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**Conservation Commission  
Meeting Minutes**

Zoom Meeting Platform  
November 4, 2021

2021 NOV 23 PM 3:46

TOWN CLERK BOURNE

**Call to Order**

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday November 4, 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, Greg Berman, Tom Ligor, Elise Leduc-Fleming

**Excused Members:** Peter Holmes, Rob Palumbo, Steve Solbo, Paul Szwed

**Others in Attendance:** Amalia Amato, Nate Goshgarian, Charles York, Mary and Peter Lewitt, Kelly Kalick, "HP," Amy Ball, Zac Basinski, Mark Dibb, "pgoddard," John and Joan Holden, John York, Matt Costa, "Sarah's iPad", Richard Jason, Jerry Struzik, Rosemary Dalton, Glenn Cannon, Emily Beal, Kim Morneau, Genie and Bob Birch, "RAS," Bob Bishop, Cyndy Hurley, "Christine's iPad," Ann Ware, Nancy Jones, Pamela Neubert, Scott Farrow, Michael Intoccia, MB Galligan, "Grace," Susan Ashbrook, "Dawd," Hugo Pankoff, "LOAS Zoom Host."

Mr. Gray states that the meeting will go slightly out of order this evening, starting with the request for Certificate of Compliance:

## **Certificate of Compliance:**

1. Applicant: William and Rosemary Dalton  
Address: 140 Eel Pond Road, Monument Beach  
Representative: N/A  
File Number: SE7-1858

Remove and reconstruct a single-family dwelling.

Chm. Gray states that he made a site visit over the weekend and reviewed the site with the applicant. He found that everything was in order at the site visit. All areas are stabilized, with no areas of erosion. With these findings, Chm. Gray recommends to the Commission to grant the Certificate of Compliance.

Motion made by Ms. Leduc-Fleming and seconded by Mr. Ligor to grant the Certificate of Compliance.

Mr. Ligor yes, Mr. Berman yes, Ms. Leduc-Fleming yes, and Chm. Gray yes. Motion carries 4-0-0.

Next item on the agenda will also be taken out of order. Two requests for ISWM:

1. Vote to accept the parcel as open space under the protections noted:  
Chm. Gray explains this is to accept the parcel of open space as protected land, the parcel would be conveyed to the Conservation Commission as a Conservation Restriction. The Conservation would hold that restriction pursuant to M.G.L. Chapter 40 Section 8C, would become subject to Article 97. The first vote would be to accept taking that parcel under Conservation Restriction.

**Motion made by Mr. Ligor and seconded by Ms. Leduc-Fleming to accept the parcel.**

Mr. Ligor yes, Mr. Berman yes, Ms. Leduc-Fleming yes, Chm. Gray yes.

**Motion carries 4-0-0.**

2. Vote to accept the deed conveyance language:  
Chm. Gray explains that this will be further reviewed and voted on by the Board of Selectmen and Town Counsel, as well as through interaction with Mass Natural

Heritage. Ms. Leduc-Fleming requests clarification prior to making a motion. She states that she believes that the important parts are missing (i.e. acreage and the protected species. Chm. Gray clarifies the protected species being the Eastern Box Turtle. Glen Cannon, assistant Town Administrator, confirms the acreage as 6.5 acres. Clarification accepted by Ms. Leduc-Fleming. Chm. Gray provides clarification of the acreage, and involves a land swap, and the protected species being the Eastern Box Turtle, and that there is a fully developed Turtle Protection Plan that is believed to have been approved by Jesse Leduc at Mass Natural Heritage. Chm. Gray believes everything should be in order to be approved and then move forward to Purchase and Sale per Mr. Cannon.

**Motion made by Ms. Leduc-Fleming and seconded by Mr. Ligor to accept the deed conveyance language.**

Mr. Ligor yes, Mr. Berman yes, Ms. Leduc-Fleming yes, and Chm. Gray yes.

**Motion carries 4-0-0.**

**Request for Determination:**

Applicant: Kimberly Morneau  
Address: 268 Shore Road, Bourne  
Representative: Falmouth Engineering  
File Number: CC21-22

Construct new screened porch, rebuild and expand existing deck, access stairs. Chm. Gray confirms with the applicant that she is representing herself this evening. Ms. Morneau addresses her request. She states that when she purchased the property in April, the inspector had deemed the screened three-season room and deck were not structurally sound. A permit was obtained, and the structures were removed by a contractor. Ms. Morneau is requesting approval to rebuild what was previously existing, but to rebuild it correctly. The only difference in the plan from the original structure is that the location of the stairs would turn, making the stairs 100' from the water. Chm. Gray requests clarification of why the hearing was previously continued. Ms. Morneau states that the hearing was continued due to the fact that the plot plan of her property did not include a storm drain that already exists off to the side of the applicant's property. The storm drain was previously covered in brush, and has now been cleared, and added to the plan. The new plan includes the existing storm drain. Chm. Gray clarifies with the Commission that this is a flood zone matter, and the closest resources to the proposed plan is across from the address on the other side of Shore Road. He believes there should be no issue

with approving the request.

**Member Comment:** None

**Public Comment:** None

**Motion made by Mr. Ligor, and seconded by Ms. Leduc-Fleming to approve under a Negative Two Determination.**

Mr. Ligor yes, Mr. Berman yes, Ms. Leduc-Fleming yes, Chm. Gray yes.

