

# **Conservation Commission**

## **Meeting Minutes**

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

July 27, 2017

### **I. Call to order**

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on July 27, 2017. Chm. Gray explained all of the reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 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, Melvin P. Holmes, Paul Szwed and Elise Leduc.

**Excused Members:** Thomas Ligor, Rob Palumbo and Susan Weston.

**Also Present:** Sam Haines, Carol Mitchell, Dana Vesty, Cheryl Keown, Emilie Martin, Shannon Heino, Brian Madden and Mark Hebb.

**Request for Determination of Applicability:**

1) Colonial Gas Company

File # CC17-28

Representative: Tighe & Bond Engineers

176 Shore Road, Bourne

To install a residential gas line within an AE Flood Zone.

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

*(Hearing Under State Act Only)*

Dana Vesty addressed the board and discussed the proposed project, to install a residential gas line. Ms. Vesty stated they received communication from a concerned abutter; therefore, National Grid will send out a field survey crew prior to the start of installation to stake out the property. This may result in the gas line being moved a foot or two toward the center of the driveway or toward the residence to avoid conflict.

Board Comment –None.

Agent Comment – A site visit was performed on July 20, 2017. There are no issues with the project from an environmental stand point. There was email correspondence from an abutter; however, National Grid will survey the property to resolve the abutter's concerns.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded a Negative Two Determination** With no discussion, the motion carried. 4-0-0.

2) Jim Beyer & Cheryl Keown

File # CC17-29

Representative: Same

8 Paulinda Road, Pocasset

To construct a home addition and install a hot tub within 100 feet of a Wetland Resource Area.

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

Cheryl Keown addressed the board. She described the layout of the property which she purchased four years ago. She stated the previous owners came before the Commission in 1999 and received approval to install a Koi pond and to construct a greenhouse. The applicant is proposing to construct an addition, approximately 200 sq. ft. in size to accommodate two walk-in closets. She would also like to extend the garage, install a hot tub under the existing deck and install two pad locations for a future air conditioning system.

A brief discussion transpired concerning the existing layout of the property.

Board Comment – None.

Agent Comment – A site inspection was performed on July 5, 2017. Mr. Haines described the property's topography and stated without a full survey, it is difficult to determine where the top of the Bank is. He discussed the plan that was submitted with the filing in 1999, which shows the top of the Bank at elevation 35; however that's hand drawn, it's not a formal survey. The proposed addition would occur on an existing paved driveway and the shed that is shown on the plan that was approved in 1999 is closer to the Resource Area. The proposed hot tub would be installed under the existing deck so no further ground disturbance would occur closer to the Resource Area than what's existing. Based on the 1999 line for the Coastal Bank, the Commission would have to approve this work within the 50' adjoining land area.

Board Comment – Ms. Leduc asked if this is located within the Pocasset River ACEC. Mr. Haines stated it is.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Mr. Szwed seconded a Negative Two Determination.** With no discussion, the motion carried. 4-0-0.

Chm. Gray explained the Determination to the applicant.

3) Mark Hebb  
File # CC17-30  
Representative: Same  
2-C Wild Rose Drive, Hideaway Village

To construct a home addition within a V Flood Zone

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

Mark Hebb, representing the property owner Shaun Kennedy, discussed the proposed project. He stated the original plan that was submitted showed a 10'x14' Living Room addition, a 10'x10' loft above it and a deck area off the Living Room; however, because it's located within the Sewer District, the Special Conditions that were approved in 2005 for Hideaway Village and Taylor's Point, do not allow additional habitable space to a structure that's located within a Velocity Zone. The new proposal is for the construction of a deck and outside storage area within the same foot print. The access to the storage area will be outside of the dwelling.

Board Comment – None.

Agent Comment – Mr. Haines stated the Sewer regulations would not have allowed for the original proposal. Even if the Commission had approved the project, it wouldn't have received a Building Permit. Mr. Haines stated the Clerk's Office did not require the project be re-advertised because the original description of the home addition was vague enough to move forward as advertised. An updated plan was submitted and approval from the Hideaway Village Association was received.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Ms. Leduc seconded a Negative Two Determination.** With no discussion, the motion carried. 4-0-0.

Chm. Gray explained the Determination to the applicant.

**Notice of Intent:**

- 1) James McLaughlin  
File Number: SE7-  
Representative: Bracken Engineering, Inc.  
605 County Road

Restoration of a previously altered Wetland Resource Area.

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

*Chm. Gray explained he would normally recuse himself because he periodically works with Bracken Engineering; however, because only four members are present, he's*

*evoking the rule of necessity to maintain the quorum. He asked if anyone was opposed to proceeding with the review, there was not.*

***(Hearing under Bylaw Only)***

Brian Madden addressed the board and discussed the proposed project. He stated when he flagged the wetland back in February, he observed that a large tree had fallen into the wetland. He observed disturbance to the wetland as a result of the cleanup of the fallen tree. This application is to restore the area and portions of the buffer zone. Mr. Madden stated the Isolated Wetland holds a limited amount of standing water in the spring and has some physical characteristics of a potential Vernal Pool; although no formal assessment has been conducted, the restoration efforts can be tailored, timeline wise, to take that into consideration. He briefly explained the restoration process and he discussed the species of plants being proposed. He stated a wetland scientist will be on site to oversee the project and they are awaiting a response from the Massachusetts Natural Heritage & Endangered Species Program.

