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TOWN CLERK BOURNE

## Conservation Commission

### Meeting Minutes

Zoom Meeting Platform

September 16, 2021

#### I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday September 16, 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.

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, Thomas Ligor, Paul Szwed, Steve Solbo, Greg Berman, Rob Palumbo

**Excused members:** Elise Leduc, Peter Holmes

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

#### Continuances:

Champe A. Fisher Jr.  
4 Fisher Lane -- Continued to October 7, 2021

Sarah A. Fisher  
8 Fisher Lane -- Continued to October 7, 2021

#### Withdrawal of Notice of Intent:

Stephen and Marybeth Bisson, Trustees  
176 Scraggy Neck Road  
File Number SE 7-2135

#### Notice of Intent:

1. Applicant: Susan Bodington

Address: 48 Chickadee Lane, Pocasset  
File Number: SE7-2169  
Representative: Falmouth Engineering, Inc. (Mike Borselli)  
Proposed timber bulkhead and access stairs.

Materials Reviewed: Site plan

Mr. Borselli addressed the board and shared his screen due to the nature of the meeting. The screen sharing showed the Pocasset River, and the property in question. There is limited viewing due to "shadows and vegetation." The property is located in the cove of the Pocasset River. There is an adjacent property that has a current timber bulkhead or retaining wall, and flanked on the other side of the property is a vertical concrete wall. The property in question is the only property that does not have an armored bank in the cove. There is a salt marsh strip just off shore, and a beach inland of the salt marsh. A photo of the access stairs leading down to the beach from the property, as well as a photo of the erosion that is taking place between the beach and the end of the property. Mrs. Bodington is requesting an armored bank as she is quite worried about her property due to erosion, and her home being "only fifteen feet, and the deck is twelve feet from the top of the coastal bank." The house was constructed prior to 1978, 310CMR10.30 of the Commonwealth of Massachusetts Wetlands Regulations was the referenced in regards to this information). Proposal is being made to fill in the one area to "close off the gap" between the two adjacent properties and Mrs. Bodington's property. The property owner is requesting to use timber sheeting. The proposal is requesting traditional timbers, along with timber whale beams but helical anchor tiebacks, in hopes of causing less disruption to the bank. The proposal also includes building a new set of access stairs to replace the current set of stairs. Options regarding access for the project was then discussed. There are two options being suggested, one option being by barge off shore, and the other option being by land. This project is being requested to be done in combination with a project for the property next door (to be addressed later). The high tide line was addressed as well as the strip of salt marsh that comes after the beach into the cove. A "soft solution" was briefly discussed, but noted to not have been contemplated by the representative due to disruption that the "soft solution" would cause to the bank. It was also noted that there limited times where a bank can be armored, but this bank is not believed to be "that type of bank." It is believed that this bank would qualify for coastal armoring due to the fact that the dwelling was built prior to 1978. It was reiterated that this is the only bank that is unarmored in this cove. A continuance is being requested for October 21, 2021 as the representative is unavailable October 7, 2021, in order for the representative to review The Rivers Act and addressing the performance standards. Mr. Borselli opened the conversation to questions and comments.

Mr. Haines commented: There is fairly minimum erosion likely caused by alteration that has been done in the past. Erosion noted: end scour at the end of the timber frame, and by the stairs there is erosion noted, there is no observable

erosion on the other side of the property. Mr. Haines proceeds to state that “this is just about sheltered a spot as you can find.” He mentions that the area is in an AE flood zone, and not subject to wave action, but it is subject to tidal elevation. It is not believed that the dwelling is at eminent risk of erosion. Mr. Haines does confirm that it is allowed to put hard armor on coastal banks, where there is a valid reason; the bank needs to be eroding as long as the bank does not provide sediment. He states that due to the fact that the property is entirely within riverfront jurisdiction, which means that the plan would need to provide information proving “there are no practical or substantially equivalent economic alternatives to the proposed projects, with less adverse effects on the interests identified” (i.e. wildlife, storm damage prevention). Site visit recommended prior to October 21, 2021.

Mr. Borselli requests to respond to the comments provided by Mr. Haines. Mr. Borselli brought the photos back up of the property to review the erosion of the bank. He goes on to explain that the applicant (Mrs. Bodington) is requesting approval in order to be “proactive” as “she firmly believes her house is at risk, and she worries about this on a regular basis.” Mr. Borselli confirms that he will review The Rivers Act and return with an amended proposal.