**Motion carries 4-0-0 under a Negative Two Determination.**

Chm. Gray provides clarification the applicant as to what the application determination means. A document will be provided to the applicant, and she will be all set to move forward with her project. Applicant requests clarification regarding where the document will be sent. Clarification made, questions answered.

#### **Notice of Intent:**

1. Applicant: John and Patricia Gallagher  
Address: 96 Presidents Road, Gray Gables  
Representative: Bracken Engineering  
File Number: **NOT AVAILABLE**

To construct a lateral addition to an existing single-family dwelling, install a new septic system with I/A septic tank and complying with Title V to the maximum extend feasible, and provide associated utilities, appurtenances, grading, and landscaping.

Chm. Gray discloses that he would normally not sit on the board for a hearing where Bracken Engineering is the representative, as he does work with them. But due to the fact that there are only four members present for the meeting, and that is the minimum required for a quorum. He states that he will have to invoke the Rule of Necessity, which would allow him to sit on the board for this hearing, unless there are any objections.

Chm. Gray opens the discussion to objections. **No objections made.**

Continuance accepted by the representative and the board as there is no file number for the application.

Zac Basinski addresses the board and requests to share his screen to move forward with the presentation. Mr. Basinski notes the property is in an AE-15 Flood Zone in the southwest corner of the property, and the additional resource areas being a coastal bank. The proposed plan in a lateral addition off of the north side of the house for a garage, with a new bulkhead underneath, as well as an upgraded septic system. All addition work is outside of the 50' Buffer Zone. There is work to be proposed within the 25' Buffer Zone, which includes upgrading the existing septic tank to a nitrogen reduction micro-fast system, and upgrading the leaching pit to Title V standard system. All grades would return to normal once the project is complete, and the coastal bank would be returned to its elevations.

**Member comment:** None

**Public comment:** None

With no file number, continuance previously accepted as agreed upon by the board and the representative. **Continued to November 18, 2021.**

2. Applicant: Kenneth D. Legg and Ardelle F. Legg  
Address: 122 Emmons Road, Monument Beach  
Representative: Bracken Engineering  
File Number: NOT AVAILABLE

The applicant proposes to install a new Title V compliant septic system to upgrade an existing non-conforming system. The proposed system is composed of a 2,000 gallon septic tank, distribution box, and a Presby I/A leaching system.

Chm. Gray again discloses that he would normally not sit on the board for a hearing where Bracken Engineering is the representative, as he does work with them. But due to the fact that there are only four members present for the meeting, and that is the minimum required for a quorum. He states that he will have to invoke the Rule of Necessity, which would allow him to sit on the board for this hearing, unless there are any objections. Chm. Gray opens the discussion to objections. **No objections made.**

Continuance again accepted by the representative and the board as there is no file number for the application.

Zac Basinski addresses the board. He states there are leaching pits at the top of the coastal bank that are proposed to be abandoned in accordance with Title V. A new 2,000

gallon septic tank will be installed along with a new Presby leaching field. The leaching field will be over 100' from the top of the coastal bank, and over 200' from Little Bay, which Mr. Basinski states is a "vast improvement" over the current conditions. These plans allow the representative to put a gravity system in to further improve upon the current situation.

**Member comment:** Mr. Berman agrees that the proposed plan is an improvement. No additional member comment.

**Public comment:** None.

With no file number, continuance previously accepted as agreed upon by the board and the representative. **Continued to November 18, 2021.**

3. Applicant: JMC Realty Trust  
Address: 534 Scraggy Neck Road, Cataumet  
Representative: Holmes and McGrath, Inc.  
File Number: SE7-2163

The repair and maintenance of two existing groins. Work will take place on or within land under ocean, land containing shellfish, rocky intertidal shore, and coastal beach.

Nate Goshgarian addresses the board and requests to share his screen. He reviews the project and the additional information that was requested at the previous hearing on 09/16/21. Mr. Goshgarian states that the proposed project is for minor groin repair, with no planned expansion of the footprint of the existing groins. The previous plan included bringing in a barge to carry out the proposed work. With this plan, it was previously requested by the Commission for the representative to obtain an eel grass survey, which was put together and discussed by Dr. Pamela Neubert. Mr. Goshgarian continues with the information that there were two patches of eel grass that were noted on the survey. One southernmost patch measuring approximately 3' x 3', and one north of that patch measuring 10' x 15'. Mr. Goshgarian opens the discussion to questions. Ms. Leduc-Fleming requests clarification of the complete area that was covered during the eel grass survey. Mr. Goshgarian defers this question to Dr. Neubert. Dr. Neubert from Megaladon Environmental responds stating that the area that was surveyed was from the point of the southernmost groin, to the point of the northernmost groin, almost forming a "box." Chm. Gray questions during what tide this was done. Dr. Neubert states at low tide between about 12:00pm and about 2:00pm. Chm. Gray questions in the patches that were located, what the length of the eel grass was. Dr. Neubert states that the length that was found were about 1' – 16" fronds. Dr. Neubert further discusses the process that was

used to survey the eel grass. She states that a "Leica GPS" device was used in order to delineate the patches of eel grass and their coordinates. She states there were small patches of eel grass, and they were also mixed in with other algae. Chm. Gray requests clarification of whether there was eel grass found in the deeper water that is noted westerly of the locations noted on the plan. Dr. Neubert confirms there was no eel grass found in that area. Chm. Gray then requests clarification whether there was eel grass found between the two groins that are on the proposed plan. Dr. Neubert confirms there was no eel grass found between the two groins, nor was there any eel grass found between the rocks in the groins themselves. Chm. Gray opens the discussion to the members.

