have to have an access and maintenance agreement. This project would require a whole new Notice of Intent filing. Mr. Tavares shared photos. Mr. Holmes said the Army Corp of Engineers asked to do this job about 10 years ago. Mr. Haines said he met with them about 4.5 years ago and they said the initial feasibility study would cost \$250,000. The Commission members would like a site visit before the next meeting. **Continued to June 17, 2021.**

Mr. Palumbo's internet connection returned.

2. **DEP File No. SE7- 2153, 137 Phillips Road, Sagamore Beach.** Atlantic Design Group represented on behalf of Mike Hilsinger c/o ConServ Group, Inc. Atlantic Design Group explained the proposed project to raze and reconstruct existing dwelling within a V Flood Zone and within 100 ft. of a wetland resource area.

Richard Tabaczynski, PE of Atlantic Design Engineers, Inc. provided an overview of the current and planned conditions at the site. He detailed that the resource areas encompass a coastal dune/barrier beach, a velocity flood zone at elevation 16, and an AE flood zone at elevation 14 landward. The plan also includes the NHESP (Natural Heritage & Endangered Species Program) habitat line. While awaiting a response from Mass Wildlife Division of Marine Fisheries, there is minimal proposed work in that area.

A mounded area of the dune acts as a separation between the property and the beach, with the septic system situated in front and having recently passed a Title 5 inspection. The proposed project, outlined on sheet 2, involves the reconstruction of the raised residence. This

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reconstruction aims to elevate the finished floor and any habitable space above the flood plain, ensuring compliance with FEMA and building code requirements at elevation 17.

The proposed footprint mirrors the existing one, with additions including a new deck at the back and a reconfiguration of the deck to the west of the main residence. The garage will remain in its current location. To safeguard the project area, a silt fence will be installed, limiting disturbance to the natural vegetation and dune area. The scope of work will be confined to the crushed stone driveway.

Mr. Haines said it appears there are several structures on Town owned land and in the dune that were never permitted or licensed by the Town and must be removed. He spoke to the Town Administrator about this and he has full support on this issue. There appears to be an open Order of Conditions SE7-1141 which should be closed out prior to any new Order being issued. There is no record of a COC in the file. Mr. Haines said it is very important to make sure the footprint of the existing building conforms to what was originally permitted before they talk about a new structure. The 1996 plan is the last one on file for both the Conservation and Building departments that shows a smaller deck on the seaward side and no wooden footpath in the dune. The architectural drawings show what appear to be break away walls but since this is in the dune you can only have slats with at least 50% openings to allow for dune migration. He has spoken to the engineer about this and was told that this would be rectified on the building permit. He is concerned about the garage being un-elevated. He spoke to the engineer about this and he said the structure was going to be modified with breakaway walls to make it FEMA compliant but he did not understand why the Commission would allow break away walls in the dune for a garage. In his opinion this should be open slats as well. Based upon his review and the language in the bylaw, Mr. Haines asked for a written certification from an engineer that all elements of the project as designed meet or exceed both the MA building code and FEMA regulations/guidance.

The commission members answered questions pertaining to dune migration. Mr. Hilsinger answered questions from an abutter about the height of the house which will be around 34 feet with a height restriction of 35 feet. **At the request of the applicant continued to June 17, 2021.**

3. **DEP File Number: SE7- 2148 96 Rocky Point Road, Gray Gables-** Falmouth Engineering on behalf of Richard and Janie Boylan. Proposed project: To pump and remove existing cesspools and install a new Title 5 septic system within an AE Flood Zone, V Flood Zone and Within 100 ft. of a wetland resource area. **Continued from May 20, 2021.**

Mike Borselli of Falmouth Engineering, Inc. outlined the wetland resources surrounding the area, specifying Buzzards Bay to the west, Back River to the east, and a salt marsh to the east, with an armored coastal bank on the side.

Initially, the proposal involved a standard Title 5 system. However, following additional recommendations from the Board of Health, enhanced treatment measures for denitrification were deemed necessary. Subsequently, the hearing was extended, and the plans were revised to integrate a singular denitrification septic system into the proposed design.

