

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

October 6, 2016

Mr. Palumbo announced that the Commission voted to deny permission or consent to the construction of the proposed project at 0 Crab Rock Way, Sagamore, on land owned by the Town of Bourne under the care, custody and control of the Bourne Conservation Commission.

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

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on October 6, 2016. 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 By-law.

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.

**Members Present:** Chm. Robert Gray, Robert Palumbo, Thomas Ligor, Betsey Kiebala, Melvin P. Holmes, Paul Szwed and Susan Weston.

Also Present: Sam Haines, Elise Leduc, Carol Mitchell, Michael Rausch, Paul Gately, Mary Jane Mastrangelo, Jim Mulvey, Paul Huehmer, Rosemary Huehmer, Keith Mann, Rich Tabaczynski, Ron Matthieson, Karen Gibides, Paul D'Angelo, Tom O'Connor, Mrs. O'Connor, Michael Lafortune, Barbara Frappier, Paul Nitschke, Diane Nitschke, Sean MacInnes, Treather Gassman, Carolyn Gassman, B. Paul Bushueff, Steve Barrett, John Miller, Jim O'Connell, Peter Sterling and Phil Austin.

**Request for Determination of Applicability:**

*Ms. Weston recused herself.*

**1) Keith A. Mann**

File Number: CC16-52

Representative: Atlantic Design Engineering Inc.

Project Address: 590 Head of the Bay Road, Buzzards Bay

Proposed Project: Construction of solar array and installation of associated utilities within AE Flood Zone and 100 feet of a Wetland Resource Area.

*Hearing under State Act Only*

**Materials –**

- 2 photographs showing the proposed location of the solar arrays.
- A summary of the electrical requirements for the cranberry operations.
- A copy of an excerpt from a document entitled “Farming in Wetland Resource Areas” which discusses that there is no cumulative limit to the number of farm structures on a property.
- A highlighted copy of Chapter 40A, Section 3 Zoning Regulations.
- Multiple examples of approved filings for solar arrays and cranberry bogs in the Town of Carver, including one where a DEP Superseding Order allowed a solar array to be constructed within the bog
- Letter from Bourne Resident Ron Matthieson regarding proposed conditions

Keith Mann, the property owner, addressed a few concerns that were raised at the Conservation meeting held on 9/15/16. He briefly described the proposed project and explained how this solar project qualifies as an agricultural structure. He also discussed the proposed location for the project.

Agent Comment – Mr. Haines stated he had preliminary communication with a DEP representative from the Lakeville Office. It is his opinion that this project would not be exempt and recommends an RDA be filed to determine whether or not there’s any impact to the Resource Area.

Chm. Gray suggested to proceed with only the issue relating to the Wetland and not consider the exemption; adding that the DEP representative who offered his opinion is the DEP’s point person for projects relating to the cranberry industry.

Board Comment – Mr. Szwed asked if any of the power generated will power his residence. Mr. Mann stated all the power produced can be applied just to the farm.

A brief discussion transpired with regard to net metering.

Mr. Holmes stated he researched the project and discussed a Scientific America paper he found on line which offered information on solar fields and mega power plants. He stated after conducting his research, he feels this particular project isn't of the size that warrants major concerns.

Mr. Ligor indicated that he visited the solar farm on MacArthur Blvd. to research the level of noise generated by the transformer. He stated he could not hear the transformer until he went right up to the solar array itself; adding, the panels were not hot to the touch.

Ms. Leduc also conducted research. She reiterated several of the key points made by the other board members and discussed the array's footprint on the ground.

Mr. Palumbo stated he is glad the matter was continued which allowed the board time to better understand the proposed project.

Chm. Gray sked for clarification with regard to a parcel of land listed on the plan, Map 14, Lot 34, which is labeled, Town of Bourne. Rich Tabaczynski of Atlantic Design Engineering stated it is mislabeled.

Ms. Kiebala opened a brief discussion pertaining to the location of the proposed project.

Public Comment – Ron Matthieson expressed his concern that the proposed project will become an industrial electrical project on Mr. Mann's property. Chm. Gray interjected stating the board can only review what's presently before them; a future application is immaterial.

Karen Gibides asked if any of the power generated will be used in Plymouth. Mr. Haines stated this is a net metering project and Chm. Gray added that the power will go to the grid, where it's dispersed is unknown. She expressed frustration that the proposed project may be approved.

