

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

October 19, 2017

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on October 19, 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, Rob Palumbo, Thomas Ligor, Paul Szwed, Susan Weston and Melvin P. Holmes.

Excused Members: Elise Leduc and Associate Member, Greg Berman.

Also Present: Sam Haines, Carol Mitchell, Danielle Zukowski, Joanne Stringer, Katie Zukowski, Pat O'Connor, Ed O'Connor, Shawn MacInnes, Garrett Tunison, Greg Wirsén, Zac Basinski, Elizabeth Stromeyer, Jarvis Peddicord, Patti Metcalf, Mike Metcalf, Merle Harris, John MacLachlan, Angela Sorenti and Kathy Sargent-O'Neill.

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.

Withdrawn at the request of the Representative

2) Candace Fisher

File # CC17-39

Representative: Environmental Consulting & Restoration, LLC

6 Fisher Lane, Sagamore Beach

To construct a sand fence within a V Flood Zone and a Wetland Resource Area.

Continued to November 2, 2017 at the request of the Representative

3) Josephine Smith

File # CC17-40

Representative: MacInnes Consulting, LLC

4 Richmond Road, Pocasset

To perform a septic repair and installation of a leaching chamber within an AE Flood Zone.

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

Shawn MacInnes addressed the board and discussed the proposed project.

A brief discussion transpired with regard to the location of the existing system.

Board Comment – None.

Agent Comment – Mr. Haines made note that on the plan, work is being proposed on an adjacent property for the cesspool abandonment. The plan states; coordinate with abutter. Under the bylaw, the property owner is required to sign off on the work that's

performed on their property. Mr. Haines spoke with the Health Agent who felt filling the cesspool is required to meet Title V standards; therefore, the Commission will have to either condition the Determination to require that an access agreement is supplied to the Conservation Department prior to any work being performed or request a continuance until that agreement is in place. Given the size of the lot and the depth of the water, there are quite a few Variances required until Title V, which may require revisions by the Board of Health. If the Commission is comfortable with the placement of the system and the ground disturbance, Mr. Haines could handle those administratively, at a later date. Otherwise, the lot is level, developed and located within an AE Flood Zone only, so looking at ground disturbance only, Mr. Haines has no other concerns.

Chm. Gray asked the representative if he will be able to provide the Commission with written authorization from the abutter. Mr. MacInnes stated he will provide the Commission with the access agreement.

Ms. Weston briefly discussed conditioning the Determination.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved, Mr. Ligor seconded a Negative Two Determination with the condition that an access agreement must be submitted to the Commission.** With no discussion, the motion carried. 6-0-0.

Notice of Intent:

1) Calamar Enterprises

File # SE7-

Representative: InSite Engineering

13 Kendall Subdivision (formerly 25 Perry Ave), Buzzards Bay

To construct a 3 story apartment complex with associated parking, utilities, drainage and landscaping within an AE Flood Zone.

(Hearing Under State Act Only)

Continued to November 2, 2017 at the request of the Representative

Chm. Gray announced the agenda will be heard out of order.

Abbreviated Notice of Resource Area Delineation:

1) Greg Wirsen
DEP File #7-1983
Green Seal Environmental
21 Hunters Brook Road, Sagamore Beach

Abbreviated Notice of Resource Area Delineation

Materials Reviewed – Site Photographs, Revised Plan Title dated 10/17/2017, Delineated Wetlands Map, an email from Arlene Chapin, historical documents and photographs provided by Ms. Chapin and Abutter Notifications.

(Continued from October 5, 2017)

Garrett Tunison of Tunison Environmental Consultants along with Greg Wirsen of Green Seal Environmental addressed the board. Mr. Tunison referred to the plan and briefly discussed the results of the delineation. The areas identified as a wetland are labeled with flags, A and B. He explained they are drainage created wetlands or drainage driven wetlands.

Chm. Gray asked if any discharge point was located in the A20-A22 series. Mr. Tunison stated no. Chm. Gray asked if a culvert was located in that area running to the canal. Mr. Tunison stated no, it's mostly grade driven.