Board Comment – Chm. Gray provided a brief history of the site.

Agent Comment – Mr. Haines reviewed the plan and the restoration narrative and feels it's appropriate for the site, it also provides the 25' foot buffer for mitigation of the previous alteration. He stated they are still awaiting a response from the Massachusetts Natural Heritage & Endangered Species Program. Should the Commission decide to issue an Order, Mr. Haines recommends adding the following Special Conditions; 1) as stated in the proposed restoration narrative, all mulch and topsoil removal and restoration plant installation will be monitored by a wetland scientist. The wetland scientist will then submit a summary report to the Bourne Conservation Department upon completion of the restoration, 2) additional site evaluations must be performed by a wetland scientist during the 2018 & 2019 growing seasons and monitoring reports must be supplied to the Bourne Conservation Department, 3) The vegetated wetland will be inspected by a wetland scientist or other qualified biologist during the 2018 amphibian breeding season to determine if the wetland contains biological and physical characteristics of a Vernal Pool under the Massachusetts Natural Heritage & Endangered Species Program's guidelines for certification of a Vernal Pool habitat. This documentation from the site inspection will be provided to the Bourne Conservation Department.

Ms. Leduc questioned how the wetland bowl will be maintained once the fill/mulch is scraped from the top and fresh loam is potentially added on top. Mr. Madden explained

the fresh loam will be tapered out and their intention is to recreate the pre-existing bowl. Mr. Haines stated during his site inspection, it appeared to be just surface fill and woodchips. Mr. Madden stated they will add only a small amount of top soil if they hit subsoil when they remove the fill. Chm. Gray suggested adding a condition to place a small amount of dead woody debris for the purpose of providing egg attachment in the bowl area. Mr. Haines agreed.

Public Comment – None.

A brief discussion transpired with regard to automatically incorporating any requirements by the Massachusetts Natural Heritage & Endangered Species Program into the Order of Conditions.

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

Mr. Haines - Draft Order of Conditions for CCNOI 17-01: All General Conditions, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw; 2, 3, 5, 6, 7, and the additional Special Conditions stated previously by the agent. Bylaw Conditions 2 & 3 shall continue in perpetuity.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Ms. Leduc seconded to move the Draft Order of Conditions to the Final Order of Conditions including the additional Special Conditions stated previously by the agent.** With no discussion, the motion carried. 4-0-0.

**Request to Extend Order of Conditions:**

- 1) John & Kathryn Pierce  
File Number: SE7-1901  
Representative: Holmes & McGrath  
75 Winsor Road

Installation of in-ground pool, garage, terraces, gates, drive way modifications, all associated utilities, retaining walls, landscaping and plantings within a V Flood Zone and Wetland Resource Area.

Agent Comment – Mr. Haines explained this is a request for a one year extension to install the mitigation plantings. Based on his site visit, Mr. Haines recommends issuance of the extension.

With no discussion, Chm. Gray entertained a motion to grant the extension. **Mr. Holmes moved, Mr. Szwed seconded to grant the extension.** The motion carried. 4-0-0.

**Request for Certificate of Compliance:**

- 1) Philip & Warren Goddard  
File Number: SE7-1146  
Representative: Same  
23 Worcester Avenue

To repair seawall and stairs within a VE Flood Zone and Wetland Resource Area.

Agent Comment – A site visit was conducted on July 26, 2017. Mr. Haines recommends issuance of the certificate.

Chm. Gray entertained a motion to issue the certificate. **Mr. Holmes moved, Mr. Szwed seconded to issue the Certificate of Compliance.** With no discussion, the motion carried. 4-0-0.

- 2) Mashnee Village, Inc. / Francis Folan  
File Number: SE7-0058  
Representative: Greenham Law Office  
188 Captains Row

Construction of a single family home within a V Flood Zone and 100 feet of a Wetland Resource Area.

Agent Comment – A site visit was performed. Mr. Haines passed around the file to the members. He explained it's been 40 years to the day since the matter was heard by Conservation Commission. He referred to the plan and made note of a revetment in the

front of the property as well as a deck on the seaward side of the house. Neither of those are shown on the original plan, nor is there a filing for either one. He traced back the deck and the revetment to the 1990s; so they've been in place for 20-25 years. He stated the property is being sold and the existing homeowner would like to resolve the matter prior to the closing.

Board Comment – Ms. Leduc opened a brief discussion regarding the revetment and other revetments on neighboring properties.

Chm. Gray reviewed and briefly discussed the original Order of Conditions. He asked for the agent's recommendation on the matter. After careful review of all of the files related to this property, Mr. Haines recommends issuance of the certificate. He stated he will educate the new property owner on the Massachusetts Wetlands Protection Act.