Mr. Haines read a written comment submitted by Mr. Matthieson suggesting a Condition be added that states additional solar farms installed on the property in the future would require the removal of this project. In his opinion, Mr. Haines does not feel this is appropriate.

Chm. Gray entertained a motion. **Mr. Ligor moved and Ms. Kiebala seconded a Negative Two Determination.** The motion carried. 6-0-0.

*Ms. Weston returned to the meeting.*

**2) Paul R. D'Angelo**

File Number: CC16-53

Representative: Same

5 Main Street

Install a chain link fence, grease trap, and associated underground utilities within an AE Flood Zone and within 100 feet of a Wetland.

Materials –

- Plan titled Proposed Grease Trap and Fence, 8-15- 2016

- 2 site photos

- Wetland and Change Areas Map, Mass DEP

Online - - Viewer (<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Mr. D'Angelo addressed the board and described the proposed project.

Agent Comment – Mr. Haines performed a site inspection on September 30, 2016. The site is completely developed and paved. He recommends that any stockpiled soil on site be covered to prevent migration of sediment into the nearby catch basins. There are no issues with this project.

Board Comment – None.

Public Comment – Tom O'Connor asked for more information with regard to the installation of associated utilities. Mr. D'Angelo stated the installation is for a grease trap. Mr. O'Connor asked if the grease trap would be emptied regularly and if it was being installed for restaurant use. Mr. D'Angelo stated yes to both.

Mrs. O'Connor expressed concern over the location of the proposed fence which is close to her driveway. She stated based on the submitted plan, it appears that a large area is potential parking. She is worried that vehicles will park in her driveway. Mr. D'Angelo stated a gate will close off the area she is concerned about.

Chm. Gray entertained a motion. **Mr. Holmes moved and Ms. Weston seconded a Negative Two Determination.** The motion carried. 7-0-0.

- 3) Mark Avakian  
File Number: CC16-54  
Representative: Stephen Doyle & Associates  
16 Monument Neck Road

Repair an existing septic system within an AE Flood Zone.

*Hearing under State Act Only*

Materials –

- Plan titled Septic Repair Plan, 8-25- 2016
- 1 site photo
- Wetland and Change Areas Map, Mass DEP Online Viewer  
(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Stephen Doyle addressed the board. He referred to the plan and described the proposed project.

Agent Comment – Mr. Haines performed a site inspection on September 30, 2016. All proposed work is within an existing landscaped area. There are no issues with the project.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Ms. Kiebala moved and Mr. Ligor seconded a Negative Two Determination.** The motion carried. 7-0-0.

- 4) Marshall M. Sloan  
File Number: CC16-55  
Representative: Michael Lafortune (Eastern Propane)  
115 South Road

Install a 500 gallon above ground propane tank and underground utilities within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Materials –

- Plan Showing Existing Conditions and Garage, Revised 9-14- 16
- 2 site photos
- Wetland and Change Areas Map, Mass DEP Online Viewer  
(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Mr. Lafortune addressed the board. He stated Mr. Sloan wants to remove the oil system in his home and switch to propane. He discussed the proposed location of the propane tank and described the installation of the underground utilities.

Board Comment - Mr. Holmes asked the length of the driveway. Mr. Lafortune stated the measurement from the tank to the house is 550 feet. He guessed the driveway is approximately 400 feet.

Mr. Ligor asked why the decision was made to install the tank above ground as opposed to underground. Mr. Lafortune stated it was the homeowner's decision; for some reason he did not want to excavate. He explained that a concrete slab will be poured and the tank will be anchored to it. Mr. Ligor asked if extreme weather could cause the tank to tip over. Mr. Lafortune stated no and reiterated that the tank will be anchored down to the concrete slab.

Agent Comment – Mr. Haines performed a site inspection on September 29, 2016. Based on site grading and a well-established vegetated buffer, there are no issues with the project.

Public Comment – None.

Chm. Gray entertained a motion. **Ms. Kiebala moved and Ms. Weston seconded a Negative Two Determination.** The motion carried. 7-0-0.

5) Elinor O'Neil  
File Number: CC16-56  
Representative: Warwick & Associates, Inc.  
49 Jefferson Road

Raze an existing garage and construct a new garage, driveway, and stormwater drywell within AE Flood Zone. Work includes associated grading, landscaping, utilities, and other appurtenances.