Member questions/comments: Greg Berman confirms that a site visit of the property would be helpful. He continues with sediment source bank or vertical bank, he believes that the volume of material does not be substantial, stating that “there just needs to be a beach in the immediate vicinity. He would like to investigate whether there is runoff coming from the top vs erosion at the bottom, as well as researching non-structural alternatives, completing Mr. Berman’s comments. Chm. Gray believes it is very important to research the limit of the salt marsh. “Is this really a section of beach below where they are proposing the wall? Or are these just areas of the salt marsh that are not currently vegetated?” He notes one of Mr. Borselli’s photos shows salt marsh vegetation. He believes the full extent of the salt marsh should be evaluated due to the regulations, as they do not allow alterations to a salt marsh. Chm. Gray wishes to look further into the presently un-vegetated area that is believed to be beach to ensure that it is not area of salt marsh that has been disrupted simply by “people walking.” Chm. Gray states that the area being proposed may need to be pulled landward, being pulled landward higher than the highest high tide, if possible. Mr. Haines requests to review one of Mr. Borselli’s photos depicting the vegetation in question. Spartina grasses noted in photo. Mr. Borselli requests options for alternatives. Mr. Haines requested to learn of the erosion rate, and suggests the possibility of “doing nothing” may be an alternative. Planting areas that are presently bare, may possibly be another alternative.

Public comment: None.

Continuance granted to October 21, 2021, pending site visit. Checking tides to schedule site visit suggested as well, and agreed upon.

2. Applicant: Steven Frank, Frank Family Realty Trust  
Address: 52 Chickadee Lane, Pocasset  
File Number: SE7-2168  
Representative: Falmouth Engineering (Mike Borselli)

Proposed timber bulkhead, pier reconstruction.

Mr. Borselli addressed the board and shared his screen due to the nature of the meeting. He noted the property in question is an adjacent property to the Bodington property. Photos are shared showing the current pier that is built at the bottom of the property for coastal armoring. A ramp and float are noted in the photo, which is intended to be seasonal. Copy of the Chapter 9A1 license, which was issued in 1996, was obtained and shared with the plan for the ramp and float. Mr. Borselli states that the plan proposed is to construct the new wall where the existing wall is, along with proposal for all cobble to be removed, which would help the salt marsh to heal. With the proposal of the pier being rebuilt, the plan is to elevate the pier one step up from the grade. This would provide elevation from the salt marsh, as well as a proposal for through-flow decking to be utilized as material to minimize any impacts to the strip of salt marsh. The plan will need to be revised to depict a seasonal pier, as the representative was unaware of the fact that the ramp and pier were intended to be seasonal. The initial plan proposed two 10" diameter timber pilings for the ramp. Mr. Borselli states that the new plan would need to be amended to 2" diameter pipes to depict the seasonal ramp. High tide line will be provided as well. The wall would be built landward of the edge of saltmarsh, and planned to be tied into the riprap that is existing on the side of the property.

Member questions/comments: Mr. Ligor questions that if the float is to be built as seasonal, where will the material be stored in the winter months? Mr. Haines comments on the seasonality of the floats, any rebuild of a dock for seasonal nature must remain seasonal. A permanent fixture cannot be allowed. The 2" steel galvanized piles are allowed. The ramp and float are not noted in the plan, nor is the plan for winter storage of the ramp and float. The cobble removal is required to be noted. Mr. Haines also again states that with this property, there is no wave action. And The River Act needs to be referenced and researched. Site visit recommended. Mr. Berman states that it would be recommended for there to be an infiltration area between the end of the property and the start of the timber bulkhead. Chm. Gray notes that River Front regulations typically deal with freshwater rivers, and have limited language regarding tidal rivers. Chm. Gray recommends looking over these regulations. Continuance granted to October 21, 2021, pending site visit.

3. Applicant: JMC Realty Trust  
Address: 534 Scraggy Neck Road, Pocasset  
File Number: SE7-2163

Representative: Holmes and McGrath (Nathan Goshgarian)

To repair and maintain two existing groins. Work will take place on or within land, under ocean, land containing shellfish, rocky intertidal shore, and coastal beach. (Continued from August 05, 2021).

Mr. Goshgarian addressed the board and shared his screen due to the nature of the meeting. The property is 1.5 acres of land, containing a single-family residence, two licensed stone groins, and a rip rap. There are resources within 100' of the property include land under the ocean, land containing shellfish, rocky intertidal shore, coastal beach, which was recognized by the representative that was not on the original plan for the proposal, but addressed, as well as land subject to coastal storm flowage (velocity zone elevation 20). There are multiple parts of the project, the first that is to be addressed is filling gaps in the stone groins with chink stones, as well as address the set stones on the top of the groins. The plan is to keep within the current footprint of the groins. The plan is proposing a floating barge to be brought in to complete the work. It was confirmed by the representative that the barge would be brought in at high tide with no anchoring to minimize any impact to the surrounding eel grasses. The next part of the project is to address and attempt to fill in erosion ruts that are forming in the lawn, due to concern of harm occurring to a family member of the applicant. Mr. Goshgarian opened the discussion to questions.

