

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

September 7, 2017

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on September 7, 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, Thomas Ligor, Paul Szwed, Rob Palumbo, Melvin P. Holmes, Susan Weston and Associate Member, Greg Berman.

Excused Members: Elise Leduc.

Also Present: Sam Haines, Carol Mitchell, Paul Gately, Jim Mulvey, Gunlog Millett, Stella Bearse, Joe Corn, Dr. Michael Flynn, Alex Zelford, Bradley Bertolo, Marcia Rothwell, Collette Edwards, Bruce McNamee, Colin McNamee, Don Edwards, Laura Richards, Casey Smith, Dan Reddy, Nicole Lord and Maureen Reddy.

Chm. Gray introduced Associate Member, Greg Berman to all in attendance.

Request for Determination of Applicability:

1) Gerhard Bottcher

File # CC17-33

Representative: Warwick & Associates, Inc.

11 Bayhead Shores Road, Buzzards Bay

To install a Title V septic to service two dwellings which will include all associated landscaping, grading utilities and other appurtenances within an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

(Continued to October 17, 2017)

2) Ellen Harrington

File # CC17-34

Representative: Peter Valarie/Valarie Construction

67 Jefferson Road, Monument Beach

To upgrade a new leaching field, to include all associated landscaping, grading, utilities and other appurtenances within an AE Flood Zone.

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

(Under State Act Only)

The representative was not in attendance. Chm. Gray asked the agent if he'd like to proceed without the representative. Mr. Haines stated this is a standard upgrade and since it's located in an AE Flood Zone only, an RDA under AE Flood Zone only isn't subject to the Bylaw and therefore isn't subject to abutter notification.

Agent Comment – Mr. Haines briefly described the proposed project and referred to the site plan to explain the location of the proposed work. He stated one abutter contacted him seeking additional information but didn't express any issues with the proposed project. Mr. Haines explained that the work will be performed in a flat, landscaped area and did not identify any issues with the project.

Board Comment – None.

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

Notice of Intent:

1) James Swent

File # SE7-1981

Representative: David MacLean & Associates

52 Baxendale Road, Cataumet

To replace and rebuild existing deck and stairs, as well as landscaping of vegetation for erosion control within a V Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, DEP Wetlands Change Mapping Site plans of record dated May 24, 2017, Restoration plan from SE7-1819, Site plan marked by agent to show proposed deck expansion.

David MacLean addressed the board. He stated the property owner contacted him approximately one year ago because his office was working on two properties that abut his property. Mr. MacLean helped him to obtain a Chapter 91 License for his existing seawall. In the process, Mr. MacLean noticed during an inspection the existing deck and stairs that lead to the beach had deteriorated and was actually breaking away from the house. Additionally, the sonotubes were not installed properly in the Coastal Bank and are beginning to topple over. Mr. MacLean stated he met the agent at the site to discuss the proposed project in advance. Mr. MacLean went on to describe the proposed project which includes; increasing the size of the existing cantilevered deck, moving the existing stairway easterly, installing a boardwalk on top of the existing compacted gravel base, the removal of invasive species and revegetating the area with indigenous species. He explained that moving the stairs easterly will not only reduce the number of sonotubes currently used to support the stairs but will also reduce their square footage

Board Comment – Mr. Berman asked if the new design will affect water flowing over the top of the Bank. Mr. MacLean stated no, it is pervious.

Agent Comment – Mr. Haines stated the footings on the existing coastal stairway shows signs of undermining. The pressure on top of them is shifting them and the deck is pulling away from the house. As stated by the representative, there will be benefits to the Bank itself; a reduction in footing, a reduction in the size of the landing and the