*Hearing under State Act Only.*

Materials –

- Site Plan Proposed Garage, 9-9- 2016
- 2 site photos
- Wetland and Change Areas Map, Mass DEP Online Viewer

(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Barbara Frappier addressed the board and described the proposed project.

Agent Comment – Mr. Haines performed a site inspection on September 29, 2016. Mr. Haines asked if the Oak tree in the back will be removed. Ms. Frappier stated she wasn't sure, but would try to save it. Mr. Haines stated it would not affect the project if it had to be removed, there are no issues with the project.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Ligor moved and Mr. Holmes seconded a Negative Two Determination.** The motion carried. 7-0-0.

- 6) Paul and Diane Nitschke  
File Number: CC16-57  
Representative: Same  
115 Puritan Road

Construct a deck within 100 feet of a Wetland Resource Area.

Materials –

- Site Plan of Land, Revised 9-23-04
- 5 site photos
- Copy of assessors cards for subject properties
- Wetland and Change Areas Map, Mass DEP Online Viewer
- (<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Paul Nitschke addressed the board and discussed the proposed project. He described the lot and stated the deck will be attached directly to the rear of the house.

Board Comment – None.

Agent Comment – Mr. Haines performed a site inspection on September 30, 2016, and has no issues with the construction of the deck. He observed there has been some clearing of the Bank, a flight of stairs has been installed on the Coastal Bank and a boat rack is at the base of the Bank. He spoke with Engineering and this property is considered one contiguous parcel owned by the same land owner. He could not find any

permitting in the Conservation files for this work. The applicant has not been able to provide additional documentation with regard to this work.

Mr. Nitschke stated the property always had a path. Recently, he replaced the dilapidated staircase. He apologized for not following the proper procedure before completing the work. A discussion ensued.

Chm. Gray asked for the agent's recommendation. Mr. Haines recommends a Notice of Intent after the fact for the stairs. The boat rack appears to be within the Mean High Water; that will also require a filing to see if it meets the standards for a structure within the water. Mr. Haines will deal with that issue separately.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Palumbo moved and Ms. Kiebala seconded a Negative Two Determination.** The motion carried. 7-0-0.

A brief discussion transpired concerning leaves that were dumped in the Coastal Resource Area.

7) Paul and Rosemary Huehmer  
File Number: CC16-58  
Representative: Same  
39 Buttermilk Way

Proposed Project: Construct a landscape retaining wall and stone parking area as well as perform landscaping and vegetation maintenance within an AE Flood Zone and 100 feet of a Wetland Resource Area.

Materials –

- Plan to Accompany Certificate of Compliance, October 20, 2014
- 2 site photos
- Wetland and Change Areas Map, Mass DEP Online Viewer  
(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Mr. Huehmer addressed the board and described the proposed project.

Board Comment – None.



Agent Comment – Mr. Haines stated this filing is the result of a violation issued on September 9, 2016, for tree clearing and grading. A second visit was performed on September 19, 2016. There is currently a lot of unstabilized soil at the site. Mr. Haines would like to stabilize it in some fashion as quickly as possible. He spoke to the applicant regarding the mitigation plantings within the 25 foot buffer. He told him only native plantings are permitted.

Mr. Haines discussed the applicant's request to cut one of the shrubs. He is having a problem with trespassers from the beach and is hoping that cutting the shrub will eliminate the problem.

Mr. Haines feels the project can be constructed without any further negative impact to the Resource Area; however, he suggests adding Conditions because of the previous violation. He recommends; 1. Mitigation plants consisting of native shrubs be approved by the Conservation Commission, 2. Mitigation plants will be allowed to grow to maturity to establish healthy roots systems, 3. Existing vegetation on the top of the Coastal Bank shall be maintained at a minimum of three feet in height, 4. The Commission be notified upon completion of the work so its agent may perform a follow-up site inspection.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Ms. Kiebala moved and Mr. Ligor seconded a Negative Two Determination with the agent's recommended Conditions.** The motion carried. 7-0-0.

**8) Treather Gassman**

File Number: CC16-59

Representative: MacInnes Consulting, LLC

38 Monument Avenue

Repair an existing septic system within 100 feet of a Wetland Resource Area.