Mr. Haines questions whether there may be photos available of the erosion ruts that are forming on the property, as it was not mentioned in the original Notice of Intent that was submitted by the representative. Mr. Goshgarian states that he does not currently have any requested photos of the erosion ruts, but does describe them to be "about 6" deep, spanning out maybe 5', essentially mini scarbs." Mr. Haines then questions what the thought process may be in the thought process in utilizing rip rap to fill in the ruts, but possibly considering the alternative of soil and plantings. Mr. Goshgarian does agree with the suggestion, but states that the "pea stone" would be utilized on more of a "temporary basis." This information was confirmed to be referenced in the cover letter for the supplementation of the application. The attention was turned to the groins of the proposal. Mr. Haines states that the groins are in relatively good condition. He agrees that what is being proposed is similar to what is currently existing. He does mention one concern that DMF had previously requested a formal eelgrass assessment. It was discovered that as of 2017, eelgrass was found to be in this area. Mr. Haines opens the option up to the Commission whether they would prefer to let the project move forward with or without an eelgrass assessment, specifically in regards to grounding and anchorage of the machines and/or barge during the work of the proposed project. Mr. Haines does believe that aside from the eelgrass concern, this otherwise does appear to be "a typical project," and there have been permits granted for Chapter 91 licensed structures. Chm. Gray opens the discussion to additional questions from the Commission. Mr. Ligor questions whether the capstones that are proposed for the groin will be dry-fit, or if there

may be some type of adhesive applied to the stones to keep them in place. Mr. Goshgarian confirms that there is no plan for there to be no adhesive used to keep the stones in place. Mr. Haines states that there is to be a condition in place stating that the stones will be required to be dry fit, using no adhesive. Mr. Solbo asks for confirmation regarding the lack of anchoring planned for the barge. Mr. Goshgarian confirms there is no intention of anchoring the barge, and that it will be brought in during high tide. Mr. Berman reiterates that idea of the pea stone fix that is proposed for the erosion ruts could be improved upon. He then states that he believes if the project is done exclusively via land access, the eelgrass survey may not be recommended as it would not be affected. He does also raise concern with the barge access, even during high tide, or without anchoring, affecting the eelgrass. Mr. Haines brings up the concern regarding the water depth and the barge, stating that there is not much water depth, even at high tide. He also is concerned of the effect on the eelgrass regarding the lack of anchoring, as well as possible grounding from the barge. Mr. Haines states that he reviewed priority habitat and requested to confirm whether the proposed location is in priority habitat. Mr. Goshgarian confirms that the proposed location is not within priority habitat, but directly adjacent. Continuance requested by the representative.

Member Comments: The option is opened to the Commission whether or not to require an eelgrass survey. The timeframe in which the eelgrass survey may be performed was confirmed (through the end of September/early October). Due to the fact that the representative does not have anyone in their facility that may be able to perform the eelgrass survey. The attention was then brought back to the shared screen of Mr. Goshgarian in order to show that the representative had done a similar project not far from the proposed project. The previous project was done also by barge, but Mr. Haines is requesting review of that project as well for confirmation. Mr. Berman states that he did review a Google Earth map, stating that the current proposed location "may have more opportunity for submerged aquatic vegetation." A motion was requested whether or not to require an eelgrass survey. Mr. Palumbo requested clarification, Mr. Haines provided clarification. Mr. Palumbo then requested confirmation for when the project would plan to be initiated, and whether that factor would have any effect on the requirement for an eelgrass survey. Mr. Goshgarian states he is uncertain exactly when this project would be expected to begin. Chm. Gray suggests contacting Mr. John Logan (DMF) in order to gather additional information regarding eelgrass dormancy and effect on eelgrass in different parts of the year. Mr. Szwed questions whether it would be appropriate to amend the motion again to require the eelgrass survey unless DMF feels unnecessary due to the time of year and the impact on the eelgrass. Chm. Gray elaborated on how the eelgrass survey would, be carried out. Continuance granted to October 7, 2021.

Public comment: None

**Mr. Ligor moved the motion to require an eelgrass survey. Mr. Berman seconds the motion, with the contingency that the representative utilizes a barge for the project, and if they come from the upland, a survey would not be required.** No further discussion. Motion carried 5-0-0.

4. Applicant: Michael Giancola  
Address: 45 Bell Buoy Road, Pocasset  
File Number: SE7-2164  
Representative: J.E. Landers-Cauley

Tear down existing house, build new house, garage, and driveway. Upgrade Title V system to five bedrooms, and all areas to be landscaped, graded, loamed, and seeded. (Continued from September 2, 2021).