stairs will no longer be within the salt marsh area. The proposed stairs are located further to the east in an area that is currently vegetated. This area was shown under a previous Notice of Intent as the replication area, which was previously approved by the Commission as a replication area for previous Bank cutting under SE7-1819. This would be a variation from that NOI; but the agent doesn't feel this is an issue. Because it was understood that the stairs would have to come down in some fashion, that particular area was never revegetated; however, native species and invasive species have grown in that area. The project shows a significant expansion of the deck at the top of the Bank which is depicted on the submitted colored drawing; everything in pink is an expansion of what's existing. The portion that is closer to the Coastal Bank and over the Coastal Bank is cantilevered so the open side will be left exposed. Mr. Haines made note that on the plan the stairs have enclosed risers on the back of the stairs. He stated typically on a Coastal Bank the backs are left open to allow for light penetration; therefore, he suggested adding this as a condition should the Commission decide to issue an Order. Also, the deck is going to be expanded along the front of the house. It was originally proposed as a boardwalk but it's a deck expansion which will be placed directly on the ground, in an area currently altered. Because it's right up next to the house, there's no way to vegetate the area. He stated the Commission may want to consider allowing stone pavers and/or stone to handle water runoff. Mr. Haines advised the Commission that a portion of the area was located within the back restoration area. Under the State Act, they'll have to determine whether this work impacts the stability of the Bank. They'll also have to determine whether the project complies with the language of the precedent for the Bylaw setback language for joined land use. Although there'd be no foundation impacts closer to the Wetland Resource Area than currently exists, the proposed project goes directly over the Bank and although this request calls for an expansion of the existing structure, the Order for SE7-1819 contained language that no new accessory structures within the 50' would be permitted.

Board Comment – Ms. Weston asked how the new deck would be pervious. Mr. MacLean stated spacing will allow for water runoff.

Mr. Berman stated because the proposed boardwalk will be constructed over existing stone, he doesn't feel it will have an additional adverse impact to the Resource Area.

Mr. Ligor referred to the site photograph and discussed the steepness of the Bank. He expressed concern with regard to the stability of the Bank once vegetation has been removed. Mr. MacLean stated it will be a challenge; however, similar work has been performed on some of the adjoining properties and they've been able to work within a construction limit line, which is shown on the drawings. The Landscape Plan provides

details for replanting vegetation in any area that will be disturbed. A brief discussion transpired with regard to the sonotube footings installation. Mr. McLean stated either an auger will be used or perhaps Helical Piles which have the ability to go deeper into the soil.

Mr. Ligor asked why the stairs will be moved rather than using the existing footprint. Mr. MacLean stated the area that the stairs will be moved to hasn't been revegetated yet as part of the original Order of Conditions. Because new stairs were going to be constructed, the property owner held off revegetating that area. A new Landscape Plan was submitted as an addendum which reflects an increase the amount of vegetation.

Mr. Szwed asked how moving the staircase eastward is advantageous. Mr. MacLean stated the slope of the Bank is consistent throughout. By moving the location of the stairs, their square footage will be reduced by 40 sq. ft. The landing will also be decreased, holding it back from the top of the seawall. Mr. MacLean recently obtained a Chapter 91 License for the property owner. One of the criteria is clear passage on top of the seawall.

Mr. Holmes stated it appears as though the existing sonotubes are failing in the sense that they're beginning to lean. How questioned how deep the new sonotubes will be installed to prevent this from occurring in the future. Mr. MacLean stated both the carpentry and foundation work on the initial structure was inferior. The proposed stairs will be constructed by an experienced individual who's had no problems with similar projects on adjoining properties.

Mr. Haines would like to see additional erosion controls be added. He suggested should the Commission decide to issue an Order, an after-the-fact condition be added requiring a revised plan be submitted with updated BMPs and erosion controls. The representative agreed. In addition to the previously stated condition with regard to leaving the risers open, Mr. Haines also suggested that no heavy equipment be allowed on the Bank. Mr. McLean agreed.

Board Comment – Ms. Weston asked if the existing deck is already cantilevered. Mr. MacLean stated it is. Ms. Weston expressed concern with approving the expansion of the deck. Mr. MacLean stated it is being expanded in order to accommodate the relocation of the stairs. She asked Chm. Gray for his opinion, a discussion transpired with regard to the 50' setback language in the Bylaw and how it applies to this project. Mr. Haines read the Bylaw language and a brief discussion ensued.

Mr. Maclean finished his presentation by stating as an architect and a professional in town, he has great sensitivity toward the environment and although the design is beneficial to the homeowner, he sincerely believes the project is mitigating measures and improving what currently exists and is beneficial to the site.

