

# **Conservation Commission**

## **Meeting Minutes**

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

November 3, 2016

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

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on November 3, 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. He asked for all to silence their cell phones and asked if anyone in the audience was audio or video recording the meeting to acknowledge that.

**Members Present:** Chm. Robert Gray, Thomas Ligor, Betsey Kiebala, Melvin P. Holmes (7:01), Paul Szwed and Susan Weston (7:10).

**Excused Members:** Robert Palumbo

Also Present: Sam Haines, Elise Leduc, Carol Mitchell, Carol Murphy, Larry Murphy, Amanda Crouch-Smith, Lynn Valeri, Zachary Basinski, Paul Gately, Kate Mahoney, Christine Gustafson, Lavinia Giardina and Nancy Fernald.

### **Requests for Determination of Applicability:**

#### **1) Lawrence J. Murphy**

File Number: CC16-65

Representative – Lawrence J. Murphy

11 Red Brook Pond Drive, Cataumet

Install a new shed within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

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

Larry Murphy read a statement to the board which described the proposed project, the proposed location of the shed and its purpose.

Board Comment – None.

Agent Comment – Mr. Haines performed a site inspection on October 25, 2016, the work will be performed within an existing landscaped area. All of the work will be done by hand; no machinery will be used. There are no issues with the project.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Ms. Kiebala moved and Mr. Holmes seconded a Negative Two Determination.** With no discussion, the motion carried. 5-0-0.

2) Peter Foley

File Number: CC16-66

Representative – Lynn Valeri – P. Valeri, Construction

17 Robin Lane, Pocasset

Replace a leaching field within an AE Flood Zone.

***Hearing under State Act Only***

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

Lynn Valeri addressed the board and described the proposed project.

Agent Comment – Mr. Haines stated this is a very straightforward project. It's outside of the Riverfront Area and is in the Flood Zone only. All work is in an existing landscaped area. 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.** With no discussion, the motion carried. 5-0-0.

Chm. Gray explained the Determination to the applicant.

**3) Colonial Gas Company**

File Number: CC16-67

Representative – Amanda Crouch-Smith- Tighe & Bond

67 Tahonto Road, Pocasset

Install a gas service connection within an AE Flood Zone, 100 feet of a Wetland Resource Area and Riverfront Area.

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

Amanda Crouch-Smith addressed the board and described the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines stated this is a straightforward service connection; the only difference is, it is in the Pocasset Riverfront Area. All work will be performed in an existing landscaped area. Even though it is fairly close to the Resource Area, the grade is relatively flat. There are no issues with the project.

Board Comment – None.

Public Comment – None.

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

**4) Colonial Gas Company**

File Number: CC16-68

Representative – Amanda Crouch-Smith – Tighe & Bond

143 Shore Road, Bourne

Install a gas line within an AE Flood Zone and within 100 Feet of a Wetland Resource Area.

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

Amanda Crouch-Smith addressed the board and described the proposed project.

Board Comment – None.

Agent Comment – Mr. Haines stated this is a very straightforward install. The work will be performed within the existing driveway. Email correspondence has been added to the file between the agent and the representative with regard to a stone wall that is located on the property. There are no issues with the project.

Board Comment – None.

Public Comment – None.

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

**5) Lavinia Giardina**

File # CC16-69

Representative – Kate Mahoney – Mahoney & Douglas, LTD

153 Captains Row, Mashnee Island

Remove an underground storage tank within a V Flood Zone and within 100 feet of a Wetland Resource Area.

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

Kate Mahoney addressed the board and described the proposed project. She stated she was unable to cut into the tank because of its thickness; but believes the tank is empty because when she pounded on it, it reverberates as empty. The former owner converted to natural gas 15 years ago; therefore, the tank has been out of commission for that amount of time. Ms. Mahoney stated soil boring was performed which showed no evidence of contamination.

Board Comment – Mr. Ligor referred to the submitted photos and discussed the proximity of the tank to the Resource Area. He also discussed the need to pump any remaining fuel prior to the excavation beginning. Ms. Mahoney stated any remaining fuel would be pumped prior to moving the tank. A discussion ensued.

A brief discussion transpired with regard to erosion controls being required as a condition and the amount of time the tank has been in place.

Ms. Leduc opened a discussion with regard to the backhoe that will be used and how it will access the excavation site.

Agent Comment – Mr. Haines stated he doesn't have serious concerns with regard to erosion; however, having hay bales on site is recommended in the case of inclement weather. He asked the applicant to agree that in the event that contaminated soil is discovered, that she contact the agent immediately; Ms. Mahoney agreed. She stated the Fire Department will be on site during the excavation.

Mr. Ligor asked if there's any risk of fire when cutting into the tank with potential sparks from the saw. Ms. Mahoney stated if it were gasoline, yes; however, number 2 fuel oil is not ignitable in this manner.

Additional Agent Comment – Mr. Haines reiterated that he'd like to be contacted should any contaminated soil be discovered. Additionally, he would like to have hay bales on site as a precaution.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved and Ms. Weston seconded a Negative Two Determination, with added Conditions that hay bales be kept on site and the agent be notified of any contaminated soil.** With no further discussion, the motion carried. 6-0-0.