**Member comment:** Mr. Berman states that with the description provided, he does not believe there would be any issue with the barge going between the two groins. He does question if the eel grass survey and boundaries added to the plan. Mr. Goshgarian clarifies that that information will be added to the plan. Chm. Gray questions how soon until the written report may be available. Dr. Neubert questions when the report would be requested to be available. Chm. Gray opens the discussion to the other members to see if they would require a written report prior to closing the hearing. Mr. Ligor does feel that it is necessary. Mr. Berman states that as long as the verbal report is forthcoming, and no additional information would be provided in a written report, he does not feel it necessary to require a written report to move forward. Ms. Leduc-Fleming agrees with Mr. Berman, adding that as long as there will be no "additional earth shattering information" included in a written report. Dr. Neubert clarifies there would be no such information included in a written report. Chm. Gray informs the representative that even if the hearing were to close at this meeting, the project would not be able to move forward as the Commission does not currently have a Conservation Agent to draw up a draft Order of Conditions. Mr. Goshgarian verbalizes understanding. No additional member comment.

**Public comment:** None.

With the situation of no current acting Conservation Agent, **continuance agreed upon by the board and representative. Continued to November 18, 2021.**

4. Applicant: Sarah E. Fisher  
Address: 8 Fisher Lane, Sagamore Beach  
Representative: Bracken Engineering  
File Number: SE7-2137

Construction of a 4' wide (final width) access path through a vegetated Buffer to a Coastal Bank. Restoration and regrading of an existing path and area within the Buffer Zone. Supplemental mitigation plantings within the 50' Buffer Zone. Existing vista corridor to be maintained.

Chm. Gray again discloses that he would normally not sit on the board for a hearing where Bracken Engineering is the representative, as he does work with them. But due to the fact that there are only four members present for the meeting, and that is the minimum required for a quorum. He states that he will have to invoke the Rule of Necessity, which would allow him to sit on the board for this hearing, unless there are any objections. Chm. Gray opens the discussion to objections. **No objections made.**

Zac Basinski addresses the board. He reiterates to the board that this project was associated with the Coastal Restoration Project from 2019, where the representative was previously granted approval to stabilize the bank and build coastal stairs at this property. This proposed plan is to restore the existing path that led to a previously existing set of stairs that have been relocated per approval granted on a previous Order. This project was previously continued as there was grading work that had been proposed, that has now been removed from the application. The new plan is just requesting to maintain the existing site grades, "roll" a little bit of the end of the bank, and build a 6" berm to redirect water to allow the existing path to re-establish itself. The area would be maintained at a 3' height, which was a previously approved height per the original Notice of Intent for the house. There will be stones added in order to minimize the grading as well.

**Member comment:** Mr. Berman states that this revision is an improvement from the previously proposed plan. He then requests discussion about plans to address runoff. Mr. Basinski states that due to the current grades, the water will now be redirected into the existing vegetated areas. Ms. Leduc-Fleming requests clarification of the extent of "rolling" the top of the bank. Mr. Basinski states that the grade currently at the top of the bank is currently at a 1:1 slope, and the proposed plan is to just roll the slope back enough and replant it so that it provides a 45 degree angle, to keep in with the rest of the grading of the slope, preventing a vertical drop. Ms. Leduc-Fleming requests clarification as to if this is being proposed simply because that is the area where there is work being done. Mr. Basinski confirms that is the reason that this is being proposed. Mr. Berman states that while the plan is accurate, there was a supplemental letter that was submitted that stated the top of the bank was going to be rolled back "161'." Mr. Basinski clarifies that it was meant to be "16'". Mr. Berman accepts the clarification as it is noted correctly as 16' on the site plans. No additional member comment.



**Public comment:** None.

Chm. Gray states this hearing will be in the same situation as the previous hearing, with presently having no Conservation Agent to write up a draft Order of Conditions, this hearing will have to be continued as well. **Continuance agreed upon by the board and representative. Continued to November 18, 2021.**

5. Applicant: Cape Club Building, Inc.  
Address: 96 Megansett Road, Cataumet  
Representative: Cape and Islands Engineering, Inc.  
File Number: SE7-2171

To raze existing cottage/dwellings, utilize the existing shed for storage, and remove a portion of one of the existing dwellings to be converted into a covered, open-air patio with a rinse station, ½ bath, and outdoor kitchen area. Construct and maintain a new single-family dwelling with attached garage, decks, steps, covered porch, a/c, generator, in-ground swimming pool, driveways, retaining walls, fire pit, and to utilize the existing Title V sewage disposal system.