Materials –

- Plan titled Septic System Upgrade Design, September 15, 2016
- 2 site photos
- Wetland and Change Areas Map, Mass DEP Online Viewer

(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Sean MacInnes addressed the board and described the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines performed a site inspection on September 26, 2016. He noted on the plan, it appears this is within an easement. He will bring this to the attention of the BOH and will coordinate with the Town Engineer. There is unstabilized soil requiring erosion controls as shown on the plan. Otherwise, he has no issue with the project itself.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Ms. Holmes moved and Mr. Palumbo seconded a Negative Two Determination.** The motion carried. 7-0-0.

**9) B. Paul Bushueff**

File Number: CC16-60

Representative: Same

9 Agawam Point Road

Construct a pool, patio, utility shed, fence, and retaining wall, as well as install associated utilities within 100 feet of a Wetland Resource Area.

Materials –

- Plan titled Site and Sewage Plan, Revised 9-20- 16
- Pool Plan with 9-20- 16 Modification
- 4 site photos
- FEMA flood hazard map
- Wetland and Change Areas Map, Mass DEP Online Viewer  
(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Mr. Bushueff addressed the board and described the proposed project.

Board Comment – Mr. Ligor asked what type of pool is being proposed. Mr. Bushueff stated it will be a PermaCrete saltwater pool with a liner. It will have a filter as opposed to sand, backwashing won't be required.

Ms. Weston discussed the proximity of the proposed pool to the top of the Coastal Bank. A discussion ensued.

Agent Comment - Mr. Haines stated all work will be conducted within an existing lawn area. One Cedar Tree may need to be removed. The intention is to build a wall at the 15 foot mark so the grading won't increase closer to the Coastal Bank. This is an Accessory Structure within 50 feet of the Wetland Resource Area. He looked at the FEMA mapping, it's possible that a part of the project may fall within a VE Flood Zone; however, because the pool is elevated in that area, it may be well above the VE Flood Zone. The Building Inspector will determine that. Mr. Haines recommends erosion controls along the top of the Bank.

Ms. Weston stated the house was built before the By-Law and asked if the Accessory Structure regulation comes in to play. A brief discussion ensued.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Ligor moved and Mr. Palumbo seconded a Negative Two Determination with Special Condition #8 (erosion control).** The motion carried. 7-0-0.

**Notice of Intent:**

Georgio Petruzzello - DEP File Number: SE7-1958

**The applicant requested a continuance to the October 20, 2016 meeting.**

- 1) Marine Renewable Energy Collaborative of New England, Inc.  
DEP File Number: SE7-1956  
Representative: Barrett Energy Resources Group  
Cape Cod Canal, adjacent to 40 Academy Drive

Installation of two pilings and a supporting platform in the Cape Cod Canal for the purposes of testing a tidal energy device.

Materials –

- Plans titled Marine Renewable energy Collaborative of New England (S1-S10), dated 06-06-16.
- September 23, 2016 email correspondence from NHESP representative regarding MESA Review
- Chapter 91 Public Notice
- 2 site photos
- Attachment A: USGS map Showing Project Location
- October 6, 2016 letter from MA Division of Marine Fisheries.
- MRECO October 6, 2016 Technical Memorandum responding to letter from MA Division of Marine Fisheries.
- Survey of Cape Cod Tidal Energy Demonstration Area
- Wetland and Change Areas Map, Mass DEP Online Viewer (<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Steve Barrett and John Miller addressed the board and provided a lengthy presentation pertaining to Marine Renewable Energy. He discussed the proposed project; how the project will be funded, the proposed location of the project and the collaboration with the Army Corps. of Engineers. He stated the Board of Selectmen endorse this project.

Mr. Barrett explained that two piles will be installed in the Cape Cod Canal, on top will be a platform, which lowers into the water with a marine turbine hanging off of it. The turbine, much like an underwater windmill, harnesses the power of marine currents to drive generators, which in turn produce electricity. Additionally, he discussed the install of the platform, how it will be powered, the dimensions of the turbine, the speed of the turbine blades and the potential impacts to Marine wildlife. He stated a Chapter 91 license will be required as well as an Army Corps. Section 10 permit. Additionally, National Marine Fisheries Service will be responsible for commenting on that permit. He briefly discussed studies that have been conducted in Maine and in other countries which concluded; Marine Wildlife avoid the turbine blades much like they do fishing trolls or other obstacles they may encounter in the water.

