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TOWN CLERK BOURNE

Conservation Commission

Meeting Minutes

Zoom Meeting Platform

December 16, 2021

I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday December 16, 2021, held via Zoom Platform. Chm. Gray explained all reviews, unless otherwise stated are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131 § 40, Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. If the Act or the Bylaw don't mutually apply to the review, it will be indicated at the time of review which instrument of law they will be reviewed under.

Chm. Gray also reviewed the 5-5-5 Rule, which allows the applicant or representative to make a five (5) minute presentation to the Commission Members, Commission Members will then take five (5) minutes to seek additional information if necessary, and then the public will be allowed five (5) minutes for comment.

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: Chm. Bob Gray, Peter Holmes, Tom Ligor, Elise Leduc, Paul Szwed

Excused Members: Greg Berman, Rob Palumbo

Others in Attendance: Stephanie Fitch, Amalia Amado, Susan Ashbrook, Mike Ball, Emily Beal, Bob Bishop, "Bob", "Brian", "Donna C.", "Cape WiFi", "Christine's iPad", Jessica Coyle, "CPG2", Matthew Creighton, "Cyndy", Robert Dewar, Mark Dibb, Karen Dubrovsky, Paul Forgione, Thanos Gossios, "grace", "iPhone", "Jared", Donald Jones, "Nathan", Molly Kammerer, Jack Landers-Cauley, John Lavelle, "LOAS Zoom Host", Joe McGurl, Peter Meier, Allen Metcalfe, "mgalligan", "RAS", Diane Reed-Hunt, "SB", George Seaver, James Sullivan, "Timothy's iPad", Matthew Watsky, Andrea York, John York, Maureen York

Request for Determination:

1. Applicant: Brian J. and Gail J. Kennedy
Address: 70 Gilder Road, Gray Gables
Representative: J.E. Landers Cauley, P.E.
File Number: CC21-24

Construct new addition to existing dwelling, approximately 573ft², and two new decks, approximately 260ft². All disturbed areas are to be loamed, seeded, and landscaped. No changes to existing septic system, no increase in bedrooms, no increase in flowage.

Mr. Jack Landers-Cauley addresses the board and Ms. Stephanie Fitch shares the plan. Mr. Landers-Cauley addresses the previous request for the "Top of Bank" to be added to the plan. He notes that this has been added to the plan. He also notes that this project was discussed with the prior Conservation Agent. Mr. Landers-Cauley goes on to discuss that the project, regardless of where it is proposed to go, will occupy or affect part of the Coastal Bank. He states it is considered a Coastal Bank only in name, but not necessarily in function, as it does not provide traditional Coastal Bank properties, i.e. littoral processes, etc. A dry well has been added to the plan in order to alleviate some of the previous concerns expressed by previous public comment (specifically of the abutting neighbor) to collect roof runoff from the proposed addition. He opens the discussion to questions.

Member comment: Mr. Szwed requests clarification of where the Coastal Bank is indicated on the plan. Clarification on the plan is provided. Chm Gray also provides clarification of the AE flood zone location for the lot. Mrs. Leduc-Fleming suggests adding the "Toe of Bank" on future plans as a standard of practice. Chm. Gray responds, stating that the "Toe of Bank" was likely not shown on this particular plan due to the fact that the abutting property would likely have had to have been surveyed. Mr. Landers-Cauley responds, stating that he believes that this property is a clear case of a non-functioning Coastal Bank, with the exception of retaining still water flooding. Mrs. Leduc-Fleming questions whether any members were able to make a site visit. Chm. Gray states he was unable to make a site visit, and no additional response from other Commission members. No additional member comment.

Public comment: Ms. Donna Coyle questions whether the proposed addition may be able to move "further into the Coastal Bank." Chm. Gray defers response to Mr. Landers-Cauley. Mr. Landers-Cauley responds, stating that a consideration was made to relocate the addition. Mr. Landers-Cauley defers response to the architect. "Jared" provides clarification as to why the proposed addition would not be recommended to be relocated.

Ms. Coyle again questions whether the addition could be moved “further into the Coastal Bank.” Mr. Brian Kennedy responds, stating that there is no variance being requested, and he is sticking with the plan that the architect has provided. Chm. Gray responds to the issue that has been raised, stating that it is not an issue that this Commission has authority to address. He states that the concern would be recommended to be brought up with the building inspector to address the zoning concern. No additional public comment.