Mark Dibb addresses the board, and introduces Matt Costa, an additional representative for the applicant, and requests to share his screen. Mr. Dibb reviews the previous hearing from October 7, 2021, and the requests made at that time. He also addresses the comments and requests made at during an onsite meeting on October 25, 2021. An amended document was submitted on October 28, 2021 including a response to all of the comments that were discussed, and the revisions made to the plan, complete with a new set of plans for the project. The first revision that was made to the plan was to submit an existing conditions survey, in addition, to a simplified aerial survey. The existing covered patio has been moved landward of the saltmarsh, setting it back 68' from the saltmarsh as opposed to the previous 0' from the saltmarsh. The existing pump area is also being proposed to be moved from 18' from the resource area, to now 100' from the saltmarsh on the revised plan. There is an addition to the plan for a revegetated area that has been mapped out, including the location of the removed dwelling and deck, as well as an additional 10' section toward the proposed dock area. The calculations of the River Front area have also been added to the plan. The area of the saltmarsh has also been adjusted. There was a meeting with the peer reviewer, which was recommended during the October 7, 2021 Conservation Commission meeting, that discussed an area of the saltmarsh has been remapped and now is along the face of the dwelling, moving the line

of the saltmarsh inward of the property. As a result of moving the patio, the applicant has requested an area of vista pruning to improve the view from the new location of the proposed patio, without tree removal, only vegetation management. Mr. Dibb then provides responses to comments that were previously mentioned. He states that the previous agent had mentioned that the local storm water bylaw would pertain to this property. Mr. Dibb reviewed the bylaw, and it states "land disturbances over one acre that drain into municipal storm drain systems and into water courses of the Commonwealth via municipal point source," which he goes on to explain that this would mean that if the roadway or driveway were to drain into a municipal catch basin, then the aforementioned storm water bylaw would be applicable. Mr. Dibb states that he believes that the bylaw would not be applicable for this property, as all of the runoff is contained on site, and does not enter any municipal system via a municipal point source. The River Front area calculations comment was then addressed. Mr. Dibb states that the area in the proposed plan is previously developed and disturbed, and therefore believes that it should meet the Section 10.5§58 Number 5 for redevelopment work. The plan also has an updated mitigation plan of 1:1, as opposed to the 2:1 mitigation plan that was discussed on site. All calculations are provided on the plan, very detailed per Mr. Dibb, and the impervious area has been reduced by almost 2,000 square feet, which includes a significant removal of pavement, and dwelling. Mr. Dibb believes that especially in the 0'-100' Buffer Zone, it is a significant improvement from the current conditions. The next area that Mr. Dibb addresses is a previous comment in regards to trees. He states that every tree has been noted on the project plans, and if they are in an area with large amount of pavement, or close to pavement, they are proposed to be removed. The final discussion that is addressed is the work that is proposed to be done in the area of the coastal bank. A summary of the Wetlands Protection Act has been provided, and the requirements for work in a coastal bank. Mr. Dibb states that "the proposed work will not have a significant impact on the functionality of the existing coastal bank." He notes that all work that is being proposed is located in previously disturbed areas, and no work is being done in any natural Buffer Zones, nor is the coastal bank that is on this property a sediment source, adjacent to coastal dunes, or coastal beaches. There will be no significant alterations made to the site along the coastal bank as what was mentioned during the site visit: he states "what is grass now, will be grass when we're done with the project." The plan for the septic system is then addressed. The existing septic plan was for 1,760 gallons per day, which was a previously permitted system. The proposed use will reduce the gallons per day to 990. The location of the proposed septic is the furthest it can be from the River Front and the saltmarsh. He states that the areas that are currently paved driveway, and scarce trees will be revegetated. Mr. Dibb then reiterates that the area of impervious surface will be significantly reduced in the 0'-100' area. Mr. Dibb believes that with all the above revisions, the plan does meet the applicable performance standards, and that the site would be worthy of an Order of Conditions. He

opens the discussion to questions/comments from the Commission.

**Member comment:** Mr. Ligor expresses concern regarding the building that is proposed to be removed. He has concern regarding the plan for carrying out the actual removal as it has been noted that that area that encompasses that building is saltmarsh. Mr. Dibb replies that the removal of the building will be carried out carefully. There is a plan provided for erosion control for that part of the plan. Any machinery that is proposed to be utilized for that task will be kept on the upland side of the property. Michael Intocci, the developer and applicant, requests to respond to the question. Chm. Gray grants Mr. Intocci permission to respond. Mr. Intocci states that the machinery that he is planning to use for the removal of the structure has a long enough arm to pick up the dwelling, keeping far enough away from the saltmarsh, and loading the structure onto another truck to be taken off of the property. He states that the remaining material will crumble so quickly, it will be picked up with a bucket, swung around to an awaiting truck, and taken away, without causing any disturbance to the saltmarsh or wetland. Ms. Leduc-Fleming requests to make a comment about the specific discussion at hand. Chm. Gray approves her request. Ms. Leduc-Fleming goes on to mention that while it is typical to put erosion control all the way around the area that is planned to be worked on, the area in question is subject to tidal flooding twice daily. She questions how long it may take to tear down specifically the seaward end of the structure, and if it could possibly be done during a neap tide. Mr. Intocci responds stating that the building would likely be able to be taken down within a day or day and half, and can be done working around the tides. Ms. Leduc-Fleming provides clarification regarding the suggestion she is making, stating that it may be recommended to time the removal of the structure during the time of the month where the tides are as low as they are going to be to prevent the need for something like hay-baling, etc. for erosion control. Mr. Intocci states that they will work with the Commission to coordinate around the days they believe would be the best to remove the structure. Ms. Leduc-Fleming agrees, and appreciates the agreement. Ms. Leduc-Fleming requests putting this request in as a condition for moving forward with approval. Chm. Gray agrees, and elaborates on this matter. He states that hay bales, or siltation fencing, that may be used would likely do more damage than prevention. He suggests moving them closer toward the structure to limit the disturbance to the saltmarsh. Chm. Gray then notes that mean high water and mean low water heights are noted on the plan, as well as estimate high water. He questions if the estimated high water line is the highest spring tide of the year. Mr. Dibb responds, stating that the high tide line that is noted is elevation 3.23. He then states that the erosion control is proposed to be above that noted high tide line, but something could be used that could be quickly removed if there were a high tide. Chm. Gray provides clarification regarding his comment/question, stating that he believes that the elevation 3.2 being the estimated high water line is not representative of the highest spring tide of the year. Based on the