The project will operate year round except if there's ice in the canal.

Board Comment – Mr. Ligor raised a concern with regard to impact on sea life; particularly endangered species. Mr. Miller offered additional information received from other studies that have been conducted with regard to impact on wildlife.

Mr. Ligor asked if the turbine generates noise while it's turning that may attract wildlife. Mr. Barrett stated there is no evidence that shows the turbine makes noise that attracts wildlife. He briefly discussed acoustic monitoring that was conducted in Muskeget

Channel. They did not observe any animal species being attracted to the device. Mr. Miller discussed a similar study that was conducted in Scotland. Researchers discovered the noise of the tide was greater than the noise of the turbine.

Ms. Kiebala asked if the project has any impact on tidal flow and whether or not the speed of the turbine could be adjusted. Mr. Barrett stated research is being conducted not only for tidal flow interruption but sedimentation transport; through modeling, any impact was all very near field. He stated the speed of the turbine could not be adjusted.

Mr. Szwed opened a discussion with regard to the depth of the turbine. Mr. Barrett stated the turbine is fairly close to the surface; 3 feet below the surface. A discussion with regard to the tides transpired.

Mr. Holmes feels more research needs to be conducted on mortality impacts on wildlife.

A brief discussion transpired with regard to the equipment withstanding the shifting of ice when the canal freezes.

Agent Comment – Mr. Haines performed a site visit on September 3, 2016, with the Army Corps Canal Manager, Sean McDonald. According to the information provided, the device will be located in a closed government facility. The Division of Marine Fisheries provided comments; however, the thirty day Natural Heritage review period has been suspended pending response to those Division comments. Mr. Haines recommends continuing the filing pending the Natural Heritage determination. After a brief discussion, Mr. Barrett agreed to continue the filing to the October 20, 2016 meeting.

Public Comment – Barbara Frappier asked if the saltwater has any negative impact on the device and if chemicals or lubricants are used to prevent damage to the mechanism. Mr. Miller stated the system is sealed and the lubricant is inside; adding that the state has developed a set of regulations to allow this type of testing.

Chm. Gray stated the filing will be continued to October 20, 2016.

### **3) Scraggy Neck Recreation Association**

DEP File Number: SE7-1957

Representative: Warwick and Associates, Inc.

Scraggy Neck Road Causeway

Proposed Project: Reconstruct and extend the existing stone revetment within a V Flood Zone and a Wetland Resource Area on the north side of the causeway.

Materials –

- Plan of Record dated August 15, 2016 and signed/stamped by Robert M. Perry
- Project Narrative and Alternatives Analysis, August 12, 2016, Coastal Advisory Services; Warwick & Associates & Cape Cod Engineering.
- September 22, 2016 email correspondence from NHESP representative regarding MESA Review
- 4 site photos
- Wetland and Change Areas Map, Mass DEP Online Viewer (<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Barbara Frappier along with Coastal Geologist, Jim O’Connell, addressed the board. She discussed the proposed project, to rebuild and extend the wall. Additionally, she discussed the various attempts over the years to stabilize the causeway; the sole access to Scraggy Neck. Ms. Frappier noted a correction to the alteration on page 4 of 9 of her filing.

Board Comment – Mr. Ligor asked if the purpose of the project is to prevent erosion of the roadway, if the project is a revetment and if the causeway is town property. Ms. Frappier stated the project is a revetment to prevent erosion to the roadway and is private property. A brief discussion transpired concerning how the project is being funded and how the repair work will be performed.

Ms. Kiebala asked if any consideration would be given to planting vegetation and eliminating some of the parking spaces in the turn-around. Mr. O’Connell stated for safety reasons, there is no plan to remove the parking area. Ms. Frappier stated the proposal includes planting a significant amount of vegetation on the top and along the sides of the causeway.

Ms. Leduc noted an area of the causeway is heavily vegetated in and amongst the rocks; which could be serving as habitat. She asked if consideration was given to laying a layer of sand over the rocks and vegetating that. Mr. O’Connell stated the saltmarsh is so close that if the revetment were covered with sand it may adversely affect the marsh.

Mr. Ligor asked if any nesting sites may be identified when the work begins. Mr. O’Connell stated he doesn’t think they will find any. Ms. Frappier stated she is waiting for the review from Natural Heritage who may require as a Condition, a sweep of the area prior to beginning the work.