Motion made by Mr. Ligor, and seconded by Mrs. Leduc-Fleming for a Negative 2 Determination. **Motion carries 5-0-0.**

Continuances

1. Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
Representative: Cape and Islands Engineering, Inc.
File Number: SE7-2172
Continued to January 6, 2022 meeting
2. Applicant: Champe A. Fisher
Address: 4 Fisher Lane, Sagamore Beach
Representative: Bracken Engineering, Inc.
File Number: SE7-2167
Continued to January 6, 2022 meeting

Notice of Intent

1. Massachusetts Maritime Academy
Address: 101 Academy Drive, Buzzards Bay
Representative: Baxter Nye Engineering
File Number: SE7-2180

Proposed student lounge addition to dining hall, including new sidewalks, outside patio, landscaping, site lighting, drainage, and associated utilities.

Mr. Szwed requests abstention from this application. Abstention granted by Chm. Gray.

Mr. John Lavelle addresses the board and reviews the resource areas on the property:

- Land subject to coastal storm flowage
- AE and VE Flood Zones
- Coastal Bank Buffer Zone

He shares his screen and the proposed plan. An armored stone Coastal Bank from the late 60s is noted. Mr. Lavelle also notes that there is no work being proposed to be done in the Coastal Bank or resource areas, just in the Buffer Zone. He then addresses the plan for storm water collection both from the roof, and sidewalks. Mr. Lavelle discusses the barrier around the limit of work as well. There will also be a slight change in the grading of the sidewalks to allow them to drain toward a low point catch basin. He opens the discussion to questions.

Member comment: Mrs. Leduc-Fleming requests submission of the current plan that is being viewed to the Commission so it may be added to the record. She also requests clarification of the species of trees that are proposed to be planted within the 100' Buffer Zone, questioning whether they are native species. The tree species are clarified, and confirmed by Ms. Karen Dubrovsky. Mr. Lavelle states it can be ensured that native species be used for the proposed plantings in the Buffer Zone. The remainder of the species list is reviewed, and it is requested by the Commission to ensure there are no proposed planting of any plants that are on the Massachusetts Plant Watch List. Mr. Holmes questions whether there may be room to put a rain garden. Ms. Dubrovsky states there may not be room for a rain garden, but it can be addressed with the landscape architect. Mr. Lavelle comments that the installation of a rain garden may be difficult without removal of a parking area. No additional member comment.

Public comment: None.

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Ligor to close the hearing.
Motion carries 4-0-1. Hearing closed.

Draft Order of Conditions pursuant to Chapter 131 § 40 include:
1, 2, 3, 4, 7, 8, 9, 10, 12, 14, 16, 17, 18, 19, 21, 25, 26, 27, 28, 29

Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:
5, 6, 7, 8

Motion made by Mr. Ligor, and seconded by Mr. Holmes to move the draft Order of Conditions to final. **Motion carries 4-0-1. Order of Conditions is issued.**

2. Applicant: Pocasset Golf Club, Inc
Address: 24 Clubhouse Drive, Pocasset
Representative: Coastal Engineering
File Number: SE7-2179

Proposed invasive species management.

This hearing was continued from the December 2, 2021 meeting pending a file number only. File number has been obtained.

Motion made by Mr. Holmes, and seconded by Mr. Ligor to close the hearing. **Motion carries 5-0-0. Hearing closed.**

Draft Order of Conditions pursuant to Chapter 131 § 40 include:

1, 2, 3, 7, 8, 9, 10, 12, 18, 27, 28, 29

Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:

6, 7, 8

Motion made by Mr. Ligor, and seconded by Mr. Holmes to move the draft Order of Conditions to final. **Motion carries 5-0-0. Order of Conditions is issued.**

3. Applicant: Thanos and Danielle Gossios
Address: 295 County Road, Bourne
Representative: Marsh Matters Environmental
File Number: SE7-2178

In-ground pool installation.

Mr. Mike Ball addresses the board and shares his screen. He addresses the revisions to the project, and the mitigation plan:

- Mitigation plantings in the Buffer Zone
- Removal of the previously proposed retaining wall in the 50' Buffer Zone
- Proposed contour of fill to accommodate the location of the pool
- Type of fence proposed to be used has been added to the plan with request for some flexibility from the Commission for exact type of fence the applicant would like to use
- A gap has been noted at the bottom of the fence to allow passage of small mammals. The actual size of the gap would be dependent on the allowance and requirement by the Building Department or state law for fences around pools.
- Achievement of the request of 1.5:1 planting mitigation ratio in the inner 50' Buffer Zone

Mr. Ball addresses the concern of the Commission to move the proposed pool further from the Wetland Resource area. He goes on to explain the reasons why the proposed pool was not relocated on the plan. He opens the discussion to questions.