vegetation that is on the property, the highest spring tide of the year would be predicted to be about six inches or more, higher than the noted estimated high water line. The plants that delineate the saltmarsh are on the lower end of the saline loving soils. Moving further seaward, they were noticing vegetation that like more saline conditions. Chm. Gray requests clarification of the 3.2 elevation is representative of the highest spring tide of the year. Mr. Dibb agrees with the request, but does request clarification that all of the above information and requests are in regards to the removal of the structure. Chm. Gray confirms that the requests are in regards to the removal of the structure. Matt Costa requests to provide additional information. He states that the extreme high water line was obtained be the Buzzards Bay Tidal Data. A representative from L.A.C. met on site with the third party consultant who agreed with the delineation of the saltmarsh, with the exception of an adjustment that was made to the structure. He then provides clarification of the plan, explaining how the saltmarsh and the structure are indicated. He agrees that hay bales would not be appropriate for a saltmarsh, and a siltation fence would be a better option as a barrier for the workers to remain within. He then states that all of this work will be located above the extreme high water line, and will not be done in the tide cycles. He also expect conditions to state that there would be restoration required to any disturbed marsh area associated with the removal of the structure. He believes the marsh would recover quickly, but if there are any bare spots as a result of the work, they would be replanted. Ms. Leduc-Fleming suggests in the location that is denoted with a darker shaded green area that is proposed to be a mitigation area should be expanded to include where the hay bales are being shown on the plan, as it is likely not a densely vegetated area of the saltmarsh. Chm. Gray agrees. Mr. Costa agrees as well. Ms. Leduc-Fleming suggests also changing the species that is proposed to be planted there to be more saltmarsh species than landward species of vegetation. Mr. Costa agrees, and states that can be noted on a revised plan. Mr. Berman questions if there is notation for restoration marsh plantings. Mr. Dibb requests clarification. Mr. Berman states that there is vegetation that is better suited for saltmarsh that would be suggested to be used in the saltmarsh for the revegetation. Mr. Dibb confirms that that information will be provided on a revised plan. Mr. Berman then confirms that while it may not be a rapidly eroding area, there is a coastal beach present in the area, although it was noted previously in the presentation that there is not a coastal beach in the area. Mr. Costa replies clarifying that the bank is not adjacent to a coastal beach, nor is it a sediment source to a coastal beach. He confirms there is land subject to coastal storm flowage between the bottom of the bank and the saltmarsh. Mr. Berman disagrees, stating that a coastal beach does not have to be adjacent to a coastal bank to receive sediment as a sediment source bank. Mr. Costa states that on this site there is a coastal bank defined by slope. In areas that it is less than 10%, it is not considered a coastal bank, but it is land subject to coastal storm flowage, unless it is another resource area. He states that the land at the bottom of the bank is land subject to coastal storm flowage, then transitions to saltmarsh, then coastal beach area

beyond the saltmarsh. Mr. Berman reiterates that the area does not need to be immediately adjacent to the beach to which it provides sediment. He does agree that the bank, based on topography, was not eroding into the beach, not that it wouldn't. He does state that this is in an inland area, but if there was erosion in the area, it would provide sediment to the beach. Mr. Costa questions even if the sediment traveled through the saltmarsh first. Mr. Berman states yes. Mr. Berman questions if a cross section was provided through some of the areas in the coast that were discussed at the site visit. Mr. Dibb states that the cross section was not added, but will be. Mr. Berman then addresses the vista pruning, stating that removing the structure makes up for any vista pruning that will be requested to be done, so he has no issue with the vista pruning. He then questions whether the peer reviewer has submitted any documentation to the Commission. Chm. Gray confirms that the peer reviewer has not submitted any documentation to the Commission. He is hopeful that the documentation will be submitted and received by next week, prior to the next meeting on November 18, 2021 to give the Commission time to review the documentation. Chm. Gray then states that what is being depicted on the plan as a coastal beach is not actually a coastal beach. He believes that a section of the shoreline that has very little saltmarsh vegetation is being picked up and called a coastal beach. Chm. Gray's concern is that if access is being allowed down through the saltmarsh to the area that is being called a coastal beach, it will grow in size due to human alteration. He requests further investigation as to whether that is just a bare spot in the saltmarsh, or actual coastal beach. Chm. Gray then requests to review the River Front calculations, specifically in regard to hardscape numbers, etc. Mr. Dibb asks if Chm. Gray would like Mr. Dibb to go over the information, or if he has a specific question. Chm. Gray questions two items noted on the "Conservation Statistic," the first being "Existing Impervious Surfaces: Structures, Paving, Deck," with a total of 11,810ft<sup>2</sup> within the 200' Buffer Zone. The next item is "Proposed Impervious Surfaces" with a total of 19,250ft<sup>2</sup> in the River Front. He requests the percent increase of the total. Mr. Dibb states that the 11,810ft<sup>2</sup> is 10% of the River Front (total area being 111,420ft<sup>2</sup>), and the proposed area goes above 10% of the River Front, and they are proposing to mitigate anything above the 10% of the area, which is the additional 5% included in the 19,250ft<sup>2</sup>. Mr. Dibb states there is a reduction of impervious surfaces in the 0'-100' Buffer Zone, but an increase in the 100'-200'. He then notes that the area of pavement, being that it is pollution generating, is decreased from 8,300ft<sup>2</sup> of existing pavement to 8,200ft<sup>2</sup> of proposed pavement. Chm. Gray requests clarification of the part of the plan that was just discussed, confirming that the area of impervious surfaces is actually increasing in the 200' Riparian Zone. He states that by using the figures provided, the hardscape area is increasing by 63% in the River Front area. Mr. Dibb states that that is true to go from 11,810ft<sup>2</sup> to 19,250ft<sup>2</sup>, but the percent increase of impervious surface is going from 10% of the total River Front area to 15% of the total River Front area. Chm. Gray states that there is a positive in that there is a decrease in impervious surface in the proposal for the