Agent Comment – Mr. Haines stated an individual who claimed to be the former property owner advised him there was a former cranberry bog on the site, but had been filled in in some way that predates the Wetlands Protection Act. Mr. Wirsen agreed, stating there had been a cranberry bog on the property at one time. Mr. Haines stated the wetlands may not be entirely stormwater driven, there may be some springs or some other hydrology source. Mr. Haines thought overall, the line looked good. He pointed out a few concerns to the representatives he had resulting from his review of the property and they have addressed almost all of them. Mr. Haines stated he did not see any evidence of bankfull conditions in the area of Flag B1; however, in terms of the delineation, he doesn't feel it will have any impact on any future filings. Mr. Haines spent approximately two hours at the southern end of the property looking for culverts or connections and didn't find any. He stated if Hunters Brook existed on this property, it was long before the state created their highway system.

Chm. Gray asked the representative if he found any evidence of a vernal pool in the A6-A7 and A36-A38 areas. Mr. Tunison stated no. He further explained his findings. Mr. Haines dovetailed on the representative's explanation. Chm. Gray suggested the representative and the agent reexamine the depth of the water at those particular

locations in late March / early April. Mr. Tunison further explained there was almost a 100 year event approximately 2 ½ months ago. He visited the site 48 hours after the storm and found hardly any standing water.

Board Comment – Mr. Holmes raised concern over wildlife in the area. Mr. Wirsen stated a habitat study is being performed. Further discussion with regard to the mapping of the area transpired.

Chm. Gray stated before he opens the matter up for public input, under an ANRAD filing, discussions must pertain to wetlands/wetland boundaries. Since there are no plans before the Commission, discussions pertaining to the development of the site may not transpire. Should the project proceed past the ANRAD to a NOI, plans of the project will be submitted and abutters will receive notification of the next step in the process.

Public Comment – Merle Harris addressed the board. He stated he lives at 21 Hunters Brook and would like the representative to change the address of the project so it doesn't appear that he's involved with it. Mr. Wirsen offered a brief explanation for the address listed on the filing stating the information will be revised in the development phase. Next, Mr. Harris provided history of the cranberry bog that was located on the property during the 1950s.

Mr. Haines shared information he received in an email from Arlene Chapin.

Joanne Stringer discussed turtles that she's seen on her property. Mr. Harris stated he too has seen turtles on his property. Chm. Gray briefly discussed The Natural Heritage & Endangered Species Program and explained the Commission's jurisdiction. Mr. Haines discussed procedures in filing rare observation forms.

Chm. Gray entertained a motion to close the public hearing. **Mr. Palumbo moved, Mr. Ligor seconded to close the public hearing.** The motion carried. 6-0-0.

Mr. Haines stated he will have to update the plan title as revised 10/17/2017. He stated the delineation is accurate per the 10/17/2017 plan.

Chm. Gray entertained a motion to issue the Order of Resource Area Delineation accepting the delineation on the current plan dated 10/17/2017. Mr. Holmes raised concern that additional wetlands may exist on the property. A lengthy discussion pertaining to the submitted historical photographs ensued.

Mr. Ligor moved, Ms. Weston seconded to issue the Order of Resource Area Delineation accepting the delineation on the current plan dated 10/17/2017. With no further discussion, the motion carried. 6-0-0.

Notice of Intent:

2) James Diede

File # SE7-1986

Representative: Bracken Engineering, Inc.

60 Lewis Point Road, Bourne

To place supplemental fill material, grade and install vegetative plantings within an AE Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Mass. DEP's Performance Standards and DEP Wetlands Change Mapping.

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

Zach Basinski addressed the board and discussed the proposed project. He provided a brief history of the subdivision and the property and identified the Flood Zones and Coastal Banks located on the property. He briefly discussed the desire to place fill on the property to make it a buildable lot because current local regulations are restricting this; even though prior to 1992 the lot was considered buildable. Mr. Basinski discussed the intentions that the property has for the lot and requested the Commission perform a site visit prior to making a decision.

Board Comment – Mr. Holmes opened a brief discussion concerning the combining of 0 Nye Lane and 60 Lewis Point Road to create one lot. He questioned whether the zoning has been changed to allow this. Mr. Haines explained he spoke with the town engineer who stated the field cards will be changed to reflect one lot as of January 1, 2018. He stated they are owned by the same individual, they have been deeded as one lot and going forward, they will be assessed as one lot. A brief discussion transpired regarding the lot size.

Mr. Ligor questioned whether or not another house will be built on the lot. Mr. Basinski stated the property owner will potentially build a house in the future. Mr. Ligor expressed concern that wildlife species living on the lot will be forced out and noted the town's green space is diminishing. A discussion regarding the clearing of land, the replanting of native species and the type of fill the representative is proposing transpired.