Member comment: Mr. Ligor questions whether the proposed pool is planned to be a fresh or salt water pool. Mr. Thanos Gossios confirms that the pool is proposed to be a salt water pool. Mrs. Leduc-Fleming appreciates the adjustments made to the plan to accommodate the Commissions previous concerns. She expresses that her concern regarding the fence would be lessened if the proposed fence around the pool would be that of a chain link fence as opposed to a solid material to allow for the passage of small mammals, even if the proposed fence were to extend to the ground. She then questions whether the fill that is proposed to be utilized for the regrading around the pool will be brought in from out of site, or if it will be taken from what is removed from digging out the pool itself. Mr. Ball confirms that the plan is to use the material that is removed from excavation of the pool itself. Mrs. Leduc-Fleming then requests clarification of the representation of a specific symbol noted on the plan. Mr. Ball provides clarification of the symbol, noting it is the fence line, and also notes the limit of work on the plan. Chm. Gray comments that he is pleased with the revisions of the plan. No additional member comment.

Public comment: None.

Motion made by Mr. Holmes, and seconded by Mr. Ligor to close the hearing. **Motion carries 5-0-0. Hearing closed.**

Draft Order of Conditions pursuant to Chapter 131 § 40 include:
1, 2, 3, 7, 8, 9, 10, 12, 14, 18, 19, 25, 26, 27, 28, 29

Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:
4, 5, 6, 7

4. Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
Representative: Cape and Islands Engineering
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.

Chm. Gray reviews the boundaries of the Conservation Commission by the regulations under 310 C.M.R. 10.00, the Wetland Regulations under M.G.L. Chapter 131 § 40. He also notes that peer reviewer, Matt Creighton is in attendance at this meeting as well.

Atty. Matthew Watsky addresses the board, and notes there have been plan revisions that take the previous concerns of the Commission into consideration. He turns the presentation over to Mr. Mark Dibb. Mr. Dibb addresses the board and shares his screen. He reviews the revisions to the plan:

- Revisions to mitigation plan
- Modification to the shape of the pool, allowing an adjustment to the edge of patio to move it further from the Resource Area
- Movement of the entire scope of the project 10' northward, moving any proposed pavement out of the 100' Riverfront area, and moving the patio area further away from the Resource Area
- Report of the condition of the existing Coastal Bank; Mr. Dibb explains this part of the plan in more detail as well

Chm. Gray requests clarification of the location on the plan of the Top of the Bank and the Toe of the Bank, as well as the 100' Riverfront and 200' Riverfront areas. Mr. Dibb provides requested clarification. Chm. Gray also requests clarification regarding the location of Coastal Bank in relation to the building that is proposed to be removed for installation of the tennis court. Mr. Dibb provides this clarification as well. Mr. Dibb goes on to address an area noted on the plan as existing pavement that is proposed to be removed. Atty. Watsky notes the area on the plan that is proposed to be permanently deed restricted for conservation. Mr. Dibb notes the outer limit of the mitigation area on the plan, delineated by a proposed post-and-rail fence, along the limit of the area of the aforementioned part of the property. Photos of the site are shared, reviewed, and discussed. Atty. Watsky requests that Mr. Dibb elaborate regarding the soil types that were found on the site, and what effect the proposed structures may have on the stability of the site. Mr. Dibb provides explanation of the request from Atty. Watsky. The revised mitigation plan is reviewed in more detail, including the planting types. Additional revisions regarding the proposed outdoor patio area were discussed. This part of the plan has now been moved further from the Resource Area, in turn, allowing for existing plumbing to be moved further from the salt marsh. Atty. Watsky continues the discussion, reviewing D.E.P. standards regarding the definition of a Coastal Bank. He also reviews the stability of the bank, and the belief that it is not an unstable bank. Comments and discussion also made by Atty. Watsky regarding peer reviewer comment.