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Mr. Haines explained they have revised their plans showing a denitrification system. No issues with the Order based on the septic revisions. No Public Comments.

Motion made to close the public hearing by Mr. Palumbo and seconded by Mr. Szwed.
Roll call: Mr. Holmes – yes, Mr. Szwed – yes, Mr. Ligor- yes, Mr. Palumbo - yes, Mr. Berman – yes, and Chair Gray – yes. **Motion carried 6-0-0.**

Draft Order of Conditions contains all general conditions and special conditions pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 18, 19, 21, 22, 27, 28, 29, and special bylaws 2 & 4. No additional special conditions.

Motion made to move the draft to the final and seconded.
Roll call: Mr. Szwed - yes, Mr. Ligor- yes, Mr. Palumbo- yes, Mr. Berman- yes, Mr. Holmes-yes and Chair Gray - Yes **Motion carried 6-0-0.**

4. **DEP File Number: SE7- 2175 249 Scraggy Neck Road, Cataumet-** BlueFlax Design LLC on behalf of applicant Frances McSherry & Carl Nelson, Pamela B Nelson Trustees. To remove invasive vegetation, restore native vegetation, manage vistas within a V Flood Zone and within 100 ft. of a wetland resource area **Continuance requested by the representative to July 15, 2021.**
5. **DEP File Number SE7-2176 251 Scraggy Neck Road, Cataumet-** BlueFlax Design LLC on behalf of applicant Frances McSherry & Carl Nelson, Pamela B Nelson Trustees. To remove invasive vegetation, restore native vegetation, manage vistas within a V Flood Zone and within 100 ft. of a wetland resource area. **Continuance requested by the representative to July 15, 2021.**
6. **DEP File Number: SE7-2150 18 Spindrift Lane, Gray Gables -** Bracken Engineering, Inc. on behalf of owner Vincent P. Michienzi. Proposed project: To install a new Title 5 septic system, including associated grading and landscaping within an AE Flood Zone, and within 100 ft. of a wetland resource area. **Continuance requested by the representative to June 17, 2021.**
7. **DEP File Number: SE7-2152 536 Scraggy Neck Road, Cataumet** - Holmes and McGrath on behalf of owners Paul J. Monica R. and Maura L. Landry. Proposed project: Repair and maintain existing licensed stone groin within a V Flood Zone and within 100 ft. of a wetland resource area.

Nate Goshgarian from Holmes and McGrath provided an overview of the proposed project, detailing that the parcel encompasses approximately 2.3 acres of land, representing a single-family property with approximately 300 feet of coastal beach. The entire stretch of beach is protected by a 100 percent armored rip rap structure. Extending from the rip rap is the groin, projecting about 110 feet into Buzzards Bay.

The project involves repairs to the existing groin, addressing erosion issues along a 20-foot length of armored stones and potential toe stones about halfway down the rip rap.

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The alterations to the resource areas include land under the ocean, land containing shellfish, rocky intertidal shore, coastal beach/bank, and land subject to coastal storm flowage. Velocity and AE zones are clearly marked on the plan.

To execute the repairs, a floating barge will be employed for the movement of rocks, and the securing of armor stones will be done by hand. There is a contingency plan that involves the possible use of an excavator brought onto the shoreline, but only in stable areas, with careful consideration to minimize any environmental impact and ensuring activities are above mean high tide. It's crucial to note that materials will be removed on a daily basis, and any disturbance will be promptly restored to its original condition.

Mr. Haines went out at low tide he observed there hasn't been any mapped eel grass since 2001 and did not see any concerns from a ground stand point or barge. No public Comments.

Ms. Leduc joined the meeting 8:45pm. She abstained from voting as she just joined in the Zoom meeting.

Motion made to close the public hearing and seconded.