0'-100' area from 5,432ft<sup>2</sup> to 3,274ft<sup>2</sup>. Chm. Gray states that due to the fact that they are filing under 10 § 58 Section 5 on re-development, he believes that this plan still has some work to be done in order to meet the regulations in Section 5. He suggests an increase in mitigation planting with the removal of the proposed lawn can be done, to make the 0'-100' area fit better into the constraints of 10 § 58. The main part of re-development is showing improvement over existing conditions. Chm. Gray commends the project and states that it is moving in the right direction, and there are some positives, but he does believe there is more that can be done to make the improvements that are discussed in 10 § 58 Section 5. He does have an issue with the increase, but would be able to accept it better with additional plantings. He then discusses the patio and pool that includes grading that goes about 30' from the saltmarsh, or possibly closer. Attention is then turned to the shed slab, and between the shed slab and the mitigation there is a proposed lawn. He believes this would be a great area to enhance vegetation, which would then cut down nitrogen loads from entering the embayment, as there are already water quality issues in Squeteague Harbor. He believes that in the process of maintaining the lawn, nitrogen would be applied to the lawn and then released. He does not believe this meets the restraints that are outlined in the 10 § 58 Section 5 for re-development in the River Front. Mr. Dibb responds, appreciative of the input given, and the suggested areas will be reassessed as potential for revegetation and mitigation. Chm. Gray also suggests 310 CMR 10 24 Section 1 which states "where a Buffer Zone has already been developed, the issuing authority may consider the extent of the existing development and its review of subsequent proposed work, and where prior development is extensive, may consider measures such as restoration of natural vegetation adjacent to the resource area to protect the interest of 131 § 40." He believes that in order to win the vote of the Commission, it would be recommended to address the amount that is being proposed as lawn. No additional member comment.

**Public comment:** Ms. Leduc-Fleming reads a question from Emily Beal that asks "Other than the shed, will all of the red buildings be demolished?" Ms. Leduc-Fleming offers the public member to add to her question. Ms. Beal comments, stating that she is concerned that the ecosystem in Squeteague Harbor is very delicate as it is, she is concerned about the demolition, and with climate change that where buildings and hardscapes are being constructed may have an adverse effect on Squeteague Harbor. Ms. Leduc-Fleming repeats the question, and Mr. Dibb responds, stating that all of the red buildings will be demolished. John York requests to make a comment regarding the demolition and the debris that will be created. He questions what the plan is for removing the debris and preventing it from entering the harbor. Michael Intocci responds, stating that the demolition will be done by pulling the building and materials inward, not outward toward the water, and surrounding the structure with siltation fence. He then states that he does not want to take the building down, but following the walk

through, it was decided that the building would need to be removed. He then states that the demolition would unfortunately cause noise due to the equipment that would need to be used. Mr. Dibb adds that there would be work that would need to be done by hand once the main parts of the structure are removed via machine in order to better clean up the area. Mr. Intocci then comments regarding the comment previously made by the board about the 50' Buffer Zone and adding vegetation as an alternative to the proposed lawn, stating that it is currently grass, pavement, and buildings. He then moves forward to state that he has other options for the property, that he could build two house lots, or 14-16 townhouses, but he is taking 4.5 acres, and only putting up one building, tearing down four structures, and cleaning up the property. He continues stating that he listened to the Commission's concerns, and is trying to adhere to all of the requests, and "it just seems like it is not working." Chm. Gray provides clarification, stating that they did not say it was not working, there is just a process and set of regulations that need to be followed. There is no preference as to how many structures are being built, anything would need to follow the same regulations, and meet the constraints of re-development in the River Front. Mr. Intocci responds, stating it does not feel like he is making progress. Chm. Gray confirms that he is making progress, but reiterates that there is a process that must be followed. No additional public comment.

By comments made by the Commission and the representative, it was understood that amendments need to be made, and continuance would be required. **Continued to November 18, 2021.**

6. Applicant: Cape Club Building, Inc.  
Address: 96 Megansett Road, Cataumet  
Representative: Cape and Islands Engineering, Inc.  
File Number: SE7-2172

Construction, licensing, and maintenance of an access ramp leading to a walkway, pier, ramp, and float, in the waters of Squeteague Harbor. Additionally, perform dredging to regain water depth adequate enough for boating access to and from the proposed float pier at 96 Megansett Road.