Agent Comment – Mr. Haines performed a site inspection on September 26, 2016. There is obvious erosion behind what’s existing. There is evidence that the soft-armor solution has failed in some places. He agrees that the functions of the Resource Area are

compromised. There is a Wetland Restriction on this beach; however, it appears that revetments are allowed as long as they have no adverse effects on adjacent property or down cast areas.

Chm. Gray asked Mr. O'Connell if he's in agreement that the project meets the constraints of the restriction order. Mr. O'Connell stated he is.

Mr. Haines stated a similar project was permitted in the past on Tobey Island, so there is precedent from the Commission. Natural Heritage is in the process of reviewing the project. He feels the Commission should consider continuing the filing or adding a Special Condition to the Order stating the Order isn't valid until the applicant receives authorization from Natural Heritage to proceed with the work.

Additional Board Comment – None.

Public Comment – Peter Sterling, a resident of Scraggy Neck, supports the project.

Chm. Gray stated the filing will be continued to the October 20, 2016 meeting.

**Request for Certificate of Compliance:**

**1) Francis Madigan**

DEP File Number: SE7- 1251

Representative: Warwick & Associates, Inc.

217 Presidents Road

Construct a new house within 100 feet of a Wetland Resource Area and remove existing pavement.

Materials –

- As-built Site Plan, Warwick & Associates Inc., 09-07-16

- 3 site photos

- Wetland and Change Areas Map, Mass DEP Online Viewer

(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Agent Comment – A site visit was performed. Mr. Haines stated there is history with this property in terms of the planting. He believes the project is in compliance with the approved planting plan, the only deviation is there appears to be more woody vegetation than shown originally where beach grass was proposed. A letter from the architect describes interior deviations from the original plan. Mr. Haines provided those to the BOH; however, the Health Agent has not supplied a comment yet. He recommends ongoing Conditions; Special Conditions numbers; 20, 23 and 24, By-law Condition number 11, and additional Special Conditions to continue in perpetuity; 1. The lawn area

shall be limited to the area shown on the plan of record and shall not exceed 10,000 sq. ft. in size, 2. The landscaping portion of the project will be done as specified in the plan of record above; any changes to the plan including utilizing different plant materials must be preapproved by the Conservation Office prior to installation, 3. All vegetation except for the lawn shall be allowed to achieve mature height; vista pruning may be requested in a future filing, 4. All plantings shall be replaced as necessary.

Chm. Gray asked if it is the agent's recommendation to grant with those Conditions. Mr. Haines stated yes, and those Conditions are for perpetuity on the Order. He recommends granting the COC with those as perpetuity.

**Mr. Melvin moved to grant the COC with those Conditions. Ms. Kiebala seconded.** With no further discussion, the motion carried. 7-0-0.

2) Peter Coffin

DEP File Number: SE7-1905

Representative: Warwick & Associates, Inc.

126 Emmons Road

Lift and relocate existing dwelling, construct additions, install an in-ground swimming pool, installation of Title V septic system and all associated grading, landscaping, utilities and other appurtenances within 100 feet of a Wetland Resource Area.

Materials –

As-built Site Plan, Warwick & Associates Inc., 08-10- 16

3 site photos

Wetland and Change Areas Map, Mass DEP Online Viewer

(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Agent Comment- There were some minor deviations from the approved plan. These include a small stone patio and the pool is slightly small. Mr. Haines feels the deviations are fairly minor and recommends issuing the COC.

Board Comment – None.

**Ms. Kiebala moved to grant the COC. Mr. Palumbo seconded.** With no further discussion, the motion carried. 7-0-0.

3) Harry J. and Judith S. Honan

DEP File Number: SE7-443

Representative: JC Engineering Inc.

40 Catskill Road



Installation of a floating dock.