Public Comment – None

Chm. Gray entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Palumbo seconded to close the public hearing.** With no discussion, the motion carried. 6-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-4, 7, 9, 10, 12, 14, 15, 18, 26, 27, 28, 29, Special Conditions pursuant to the Bourne Wetlands Protection By-law Article 3.7 numbers 2, 4, 5, 6, 7, and the three additional Special Conditions, 1) the stair risers shall remain open to allow light penetration underneath the stairway, in addition any portion of the deck which extends beyond the top of the Coastal Bank will not be enclosed, 2) no heavy equipment is allowed on the Coastal Bank, all work must be performed by hand, 3) prior to the start of work, the applicant must supply the Conservation Department with an erosion control plan showing the location and types of controls which will be utilized.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. A brief discussion transpired with regard to the plantings, the possibility of using Helical Piles and the steepness of the slope. With no further discussion, **Mr. Holmes moved, Mr. Palumbo seconded to move the Draft Order of Conditions to the Final Order of Conditions.** The motion carried. 5-1-0. Ms. Weston opposed.

2) Town Of Bourne

File # SE7-1982

Representative: JC Engineering, Inc.

0 Crab Rock Way, Sagamore Beach

To rebuild the existing coastal access stairs and perform storm water improvements within a V Flood Zone and a Coastal Resource Area.

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

Chm. Gray stated prior to the matter being heard, the Commission needed to take action under Chapter 40, Section 8C, the Conservation Act, to allow the Notice of Intent to be reviewed since the Commission has the care and custody of this piece of property. Chm Gray entertained a motion to allow for the review of the Notice of Intent. **Mr. Ligor moved, Mr. Holmes seconded.** With no discussion, the motion carried. 6-0-0.

Chm. Gray recused himself from discussion and vote. Mr. Palumbo chaired the review.

Brad Bertolo stated his firm was contacted by the town's Engineering Department in May 2017 to evaluate the beach access stairway on this piece of property. He provided a brief history of the property and described the layout of the site. He stated due to some erosion of the Coastal Bank, a number of the sonotubes have failed and collapsed and submitted photos of the structure to the members to review. Mr. Bertolo stated there's evidence that a number of sonotubes have failed in the past and have been replaced. The town asked the engineering firm to devise a plan to try to address the Coastal Bank erosion issue, figure out why it's happening and replace the set of stairs at the base of the structure.

Mr. Bertolo stated it is evident that to the north and south, the Coastal Bank facing the ocean is starting to give way. He attributed the majority of the erosion to surface water runoff from above. Another issue could be water coming from street drainage that may be failing. He stated he's contacted the DPW to assess what appears to be a catch basin adjacent to the path. He added, due to lack of space adjacent to the stairway, drainage may need to be added in the street itself. He referred to the site photos and the site plan and discussed some of the potential options which include; replacing some of the paved areas with a pervious material, adding plantings and installing Coir Logs and riprap. He feels by eliminating the surface water runoff, a lot of the erosion problems will be addressed.

Next, Mr. Bertolo discussed at length the reconfiguration of the proposed new structure, how it will be constructed and how it will be accessed. Mr. Palumbo asked the representative to turn around and show the abutters who were in attendance the proposed plan.

Mr. Bertolo stated they are awaiting comments back from Massachusetts Wildlife Natural Heritage & Endangered Species Program; therefore, they'll be seeking a continuance.

Agent Comment – Mr. Haines praised the representative for his thorough presentation. He stated he had a chance to visit the site during a 2" rain event and the water comes down the existing pavement like a sluice, which is a major contributing factor to the

undermining of the footings. He stated since he's had input on the design, he doesn't want to comment too much on the project.

Board Comment - Mr. Palumbo asked if the DPW feels they'll be able to address the surface water issue coming from the top. Mr. Bertolo stated the DPW is going to work on this issue. Mr. Haines added that some of the funds requested from the Finance Department for this project will be set aside for storm water upgrades within the roadway; however, it is still in the design phase.

Mr. Berman asked if any biodegradable material such as filter fabric will be used for the Bank stabilization. Mr. Bertolo stated they aren't proposing filter fabric be used just the Coir Logs. Mr. Berman asked if the Coir Logs will be set into the Bank. Mr. Bertolo stated they will be set into the Bank. Mr. Berman stated it appears that there's a 4' minimum for the sonotubes being installed closest to the beach. He asked if the beach drops in elevation, will that be deep enough. Mr. Bertolo stated he believes so and stated based on the evidence, the existing sonotubes closest to the beach have not been undermined, it's the section one elevation up that was undermined. He referred to the plan and explained.