Mr. Palumbo referred to site photographs and asked the agent to clarify the location for the proposed fill. Mr. Basinski pinpointed the area.

Agent Comment – Mr. Haines stated this is an extremely unique filing and although the Commission has certain jurisdiction, they also have to make sure they apply the performance standards of both the bylaw and the Wetlands Protection Act. Given the unique nature of the project, he recommended that any Commission member who has reservations, visit the site. Mr. Haines explained the primary slope is an eroding Coastal Bank and referred to MA DEP Policy 92-1; Coastal Banks, which outlines the definition and policy of Coastal Banks. He explained the Commission's role in applying state and bylaw regulations toward this request and the possibility of a precedent being set. A discussion ensued.

Ms. Weston suggested hiring a consultant to perform a peer review. Mr. Haines stated the Commission may vote to request a peer review or they can determine if one is necessary once a site visit has been conducted.

Mr. Haines stated a portion of the site is within mapped habitat. The site will be looked at by The Massachusetts Wildlife's Natural Heritage & Endangered Species Program. Mr. Haines recommended continuing the matter to receive their response and to allow the representative to submit a restoration plan.

A brief discussion transpired with regard to the grain size of the proposed fill and the amount of fill being proposed.

Mr. Haines discussed possible conditions the Commission could set should they approve the project.

A brief discussion transpired concerning the Mass DEP's Performance Standards.

Mr. Palumbo briefly discussed the possibility of Commission members performing a site visit.

Mr. Basinski made note that the property is being taxed as a buildable lot.

Public Comment – Jarvis Peddicord asked how long the lot has been taxed as a buildable lot. Mr. Basinski stated he'd have to verify the dates but he's been told since the creation of the lot. Mr. Palumbo reminded Mr. Peddicord that the taxes relating to the property are not within the Commission's purview. Mr. Peddicord discussed the owner's intentions for the lot based on a previous conversation he'd had with him. Mr. Palumbo stated plans have not been submitted for future projects; therefore, the Commission may only review the proposed project before them. Mr. Peddicord stated he'd read in the narrative that the goal of this project is to eliminate the Coastal Bank delineation and questioned how that is possible. Mr. Basinski stated there are no

Performance Standards on the elimination of Coastal Banks. He explained how the proposed project meets the required Performance Standards.

Mr. Peddicord expressed concern that a 100-year storm may occur before any vegetation has had a chance to mature and concurred with Mr. Ligor's concerns with regard to diminishing green space in the town. Mr. Palumbo assured Mr. Peddicord that Commission members share similar concerns and will not rush into a decision. Mr. Peddicord briefly discussed concerns over stormwater management.

Elizabeth Stromeyer clarified the name of the road is Nye Lane not Nye Road. She expressed similar concerns raised by Mr. Peddicord and fears a favorable decision may set a precedent. She stated she is pleased that the Commission is proceeding with caution.

Mr. Ligor reiterated his concern over the loss of green space and its impact on wildlife. Mr. Palumbo stated input from The Massachusetts Wildlife's Natural Heritage & Endangered Species Program would have to be received before moving forward. Mr. Haines stated in terms of green space, the Commission has narrow jurisdiction. When this was designed as a buildable lot on the subdivision plan, the initial intent for the lot was not to be green space. Further discussion surrounding the Commission's jurisdiction ensued.

Kathy Sargent-O'Neill opened a brief discussion regarding the species of plants that will be proposed at the time of replanting and the setback requirements. Mr. Haines discussed the list of plants that are native to the area and the possibility of the Commission requiring a restoration plan. He stated it's also within the Commission's purview to set the setbacks that they feel will be sufficient to protect the Wetland Resource Areas.

Ms. Sargent-O'Neill opened a brief discussion with regard to the site's elevation and the results of a sediment study.

Ms. Weston opened a brief discussion with regard to setting a precedent.

Mr. Basinski stated the subdivision was created in 1951. Had a house been built on this lot prior to 1992, it'd be like all the other houses in the subdivision. He stated it appears as though it was a burrow lot. A discussion transpired concerning the change in jurisdiction if the proposed project is approved.

Mr. Haines referred to the plan to address Mr. Peddicord's question pertaining to Commission's change in jurisdiction should the project be allowed to move forward as proposed. Mr. Haines explained the Commission has to determine what are the

functions and values of the Wetland Resource Area on this site and then determine if the project have negative impacts on the functions and values. A discussion ensued.