Marc Dibb addresses the board. He addresses that the site visit was done on October 25, 2021, as well as initial comments that were made on October 7, 2021, and the D.M.F. letter that was submitted on October 6, 2021. A summary was submitted of the comments previously received about the project, as well as plan revisions, response to the comments, and a summary of the proposed pier and dock submittal. An addendum was provided to the plans with an eel grass survey that expanded to include the work along the area that was proposed to be dredged. No significant amount of additional shellfish

were found in the area. An additional site visit was also performed by the representative's consultant, and the peer review consultant, though those reports are still pending. The dredging has been proposed to be removed from the project. Mr. Dibb states he will go on to explain that further later in the presentation. He then addresses the revisions that were performed to the plan for the dock itself. He notes a line that represents the midpoint of the majority of the waterway that was used as the basis for the pier design criteria within the bylaws. The measurement of mean high water to mean high water, determined to be 193.2' is clearly defined on the plans as well. The pier length has been changed to 37' to correspond to the requirement of the bylaw to be no greater than 1/5 the length of the waterway. Mr. Dibb then refers to the bylaw, which states "when a saltmarsh is below mean high water line, the dock is then structured seaward of the saltmarsh." The rest of the dock is a walkway, measuring 69' long. The location for storage of the seasonal float and ramp has been added to the plans, as previously requested. If the lawn area that was discussed in the previous project is to be modified, the storage area of the ramp and float may also need to be revised. Mr. Dibb states that the mean high water line will also be verified. He then addresses that D.M.F. comments were only pertaining to the dredging part of the plan. With the proposed dredging being removed from the plan, the D.M.F. comments are no longer applicable. It has also been confirmed that 4x6 construction can be utilized in a seasonal pier build. Finally, the impact of the dock on the resource area was summarized. 16.1A paragraphs 2, 3, 4, 5, 6, 7 were referenced, stating how docks cause a cumulative impact on the resource area. Mr. Dibb states that are two areas of the plan that have been identified, and where relief is being sought, due to the findings of the shellfish survey, the type of soils that are in the water, as well as the location of the site, the width of the property, and all of the parameters for this site. Even if relief is granted, he does not believe there would be cumulative impact to the resource area. The first area is 1.16.1.E3, to keep disturbance to the bottom minimal at all times, during both construction and use, and to keep the water at the end of the pier at a minimum of 3'. There is proposed to be greater than 1' of depth where the float location is, and is the part of the plan for which relief is being sought. Mr. Dibb states that with the appropriate boat size, there would be less impact on the area than dredging. The other request seeking relief is the birthing area of a boat being outside of 37', in lieu of the minimum 50' that is required from the saltmarsh per Section 1.E.11. Being that there will not be additional docks added to this property, aside from the one proposed in this plan, Mr. Dibb documents that there will be no cumulative impact to the resource area. Mr. Dibb opens the discussion to questions.

**Member comment:** Mr. Ligor states that the presentation has answered his questions, even the one he had planned to ask previously during the previous presentation for this address. Mr. Berman questions whether the peer reviewer is reviewing this portion of the project as well. Mr. Dibb confirms the peer reviewer will be reviewing this portion of the



project. Mr. Berman then requests confirmation regarding whether D.M.F. comments did include anything regarding the float, and the depth of the water at which the float is proposed. Mr. Dibb responds stating that it could be possible that D.M.F. may revise comments for that information, and the representative would not be opposed to putting float stops in to prevent the float from touching the ground. Chm. Gray requests clarification regarding the float stops, asking if there are presently float stops proposed on the plan. Mr. Dibb confirms there are presently no float stops included on the proposed plan, but they can be added. Chm. Gray then asks what the float consists of for buoyancy. Mr. Dibb states it would be an encapsulated polystyrene float, reducing the risk of Styrofoam coming off of the float and contaminating the water. Chm. Gray questions whether the proposed floats are expected to break down over time. Mr. Dibb declines, stating they will not. Chm. Gray requests to review the water depths at the end of the float on the plan. The end of the float on the plan is between 1'-1.4' feet at mean low water. Chm. Gray questions whether it would be of any benefit to lengthen the dock to bring it further into the waterway. Mr. Dibb states there would be benefit of going out further, the plan was attempting to stay within the previously noted parameters. Chm. Gray believes it would be preferred to have the end of the dock closer to the 2' water level if possible. He does not believe this would interfere with any of the navigation within the waterway if this were to occur. Mr. Dibb agrees. Mr. Berman asks an additional question regarding the clearance that is noted on the plan being 18" with stops, where the water depth is only noted at 12". Mr. Dibb clarifies that this is a typo, and would be corrected dependent on plan revision. Mr. Berman also comments on the length of the walkway, stating that on the plan, the dock looks like it is just a continuation of the walkway. Mr. Dibb references the definition of the regulations, if a saltmarsh is below high tide, the definition of a dock is measured from the seaward edge of the saltmarsh to the end. The definition of a walkway is measured from the seaward edge of saltmarsh to the edge of the pier as well. Mr. Berman states that he would defer any additional comment to Chm. Gray regarding this matter. Chm. Gray requests comment from Ms. Leduc-Fleming. She states that while there are multiple specifications for docks being constructed, there are some sites in town that are not suitable for docks. She believes that if there is a situation where one criteria for the construction of the dock is met, but in lieu of being able to meet another criteria, it may be leading to opinion of the site not being suitable to construct a dock. Chm. Gray requests to confirm that the proposed seasonal portion is noted to be the ramp and the float, and planning to leave the walkway in place. Mr. Dibb states that if the walkway is required to be removed, it can also be seasonal, but if it the bylaws permit the walkway to remain, it will remain. Chm. Gray states this can be further reviewed with the peer reviewer. Chm. Gray believes the walkway would be able to remain throughout the year, as it would not be considered part of the dock. What he does state is that the last part of the bent that is labeled as dock would need to be removed seasonally. Mr. Dibb states they would be amenable to

removing any part of the dock that would be deemed necessary. No additional member comment.