Mr. Szwed stated it doesn't seem as though the source of the runoff is being addressed. He asked if the new structure will be damaged at the top because the runoff will redirected and not eliminated. Mr. Bertolo stated he believes the majority of the runoff is being caused by overflow drainage. Currently the overflow is channelized, shooting down the pavement. Their proposal will break that pavement up by the creation of areas that will allow the water to infiltrate; therefore, the volume and the velocity will be reduced. Mr. Haines stated he was struck by how quickly the runoff water is moving by the time it reaches the bottom of the 200' sluiceway.

Mr. Ligor asked if the catch basin can be made bigger. Mr. Bertolo stated that is currently being evaluated. A discussion ensued.

Mr. Holmes opened a brief discussion with regard to accessing the area. Mr. Haines stated Town Counsel is working on access agreements with the seven private landowners to try to obtain access from the bottom vs. from the top.

Public Comment – Marcia Rothwell addressed the Commission. She stated there's a cracked pipe in the poison ivy that carries runoff from the drain above and is willing to show the representative its location. She also stated there's a block of cement at the bottom of the structure that she'd like to see removed. Mr. Bertolo stated the proposed plan calls for removing the cement. She questioned if the crushed stone material being proposed will cause a problem to pedestrians wearing flip flops or sandals. Mr. Haines stated no and described the material being proposed.

Dan Reddy asked if there's a possibility that the last section can be built to be replaceable, retractable or hinge able. He feels this may be helpful in preventing future damage to the structure during storm events. Mr. Bertolo stated that may be considered. Mr. Reddy expressed concern that the structurally sound areas of asphalt may be compromised when the damaged pieces are cut for removal. Mr. Bertolo stated the asphalt will be saw cut and he doesn't foresee there being a problem with the remaining sections. Mr. Reddy suggested the project might be designed in a way to allow adjoining properties the ability to install similar erosion controls to stabilize their portion of the Bank. Additionally, he also expressed support in installing the sonotubes deeper on the beach.

Joe Corn, a direct abutter, stated no one from the town has sought his permission for beach access. Mr. Haines stated the access agreements were sent via certified mail the previous day. Mr. Corn expressed concern that the proposed crushed stone material won't be pervious. Mr. Palumbo shared his experience with using the crush stone material. Mr. Ligor and Mr. Haines elaborated further. Lastly, Mr. Corn shared his opinion on the type of hand rails he'd like to see installed.

Laura Richards asked why the cost of the project hasn't been discussed. Mr. Palumbo stated the Conservation's charge is the environmental impact, not the project's cost. Mr. Ligor discussed an article from the Bourne Courier that stated the cost of the project is approximately \$108,000. Ms. Richards asked for further information on the riprap being proposed. Mr. Ligor and Mr. Bertolo explained. Ms. Richards then read a brief statement which thanked the town for addressing the issue.

Mike Powers discussed the existing catch basin and stated he feels the new design will address the runoff issue. A discussion ensued.

Mr. Reddy asked if any of the existing material from the stairs will be reused or will it be new material. Mr. Bertolo stated all material will be new. Mr. Reddy asked if any of the material can be saved because the neighborhood association paid for a lot of the material. Mr. Palumbo stated he doesn't know if that will be possible.

Mr. Palumbo reminded those in attendance that this was an initial hearing to hear feedback from the residents and to learn about the rough design. He thanked everyone for their input.

Ms. Rothwell discussed vandalism that occurred at the site in the past. A discussion ensued.

Jim Mulvey asked if there's a projected construction schedule, should the funds for the project be approved. Mr. Haines stated the town would like to bid the project out as

soon as possible. The hope is to begin work in the fall. Mr. Mulvey expressed concern over winter storms impacting the construction and wonders if an early spring start might be better. Mr. Palumbo stated the goal is to get this completed in a timely fashion. Mr. Bertolo stated Town Meeting has to approve the funding; therefore, nothing can be done until then. Mr. Haines stated the bid process can begin but there are financial constraints.

Mr. Haines summarized some of the major concerns raised that he'll be discussing at his next meeting with town officials.