He goes into further discussion regarding details of the plan. The Commission reminds Atty. Watsky of the previously mentioned 5-5-5 Rule (see full description above) and notes that the presentation has gone over the time allowance in the aforementioned rule. Chm. Gray requests to move forward with summary of the presentation, and then to proceed with peer review comment. Atty. Watsky encourages questions regarding the stability of the site, and proof requested for any additional specific questions by the Commission. Discussion opened to peer reviewer comment. Mr. Matthew Creighton addresses the board and presents his review. Mr. Creighton states that he was able to discuss the application with D.E.P. and submitted that information both to the Commission and Mr. Dibb, but understands that that information may not have been reviewed by the Commission as he was unable to submit it prior to this afternoon. He reviews his letter regarding the impact of the project on the Coastal Bank, and the stability of the Coastal Bank. He also goes on to explain why he feels as though the proposed project is not meeting the Performance Standards of the Coastal Bank or the Riverfront Area. He requests a geotechnical analysis regarding the weight of all of the structures being proposed to be constructed in the Coastal Bank. Mr. Creighton also reviews an email received from D.E.P. regarding a request for an alternatives analysis, notation of an ecological improvement over existing conditions, and a restoration and/or mitigation plan in compliance with the Performance Standards. Mr. Creighton confirms with Mr. Dibb the modifications that are proposed to be made to the Coastal Bank. Mr. Creighton comments regarding a previously noted "18 acre parcel" that the applicant was intending to sell to a Conservation Trust. He states that the sale of a parcel should not be included in the mitigation if there is any kind of money exchanged. Mr. Creighton believes under the guidance of the Wetlands Protection act, and the direction of DEP, that the lawn area that is currently being left along the portion of the inner 100' Riverfront Area would need to be vegetated prior to the vegetation of the outer 100'-200' Area. He reiterates that he does not believe the project is meeting Performance Standards for the Riverfront Area or Coastal Bank.

Chm. Gray requests clarification regarding the definition of "Parcel B" noted on the site plan, confirming that that notation is the entire site. Mr. Dibb confirms this information. Chm. Gray requests additional clarification in regards to mitigation. Mr. Dibb provides requested clarification.

Member comment: Mr. Ligor asks Mr. Creighton what the impact may be on the Coastal Bank by clear cutting and then removing the root balls of the trees in the proposed pool area. Mr. Creighton responds, stating that it would have an impact on the Coastal Bank, and then provides additional specific detail regarding the impact. Mr. Szwed questions whether there has been evidence submitted to support the claim that the bank will not be adversely affected. He then asks Mr. Creighton what the specific concerns are regarding

the pool area in particular. Mr. Creighton responds, stating the weight of the pool, leveling and regrading of the area, and removing the trees in the Coastal Bank itself are concerns. Mrs. Leduc-Fleming provides comment regarding the previous statement of allowance of building in the Coastal Bank. She provides clarification, stating that allowance has been granted in situations where it is not believed that the function of the Coastal Bank will be affected, or when it is believed that the Coastal Bank does not have a function. She goes on to state that there is a function of this Coastal Bank, that function being flood control. The proposed lowering of the top of the Coastal Bank is causing a hurdle for the applicant, as lowering the top of the bank would create less of a vertical buffer to flood water. Mr. Holmes would like to review the peer reviewer comment further. He also questions whether the removal of the pool from the proposed plan would make a difference. Chm. Gray states if the pool, covered patio, and patio around the pool were not in the proposed location, it would reduce the impact on the Coastal Bank, but not remove the impact as there are other parts of the plan that are proposed to be at least partially within the Coastal Bank. Ms. Stephanie Fitch reads an email comment from Mr. Greg Berman: he believes some concerns raised by the peer reviewer have not been fully addressed. He expresses concern regarding the tennis court, pool, patio, and portion of the house being proposed on the Coastal Bank. The email goes on to note that it sounds like there may be room elsewhere on the property for these parts of the project to be moved off of the Coastal Bank. The email states that Mr. Berman does not feel that the Commission should go against the findings of the peer review, as the peer review stated "the project does not meet the performance standards under the regulations." Ms. Fitch reads an additional email from Mr. Timothy Lydon, from the town of Bourne Engineering Dept. with comment regarding a paper road, Cornell Street, that runs through the property. The town of Bourne regulations state a frontage setback of 30' from the way, and recommend that the Commission take that regulation into consideration. Ms. Fitch also reads an email from Ms. Terri Guarino, Board of Health agent. That email comments regarding the existing septic system, stating that it does not meet the Title V requirements, or the Bourne Board of Health regulations. Due to the location of the existing sewage disposal system, it would require and upgrade to an innovative, alternative type system for nitrogen reduction. No additional member comment.