After a brief discussion concerning the coordination of a site visit, the new Open Meeting Law requirements and the potential need for a peer review, **Mr. Ligor moved, Mr. Szwed seconded to continue the matter to November 2, 2017.** The motion carried. 5-0-0.

Request to Amend Order of Conditions:

1) Sarah Fisher

File # SE7-1966

Representative: Environmental Consulting & Restoration, LLC

8 Fisher Lane, Sagamore Beach

To allow for the installation of a sand fence within a V Flood Zone and a Wetland Resource Area.

Continued to November 2, 2017 at the request of the Representative

Chm. Gray returned to chair the meeting.

Certificate of Compliance:

1) Charles R. Schow

File # SE7-1965

Representative: Environmental Consulting & Restoration, LLC

3F Hideaway Road, Buzzards Bay

To build a shed and deck within an AE Flood Zone, V Flood Zone and a Wetland Resource Area.

Agent Comment – A site visit was performed on October 18, 2017. The site appeared to be in substantial compliance. Mr. Haines recommended issuing the certificate.

Chm. Gray entertained a motion. **Ms. Weston moved, Mr. Holmes seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

2) Gerald F. O'Neil / Elaine O'Neil Family Trust

File # SE7-1968

Representative: Bracken Engineering, Inc.

58 Monument Ave, Monument Beach

To remove and replace an existing concrete seawall with a new concrete seawall and stairs within an AE and a V Flood Zone and within a Wetland Resource Area.

Agent Comment – A site visit was performed on October 19, 2017. The site appeared to be in substantial compliance. Mr. Haines recommended issuing the certificate.

Chm. Gray entertained a motion. **Ms. Weston moved, Mr. Ligor seconded to grant the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

Other Business:

- Vote excused absent members, if necessary – **Mr. Ligor moved, Mr. Holmes seconded to excuse the absent members, Elise Leduc and Associate Member, Greg Berman.** 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 July 27, 2017 meeting. **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the July 27, 2017 meeting as written.** With no discussion, the motion carried. 6-0-0.

Chm. Gray entertained a motion to approve the minutes of the August 3, 2017 meeting. Mr. Haines suggested one revision. **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the August 3, 2017 meeting as revised.** With no discussion, the motion carried. 6-0-0.

Chm. Gray entertained a motion to approve the minutes of the September 7, 2017 meeting. Mr. Haines suggested one revision. **Mr. Ligor moved, Mr. Holmes seconded to approve the minutes of the September 7, 2017 meeting as revised.** With no discussion, the motion carried. 6-0-0.

- Re-Organization of Conservation Commission – After a brief discussion concerning Mr. Gray and Mr. Palumbo serving as co-chairs and the need to select a vice-chair, **Ms. Weston moved, Mr. Ligor seconded to appoint Mr. Gray and Mr. Palumbo as co-chairs.** With no further discussion, the motion carried. 6-0-0.

After a brief discussion, **Ms. Weston nominated Ms. Leduc as vice-chair, Mr. Ligor seconded.** With no further discussion. The motion carried. 6-0-0.

- Report of the Conservation Agent – Mr. Haines briefly discussed the stockpiling of sand on Shore Road near the Singing Bridge. This area is being used as the temporary dredge disposal site for the Pocasset River next fall. This is not only a cost-saving measure but it's the cleanest sand they've seen, according to the Harbor Master, and is sufficient to be

used as nourishment for all beaches. A brief discussion transpired with regard to parking at that location. Chm. Gray asked if that location was permitted under the dredge permit. Mr. Haines stated it was. Chm. Gray opened a brief discussion with regard to opening the view shed to the Pocasset River at that location.

Mr. Haines informed the Commission that the Strand Conservation Land in North Sagamore was mapped for Piping Plover as of August 1, 2017. Mr. Haines observed at least one area of plastic safety fencing along the limit at the toe of the slope. Mr. Haines will notify the homeowner that the fence will have to be removed. A discussion ensued.

Mr. Haines opened a brief discussion pertaining to the new Open Meeting Law that became effective on October 6, 2017. He will present the updated regulations at the next meeting.

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

II. Adjournment

Mr. Ligor moved, Mr. Holmes seconded to adjourn. With no discussion, the motion carried. 6-0-0. The meeting adjourned at 8:46 PM.

Minutes submitted by: Carol Mitchell