Chm. Gray entertained a motion to issue the certificate. **Mr. Holmes moved, based on the age of the project, to issue the Certificate of Compliance. Ms. Leduc seconded.** With no discussion, the motion carried. 4-0-0.

#### **Other Business:**

- 710 County Road: Storm water outfall to privately owned Mill Pond, discussion and possible vote – Emilie Martin discussed at length the town owned storm water outfall that is affecting the privately owned Mill Pond. She referred to site photographs she had taken of the area to describe the impact the storm water outfall is having on the pond. She stated she spoke with the DPW in January about her concerns and they cleaned the outfall area once since then.

A lengthy discussion transpired with regard to a sediment bay (catch basin) that was installed in 1963. Because of an increase of development in the area and because the catch basin hasn't been properly maintained, it has become obsolete.

Shannon Heino addressed the board and discussed her efforts to clear the culvert of sediment.

Ms. Martin expressed concern over the amount of vegetation that is growing in a particular section of the pond. Chm. Gray stated this vegetation is protected wetland vegetation and doesn't think the applicant will be allowed to file an application for dredging that area back to its original condition because it is not permissible under current regulations. He suggested getting the basin on a maintenance schedule where the

DPW will use a vacuum to remove the sediment. He stated the basin may also need to be resized to accommodate the larger amount of runoff since it was originally installed.

Agent Comment – Mr. Haines stated he’s visited the site on four separate occasions and based on his observations, he recommends the Commission send a letter to the DPW director requesting that the sediment bay/catch basin cleanout is prioritized in their clean out schedule. Mr. Haines read aloud the letter he drafted to the DPW director.

Board Comment – Mr. Holmes was pleased with the draft letter and asked if a statement could be added suggesting the current system be resized to accommodate the increase in runoff. Mr. Haines stated he’ll revise the letter.

Ms. Martin expressed concern that even with regular maintenance, it may be too late for the pond to recover. She spoke about the pond’s dam system, a discussion ensued.

It was decided by the Commission that Mr. Haines will revise the letter which will be signed by the Commission at the next meeting and it will be sent to the DPW director.

- Bourne Belmont Circle Improvements - Mr. Haines stated the Commission received a vague letter, which he passed around, from Trans Systems who’s working with the Mass DOT Highway Division. In the letter, they’re requesting a review of the location by the Conservation Commission. Mr. Haines tried unsuccessfully to reach the person who signed the letter for additional detail. He stated a lot of roadway work is exempt under the Wetlands Protection Act; however, the letter states they plan on creating bike paths; amongst other things. Chm. Gray stated it is correct that there are many exemptions from the Wetlands Protection Act; but it isn’t carte blanche. The idea that state agencies have a blanket exemption from the Bylaw is incorrect. After a brief discussion, Mr. Haines stated he will continue to attempt to contact the individual to inform them that a plan needs to be submitted in order to determine what type of filing is required.

- Update on 130 & 132 Wings Neck Road regarding placement of structures and clearing of vegetation within a Wetland Resource Area – Mr. Haines stated he is now reviewing 134 & 136 Wings Neck for potential violations. Chm. Gray stated he and the agent visited the site during the week. They were able to speak with one of the property owners with regard to their mowing the salt marsh. He stated this has been extremely beneficial to the salt marsh, there are 4 or 5 different salt marsh species growing as opposed to one lot over where no mowing occurs and Phragmites have overtaken the area. The new landowner explained to them he was told during the purchase that everything was in place and he could continue to maintain the marsh. His landscape company is mowing it every three weeks. The new property owner is willing to file a Notice of Intent to establish a mowing schedule. On the 136 property, a walk way was constructed through the salt marsh and although it’s not up to standard height wise, when it was constructed,

the planks were spaced apart enough to allow a significant amount of light through; therefore, there appears to be no discernable negative impact to the marsh. The property owner was advised to file a Notice of Intent. Chm. Gray briefly discussed a breach in the dune located on the seaward side of that property and the property owner's intent to possibly repair the breach under the same NOI. Chm. Gray mentioned a flag pole was installed in cement which he would like to see removed in the future. A discussion ensued.

Mr. Haines stated he will be meeting with the property owner of 130 Wings Neck the following day and will keep the Commission informed.

- Vote excused absent members, if necessary – **Mr. Holmes moved, Ms. Leduc seconded to excuse Susan Weston, Rob Palumbo and Thomas Ligor.** With no discussion, the motion carried. 4-0-0.

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the May 4, 2017 meeting. **Mr. Szwed moved, Mr. Holmes seconded to approve the minutes of the May 4, 2017 meeting.** With no discussion, the motion carried. 3-0-1. Ms. Leduc abstained.

- Report of the Conservation Agent – None.

- Correspondence – None.

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

- Any other business that may legally come before the Commission – None.

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

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

## **II. Adjournment**

**Mr. Holmes moved, Ms. Leduc seconded to adjourn.** With no discussion, the motion carried. 4-0-0. The meeting adjourned at 8:30 PM.

Minutes submitted by: Carol Mitchell