Mr. Haines begins the conversation stating that this application was closed on September 22, 2021 in order to let the Board of Health vote on it, as well as pending revised terrace plan, and vertical wall proposal. Both requests have been received, with minor grading and an updated location of the wall in the AT Flood Zone. Mr. Haines then reports the draft order would contain all general conditions, conditions pursuant to 131-40 would include 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 16, 18, 19, 21, 27, 28, 29 with special conditions pursuant to the Wetland Protection Bylaws Article 3.7 would include 4. No additional special conditions applied to this property. No further discussion, member comment or additions requested.

**Mr. Palumbo moved the motion to move the draft to final order, Mr. Szwed seconds the motion.** Order issued with 5-0-0 vote.

5. Applicant: R. Hunter Scott  
Address: 290 Barlow's Landing Road, Pocasset  
File Number: SE 7-2166  
Representative: Bracken Engineering (Don Bracken)

Proposed landscaping, installation of a swimming pool, patio, and appurtenances within 100' of a coastal bank and land subject to coastal storm flowage. (Continued from September 2, 2021).

Mr. Bracken addressed the board, and introduced the applicants (Lou and Hubter Scott) that joined him for the meeting as well. Mr. Bracken states that the project was initially proposed in order to install a swimming pool next to the applicants' home. At which time it was discovered that the original Order of Conditions from 2011 was never closed out. An existing conditions plan was carried out, during that, two areas were found to be non-compliant with the 2011 Order of Conditions. Two plans were initiated for this project. The first plan (Post-Facto Compliance Plan) was done to propose a change to bring the project back into compliance of the original 2011 permit. Mr. Bracken shared his screen due to the

nature of the meeting. In the first plan, the first application allowed up to 5,000ft<sup>2</sup> within the river front area. There was found to be about 7,600ft<sup>2</sup> of total disturbance in the area, some being cleared area, some being lawn. There is an area that Mr. Bracken addresses in which is noted to be the proposed mitigation area, to bring total disturbance to the river front area back under 5,000ft<sup>2</sup>. Another noted area that was not in compliance was an isolated vegetated wetland with a 50' Buffer Zone, which was being encroached by a portion of the gravel driveway, as well as a short, free-standing stone wall. The suggestion was made to plant grass between the wall and the wetland area. This was addressed in Mr. Bracken's plan. The second plan depicts an updated coastal bank, as well as an updated flood zone. The updated flood zone goes around the house instead of through the house. The updated plan also pulls the 50' Buffer Zone further away from the house, which also previously had a wooden deck encroaching the 50' Buffer Zone, but has now been rectified due to the updated topography. The pool area was then addressed. The layout of the patio and the pool was updated in order to move the patio and the pool outside of the 50' Buffer Zone, as well as the 250' River Front area. Mr. Bracken opens the discussion to questions and comments.

Mr. Haines comments, stating that he believes the updated plans are permissible under the Wetlands Protection Act, as well as the Wetlands Protection Bylaw.

Member comments: None.

Public comments: None.

**Mr. Ligor made the movement to close the hearing, movement seconded by Mr. Solbo.** With no discussion, the motion carried 4-0-0.

Draft order presented by Mr. Haines: Draft order would contain all General Conditions; conditions pursuant to 131-40 would include 1, 2, 3, 4, 7, 9, 10, 11, 12, 14, 15, 18, 19, 21, 24, 25, 26, 27, 28, 29; special conditions pursuant to the Wetlands Protection Bylaw would include 2, 4 5 6. No additional special conditions added by Mr. Haines, or the Commission. Mr. Szwed moved motion to move the draft to final order, Mr. Berman seconded. With no discussion, the motion carried 4-0-0.

### **Request for Certificate of Compliance**

1. James R. Smith  
Address: 116 Jefferson Road, Gray Gables  
File Number: SE7-1597  
Representative: Bean & O'Connor, LLC

Repair 35ft existing, sloped stone coastal protection revetment system with additional stone, and plant beach grasses to protect existing vegetated areas landward of mean high water.

Site visit was made, no work was performed at the site per Mr. Haines. Recommended issuance as invalid Certificate of Compliance as no work was performed. Mr. Palumbo moved, Mr. Szwed seconded the motion to issue invalid Certificate of Compliance. With no discussion, the motion carried 5-0-0.

Vote made to excuse absent members. Motion made by Mr. Palumbo, and seconded by Mr. Szwed. With no discussion, the motion carries 5-0-0.

Report of the Conservation Agent:

Mr. Haines will be at Canal Day this coming Saturday (September 4, 2021).

## **II. Adjournment**

Motion made by Mr. Berman, seconded by Mr. Szwed. With no discussion, the motion carried. The meeting adjourned at 8:31PM.