**Public comment:** Maureen York questions via the "chat" questions whether the Army Corps of Engineers limits docks to 25% of the waterway. Chm. Gray states that will need to be researched as he is unsure how that is worded. Chm. Gray states that this application would have to move forward both to the licensing program for the waterways through DEP, as well as to the Corps of Engineers. Chm. Gray then moves forward to state that it will be likely that as the project moves through the various agencies, that there may be plan changes that would be required to come back to the Commission for additional review, and possibly a revised order. Don Jones questions whether the owner proposes to keep a boat tied to this float with the limited water level at low tide. Michael Intocci states that the tide would be used to go out on the boat, which would allow for plenty of water height. Mr. Jones responds stating that at low tide, if the boat draws greater than a foot of water, it would be sitting on the ground. Mr. Intocci states that it is a flat bottom boat that only draws about one foot of water. Mr. Jones requests the length of the boat. Mr. Intocci responds, stating he is not exactly sure of the length of the boat. Mr. Jones expresses concern again that the boat will be sitting on the mud at low tide. Mr. Intocci responds stating that the neighboring homes have the same boats. Mr. Costa comments that if the plan is approved and receives a permit from the Army Corps of Engineers, there is a regulation in Army Corps standards for 25% the width of the channel, which allows for self-verification. If plan exceeds 25% the width of the waterway, the level of permit would need to be changed. He then addresses the performance standards of the plan. The dock itself does not impose a cumulative impact, and that the bylaws are in place for docks that do impose a cumulative impact. It is up to the discretion of the Commission, if they do not believe the impact of the dock is substantial, to enforce the performance standards. He also reiterates that it is agreed to attempt to have the end of the dock go into deeper water. Also as addressed in the first hearing, the portion of the dock was proposed to be seasonal. Mr. Jones requests to add comment to his previous comment, stating he takes a small inflatable boat out in Squeteague Harbor, and during low tide, he has a difficult time navigating that channel. He believes that if the dock is brought out further into the channel, it may cause more issues with navigation. Chm. Gray adds comment regarding the boat grounding out at low tide. He states that a boat resting directly on the sediment at low tide will likely not have as substantial of compaction impact of the sediment because the weight of the boat is distributed over a certain number of square feet as a person who is out shell fishing. The person shell fishing is putting more pounds per square foot of pressure on the sediment. On this side of the cape, there are many embayment with good water depth under boats, preventing boats from resting on the sediment. Many boats in other local areas, both on the Sandwich side of the Cape, as well as the Duxbury/Marshfield areas,

many boats rest on the sediment, without a significant impact on the shell fish crop. He believes that although it seems like not a great idea to have a boat resting on the sediment, it does not compress the sediment at a rate that may be assumed. Ms. Leduc-Fleming clarifies also that the water level that is on the plan is mean low water, so the water level at spring low water will be considerably lower than the level noted on the plan. She then proceeds to mention that while it has been stated that the dock is not believed to have a cumulative effect on the area, it was meant to be directed not just at one dock, but that all of the docks in Squeteague Harbor have a cumulative effect. Every time a dock is added, the cumulative effect increases, not just due to one single dock. Chm. Gray agrees. John York then comments regarding the water depth. He believes that there is concern of the boat traveling along the sediment and scouring an outboard motor along the ground. Mr. Berman comments stating that the focus should not be on the size of the boat, as the owner will not be required to keep the same boat at that location, also if someone moves into that property they may have a different boat, etc., the focus should be on the dock itself. Chm. Gray addresses the propeller comment made by John York, stating that propeller dredging is a general concern at most docks in the area, but it is not something that would be a deal breaker, but a factor to consider nonetheless. The current bylaw that it is in effect was also not likely in place when most of the docks in the area were constructed. No additional public comment. Chm. Gray does remind the public that they are welcome to submit any additional comments or concerns in writing to the Commission.

**Continuance agreed upon by the board and representative. Continued to November 18, 2021.**

**Report of the Conservation Commission:**

Chm. Gray comments on both hearings that were closed today, but not able to move forward as there was not a draft Order of Conditions. Chm. Gray requests that the Commission goes through the checklist that was provided by the previous Conservation Agent in order to move forward with a draft Order of Conditions prior to the next meeting.

Mr. Berman then asks how the search for a new Conservation Agent is going. Chm. Gray states that the process has been started to initiate a search committee for a new agent. The application process has been closed, but it is unknown how many applications were submitted.

**Vote to Excuse Absent Members:**

**Motion moved by Ms. Leduc-Fleming, and seconded by Mr. Ligor**

Mr. Ligor yes, Mr. Berman yes, Ms. Leduc-Fleming yes, Chm. Gray yes.

**Motion carries 4-0-0.**

**Adjournment:**

**Motion moved by Ms. Leduc-Fleming, and seconded by Mr. Ligor to adjourn the meeting.**

**Motion carries 4-0-0 with a unanimous voice vote. Meeting adjourned at 9:21PM.**

Minutes submitted by: Fallon Doyle