Materials –

Plan A, B, & C from Notice of Intent Filing

4 site photos

Wetland and Change Areas Map, Mass DEP Online Viewer

(<http://maps.massgis.state.ma.us/images/dep/omv/wetviewer.htm>)

Agent Comment – Two site inspections have been performed. This dock was originally shown on the plan as being 60 feet in length; however, when the agent arrived on site, it's actually 116 feet in length with a twenty foot float. Mr. Haines has worked with the engineer to reduce that size. It's currently 50 feet in length with a footprint that's approved under the original Order. The language in the original Order states it only needs a Section 10A Harbor Master permit; which is was receiving up until this date; however, those are not transferrable; the property is for sale. There's a 10 year waiting list for that Harbor Master permit in this area. The structure doesn't have a Chapter 91 license; therefore, the dock cannot go back in the water with a new owner until it receives a Chapter 91 license or a new Harbor Master permit. The buyer would have to be made aware of those restrictions. Mr. Haines would like to put a letter in the DNR files with these Conditions and state that the dock can't be larger than 60 feet in length because that's what's approved; and it's now located in a VE Flood Zone. Current regulations state a dock cannot be expanded within a VE Flood Zone. Mr. Haines questioned whether he can apply ongoing Conditions to a Certificate that weren't in the original Order. After a brief discussion, Mr. Haines stated he will attach a letter to the Certificate explaining the restrictions and he will provide a copy to DNR for their files.

Based on Mr. Haines' second inspection on September 30, 2016, the dock is now within the footprint of the original Order; therefore, he recommends granting the COC with the attached letter.

Chm. Gray entertained a motion. **Mr. Holmes motioned and Mr. Ligor seconded to grant the Certificate of Compliance with the attached letter.** With no discussion, the motion carried. 7-0-0.

**Notice of Violation –**

Construction of floating dock/pier at 821 Shore Road. (Continued from August 18, 2016 Meeting).

Agent Comment – Mr. Haines explained he was notified that there was a new structure in the water. He photographed the structure and brought it to the Commission's attention. Additionally, he issued a Notice of Violation, not an Enforcement, which would allow the applicant to provide the Commission with any materials he may have to show it was permitted within the law.

Mr. Haines went through all of the old aerial photographs and utilized Google to create a timeline of the newer construction. Based on the photographs, it appears that the structure was built, in that approximate location, sometime between 1960 and 1972. So the original structure predates the Wetlands Protection Act, but not Chapter 91. In 2011, DNR photographed the existing structure; which was deemed hazardous and removal was recommended. DNR also discontinued the Section 10A Harbor Master permit for non-payment. Based on aerial photos, it appears that sometime between 2011 and 2015 the structure was removed and then reconstructed. The photo from 2016 shows a brand new structure in that location. Mr. Haines spoke with Dave Hill, in the Lakeville Mass DEP office, he stated a Chapter 91 license has not been issued for this structure and he feels since it is pile driven, a Chapter 91 license would be required.

Chm. Gray made a point that since there is no way of knowing when the structure was actually built, it may be better stated that the structure predates the 1978 Coastal Regulations vs. the Wetlands Protection Act. A brief discussion transpired with regard to Dave Hill's assessment.

Ms. Frappier provided a history of the structure and presented old photographs to corroborate when it was built. A discussion transpired with regard to the unpaid permit fees. Mr. Austin provided a lengthy history of the structure and the property. A discussion ensued.

Chm. Gray asked the board if Mr. Austin filed a Notice of Intent to legitimize the reconstruction and the addition of a ramp from the walkway to the floats, is that something that can be reviewed and approved. A discussion ensued. The applicant will file.

Public Comment – None.

Mr. Haines answered questions and provided information on how the homebuyer of 40 Catskill Road may pursue a Chapter 91 license for the floating dock.

- Vote excused Absent Members, if necessary – N/A

- Acceptance of Meeting Minutes - Deferred

- Report of the Conservation Agent –

MACC Membership – Mr. Haines asked if the Commission would like to proceed with paying the dues. **Ms. Weston moved and Mr. Palumbo seconded to not pay the MACC Membership dues.** With no discussion, the motion carried. 7-0-0.

Correspondence – Mr. Haines discussed correspondence he received from the Cape Cod Commission, the Pine Barrens Partnership, Department of Army and Eco-Tech, Inc. Eco-Tech, Inc. stated they have completed the oil spill restoration. Chm. Gray asked Mr. Haines to visit the site to see if he's in agreement that Eco-Tech, Inc. has finalized the restoration effort. A discussion ensued.

- 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**

Chm. Gray entertained a motion to adjourn. **Ms. Kiebala moved and Mr. Palumbo seconded to adjourn.** With no discussion, the motion carried. 7-0-0. The meeting adjourned at 9:45 PM.

Minutes Submitted by: Carol Mitchell