*Chm. Gray deviated from the Notices to accommodate the applicant who also had a Certificate of Compliance on the agenda.*

Lavinia Giardina  
DEP File Number: SE7-1349  
Representative – Same  
153 Captains Row, Mashnee Island

Installation and maintenance of a new Title V sewage disposal system within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Agent Comment – Mr. Haines performed a site inspection at the same time that he inspected the site for the tank removal. He noted email correspondence with Agent Guarino of the Board of Health. She informed him that the property is still in need of a Title V inspection. Mr. Haines recommends issuing the Certificate of Compliance; however, further coordination may be required with the Board of Health.

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

**Notice of Intent:**

- 1) Matthew Monroe  
DEP File Number: SE7-1959  
Representative – Grady Consulting, LLC  
895 Sandwich Road, Bourne

Perform septic repair within 100 feet of a Wetland Resource Area

***Continued to November 17, 2016***

- 2) Mark A. Leary  
DEP File Number: SE7-1960  
Representative: Bracken Engineering  
63 Bellavista Drive, Pocasset

Raze the existing dwelling, construct a new single-family home and install a new septic system within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

*Chm. Gray recused himself from discussion and vote. He asked Mr. Holmes to chair the hearing.*

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

Zach Basinski addressed the board and described the proposed project.

Board Comment – Ms. Leduc discussed a previous violation that was to be addressed by the property owner last spring. A fence was destroyed, the Coastal Dune was run over and trees were removed. The owner was supposed to replant trees; which he has not done. Mr. Basinski stated he was unaware of the violation. Mr. Haines stated he will conduct further research on the alleged violation. After further discussion, Mr. Holmes suggested a continuance.

**Mr. Ligor moved and Ms. Weston to continue the hearing to November 17, 2016.** With no further discussion, the motion carried. 5-0-0.

- 3) David C. Warner  
DEP File Number: SE7-1962  
Representative: Warwick & Associates

276 Scraggy Neck Road, Cataumet

Restore a 25' vegetated buffer along the top of a seawall within a V Flood Zone and within 100 feet of a Wetland Resource Area.

*Continued to November 17, 2016*

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping. Attachment to Notice of Intent prepared by Warwick and Associates.

*Mr. Gray returned to chair the meeting.*

- 4) 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.

*Continued from October 20<sup>th</sup>*

Chm. Gray stated the applicant was waiting for two items; a letter of concurrence from the property owner, the Army Corps and a letter from Natural Heritage.

Mr. Haines stated neither the applicant nor the representative could be present and asked Mr. Haines to speak on their behalf. Mr. Haines stated a letter dated December 14, 2014, from the U.S. Army Corps of Engineers in support of the Renewable Tidal Energy Project at the Cape Cod Canal was received. A letter from Natural Heritage and Endangered Species Program dated November 3, 2016, was also received stating the project will not adversely affect the actual Resource Area habitat of state protected rare species and the project will not result in a prohibited take. Mr. Haines added, there was a public concern raised with regard to the possible release of oil/lubricant from the turbine. He suggested adding a Special Condition regarding spill materials on site. After a brief discussion, the board decided that Special Condition would not be necessary.

Chm. Gray entertained a motion to close the public hearing. **Ms. Weston moved and Ms. Kieballa 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 3, 12, 16, 19, 22 and Special Conditions pursuant to the Town By-law number 14.

Chm. Gray asked if anyone would like to add Conditions. With no additions, Chm. Gray entertained a motion to move the Draft to the Final.

**Ms. Kiebala moved and Ms. Weston seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 6-0-0.

**Request for Certificate of Compliance:**

- 1) Richard & Janis Shephard  
DEP File Number: SE7-1891  
Representative – Bracken Engineering, Inc.  
14 Cannonicus Avenue, Pocasset

Install an upgraded mounded septic system to service the existing dwelling within an AE Flood Zone.

Agent Comment – A site visit was performed and the agent recommends issuing the Certificate.

Chm. Gray entertained a motion to grant the Certificate.

**Mr. Holmes moved and Ms. Weston seconded to issue the Certificate of Compliance.** With no discussion, the motion carried. 6-0-0.

**Other Business:**

- Vote excused Absent Members, if necessary – **Mr. Holmes moved and Ms. Weston seconded to excuse Robert Palumbo.** With no discussion, the motion carried. 6-0-0.
- Acceptance of Meeting Minutes – Acceptance of the October 6, 2016 and the October 6, 2016 Executive Session Meeting Minutes.

Chm. Gray entertained a motion to approve the minutes of the October 6, 2016, Open Session meeting. **Mr. Holmes moved and Ms. Weston seconded to approve the minutes of the October 6, 2016, Open Session meeting as submitted.** With no discussion, the motion carried. 6-0-0.



Approval of the October 6, 2016, Executive Session minutes – After a brief discussion, **Mr. Holmes moved and Ms. Weston seconded to accept and encumber the minutes of the October 6, 2016, Executive Session meeting.** With no further discussion, the motion carried. 5-0-1. Chm. Gray abstained.

- Report of the Conservation Agent – None.

- Update on Rotary Gas Spill Restoration – Mr. Haines stated he was unable to perform a site visit. Chm. Gray offered a brief history on the spill. Mr. Haines will perform a site visit and will provide an update to the board at the next meeting.

- Correspondence – None.

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

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

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

## **II. Adjournment**

Chm. Gray entertained a motion to adjourn. **Ms. Weston moved and Ms. Kiebala seconded to adjourn.** With no discussion, the motion carried. 6-0-0. The meeting adjourned at 7:57 PM.

Minutes Submitted by: Carol Mitchell