Public comment: Ms. Fitch reads public comment that was provided via the "chat." Mr. Joe McGurl states that he believed there needed to be a cited hardship to overcome, and questions whether there may be a plan for relocation of some of the proposed structures. Mr. Donald Jones questions whether the existing shed that is noted within the Coastal Bank is proposed to be removed. Ms. Emily Beal expresses concerns regarding the location of the pool, and it "rupturing" during a storm. She also questions possible relocation of the pool. Mr. James Sullivan comments regarding a statement made at a

previous meeting regarding the property that the applicant plans to sell as Conservation Land. He goes on to comment that that property was sold, and did not, and still does not, have Conservation restriction. Mr. John York comments in regards to the Coastal Bank, stating that the proposed man-made berm is seaward of the Coastal Bank. He then reviews that "disturbed" and "degraded" land definitions are different. He goes into greater detail regarding this information. Mr. York also believes that the interest that is being protected by both the Town Bylaw and the State Regulation is that the Coastal Bank may reshape and erode itself naturally in the future, and the proposed plan may prevent the bank from being able to do that.

Chm. Gray provides further comment regarding the existing septic system, and the concerns expressed by the Board of Health. He also states that the plan is missing a 100' Buffer Zone notation from the section of Coastal Bank near the area of the proposed tennis court. Chm. Gray reviews additional structures that would then be within the 100' Buffer Zone if it were to be noted. Mr. Creighton makes note that the proposed pier is included on this plan, even though it is filed under a different application, suggesting that this information be noted by the Commission, specifically if this plan were to be approved. No additional public comment.

Atty. Watsky readdresses the board, stating there is a great deal that has been addressed that he does not agree with. He is requesting continuance to the next meeting, and will provide a written response to the comments and concerns.

Motion made by Mr. Ligor, and seconded by Mr. Holmes to grant continuance of this hearing to the January 6, 2022 meeting. Motion carries 5-0-0.

Request to Amend Order of Conditions:

1. Timothy Jones

Address: 9 Park Street, Pocasset

Representative: Bracken Engineering, Inc.

File Number SE7-2104

Amendment request for additional landscape and restoration/mitigation. Approximately 1,800ft² of invasive species management and native plan restoration. Modification to driveway with proposed cobble apron and wheel tracks. Post-facto approval for repair and repoint work to exterior stone retaining wall.

Mr. Robert Dewar addresses the board and shares his screen. He reviews the original proposed plans, as well as the completed project. Mr. Dewar reviews the intent for the

request for amendment. He goes into greater detail of the plan for the invasive species management, including the species for proposed mitigation plantings. He opens the discussion to questions from the board.

Member comment: Mr. Szwed requests clarification on how the cobbles will be set. Mr. Dewar states that they will likely be set with mortar. Mr. Szwed then requests clarification regarding the proposed herbicide application. Mr. Dewar provides this requested clarification. Mrs. Leduc-Fleming provides comment regarding the proposed management of the *Phragmites*, stating the applicant may have a difficult time due to the amount of *Phragmites* in the area surrounding the property. She also requests clarification on one part of the plan that includes proposed invasive species removal. Mr. Dewar provides requested clarification, stating the extent of the removal of the *Phragmites* is proposed to stop at the water line of the pond near the property. Mrs. Leduc-Fleming then requests to view before and after photos, if available, of the stone wall that has been repaired. Mr. Dewar shares requested photos, and reviews the work that has been done. He also confirms that the footprint of the wall did not change. No additional member comment.

Public comment: None.

Motion made by Mr. Holmes, and seconded by Mr. Ligor to grant the amended Order of Conditions. **Motion carries 4-0-1.**

Certificate of Compliance:

1. John and Elizabeth LoMedico
Address: 18 Windsor Road, Bourne
Representative: Bracken Engineering, Inc.
File Number: SE7-2037

The construction of a new single-family home with associated utilities, grading, site work, and installation of a pool and new septic system.

Ms. Fitch states that a site visit was made, and all requested documentation has been received. She recommends that the Commission grant the Certificate of Compliance.

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Holmes to issue the Certificate of Compliance. Motion carries 4-0-1.

Vote on 2022 Calendar:

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Holmes to approve the calendar as written. Motion carries 5-0-0.

Approval of Meeting Minutes:

The board requests to review and vote on both sets of minutes at the January 6, 2022 meeting with amendments. All members in agreement.

Vote to excuse absent members:

Motion made by Mr. Ligor, and seconded by Mr. Holmes to excuse absent members. Motion carries 5-0-0.

Report of the Conservation Commission:

Chm. Peter Meier addresses the Commission, thanking them for their efforts over the last year. He also welcomes Ms. Fitch into her new position as Conservation Agent. Chm. Gray thanks Chm. Meier.

Adjournment:

All members in favor of adjourning meeting. Meeting adjourned at 10:09PM

Meeting minutes submitted by: Fallon Doyle