Nicole Lord expressed her dissatisfaction with the town's response to the situation.

With no further discussion, Mr. Palumbo entertained a motion to continue the matter to September 21, 2017. **Ms. Weston moved, Mr. Holmes seconded to continue the matter to September 21, 2017.** The motion carried. 5-0-0.

Chm. Gray returned to chair the meeting.

Request for Certificate of Compliance:

1) Gerhard Bottcher

File # SE7-1534

Representative: Warwick & Associates, Inc.

11 Bayhead Shores Road, Buzzards Bay

Removal of an existing metal shed, construction of a garage and upgrade of an existing onsite sewage system within an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

Continued to October 19, 2017

2) Gunlog Millet/Ralph T. Millet

File # SE7-698

Representative: Gunlog Millet

25 Pasture Road, Scraggy Neck

To add an addition and new septic within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment – A site visit was performed on August 22, 2017. After reviewing several files for historic information, Mr. Haines feels the project is in substantial compliance with the Order.

He stated there is a stone revetment and a set of access stairs on the property which extend beyond Mean High Water. Mr. Haines has informed the potential buyer as well as their attorneys that those structures will need a Chapter 91 License in the future. He stated it appears that those features were permitted correctly with the Commission, but they do not have a Chapter 91 License.

With no discussion, **Mr. Palumbo moved, Mr. Holmes seconded to grant the Certificate of Compliance.** The motion carried 6-0-0.

Other Business:

- Discussion and possible revisions to BWR 1.16 (e) 9 & BWR 1.16 (g) of the Bourne Wetland Regulations – Mr. Haines submitted language he drafted for the Public Benefit definition of the Velocity Zone regulations. Mr. Haines stated a vote cannot be taken on the language because the definition section wasn't advertised; however, the Commission may review the language and discuss it at a future meeting. Chm. Gray explained that a new committee has been formed to review existing regulations. He suggested the Commission hold off on making any further regulation revisions until that committee has had an opportunity to meet and present the Commission with revision suggestions. Mr. Haines agreed and stated the matter of BWR 1.16 (e) 9 has been legally advertised. The Commission may make the revision and vote on it. Chm. Gray asked if any members would like to make any additional changes to the revised proposed language. After a review of the proposed language, Chm. Gray entertained a motion to accept the revised language. **Ms. Weston moved, Mr. Holmes seconded to accept the revised language.** With no discussion, the motion carried. 6-0-0.

- Update on Violation at 0 Channel Road, Mashnee Island – Mr. Haines submitted to the members a letter he received from the association explaining they were unaware that any cutting they performed was a violation. They thought the Army Corps. of Engineers has an easement and therefore they weren't subject to jurisdiction. They're now aware and won't perform any future clearing without proper permitting. Mr. Haines explained the area was cut and two or three mature Cedar trees were taken down; however, there was no grubbing or root damage so he feels the area will probably grow back fairly quickly. He asked how the Commission would like him to proceed. After a brief discussion, Mr. Palumbo suggested the agent monitor the area to be sure it's being allowed to grow back. He stated if there's a second offense or the area does not regrow, then further action will need be taken. The Commission agreed.

- Vote excused absent members, if necessary – **Mr. Ligor moved, Mr. Holmes seconded to excuse Ms. Leduc.** With no discussion, the motion carried. 6-0-0.

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the May 18, 2017 meeting. **Mr. Ligor moved, Ms. Weston seconded to approve the minutes of the May 18, 2017 meeting.** The motion carried 6-0-0.

Chm. Gray entertained a motion to approve the minutes of the July 13, 2017 meeting. Mr. Haines suggested one revision. **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the July 13, 2017 meeting as revised.** With no discussion, the motion carried. 5-0-1. Mr. Szwed abstained.

- Report of the Conservation Agent – None.

Chm. Gray explained there's a dock violation at Agawam Point Pond. A small walkway across the saltmarsh was installed without a permit. Mr. Haines will provide further information regarding this matter at the next hearing.

- Correspondence – None.

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

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

II. Adjournment

Mr. Palumbo moved, Mr. Holmes seconded to adjourn. With no discussion, the motion carried. 6-0-0. The meeting adjourned at 8:53 PM.

Minutes submitted by: Carol Mitchell