Roll Call: Mr. Holmes – yes, Mr. Szwed – yes, Mr. Ligor- yes, Mr. Palumbo – yes, Mr. Berman – yes, Chair Gray – yes and Ms. Leduc-abstained. **Motion carried 6-0-1.**

Draft Order of Conditions contains all general conditions and special conditions pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. 1, 2, 3, 7, 9, 12, 18, 19, 22, 27, 28, and special conditions pursuant to the bylaw 15, 18, 21.

ASC- 1. All stones must be dry laid, no concrete or other binding materials allowed between the stones.

ASC-2. Project shall not expand the existing footprint of the groin as shown on the plan of record.

ASC-3. Appropriate containment technique from construction debris.

ASC-4. Petroleum spill kit must kept on the barge at all times, any fuel spills must be reported to the conservation agent immediately.

Motion made to move the draft to the final.

Roll Call: Mr. Holmes – yes, Mr. Szwed – yes, Mr. Ligor – yes, Mr. Palumbo – yes, Mr. Berman- yes, Chair Gray – yes and Ms. Leduc-abstained. **Motion carried 6-0-1.**

Certificate of Compliance

1. **DEP File Number: SE7-1960 63 Belvista Drive, Pocasset-** Bracken Engineering, Inc. on behalf of Mark A. Leary. Proposed Project: Raze and rebuild of a single family dwelling home with associated utilities, grading, site work, and installation of a new septic system.
Continued at the request of the applicant.

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2. **DEP File Number: SE7-2029 41 Little Bay Lane, Buzzards Bay-** GAF Engineering, Inc. on behalf of applicant Frank Harrington Proposed Project: To reconstruct an existing seasonal float, install piles and replace an existing wood gangway with an aluminum gangway within an AE flood zone and within a 100 feet of a wetland resource area
Continued. Mr. Haines communicated with the homeowner that the planting still needs to be completed.

Request for to Extend Order of Conditions

1. **DEP File Number: SE7-2017 464 Scraggy Neck Rd, Cataumet-** Holmes and McGrath, Inc. on behalf of Robert G. and Kathleen F. Ix. Proposed project: To demolish and reconstruct single family home with attached garage, detached guest house, porches, terraces, fire pit, Title V septic system, driveway, utilities, drywells; reconstruction of timber stairs and landing over coastal bank, associated clearing, excavation, grading, and landscaping within an AE flood zone and wetland resource area.

Mr. Haines recommended the request for a one-year extension to be granted.

Motion made to request a one year extension and seconded.

Roll call: Mr. Holmes – yes, Mr. Szwed – yes, Mr. Ligor – yes, Mr. Palumbo- yes, Mr. Berman – yes, Ms. Leduc – yes, Chair Gray – yes. **Motion carried 7-0-0.**

2. **DEP File Number: SE7-2012 819 Head of the Bay Road (Lot 2), Buzzards Bay-** Farland Corp. Engineering on behalf of Joseph Botti Company. Proposed Project: To construct a single family dwelling and attached garage; install a new Title 5 septic system; and all associated grading, landscaping, utilities, and appurtenances within a 100-feet of a wetland resource area.

Mr. Haines recommended the request for a three-year extension to be granted.

Motion to request a three year extension. Seconded.

Roll Call Vote: Mr. Holmes – yes, Mr. Szwed – yes, Mr. Ligor – yes, Mr. Palumbo – yes, Mr. Berman – yes, Ms. Leduc – yes, and Chair Gray – yes. **Motion carried 7-0-0.**

Motion made to excuse absent member Steven Solbo Jr. and seconded.

Roll call: Mr. Holmes – yes, Mr. Szwed – yes, Mr. Ligor – yes, Mr. Palumbo – yes, Mr. Berman – yes, Mrs. Leduc – yes, Chair Gray – yes. **Motion carried 7-0-0.**

Report of the agent: Mr. Haines conveyed that meetings will now resume in person, starting June 17, 2021, as the state of emergency has ended.

Meeting adjourned 9:05pm.

Minutes typed by Amalia Amado, Conservation secretary II.

Recorded by the Zoom platform.