

# ***Conservation Commission***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

April 5, 2018

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

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on April 5, 2018. 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. c. 131, § 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rules; which allow the applicant / representative five minutes to make a presentation to the Commission members, Commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. He asked for all to silence their cell phones.

Note: The meeting was being recorded anyone in the audience who was recording, or videotaping was asked to acknowledge such to the Commission. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

**Members Present:** Robert Gray, Melvin P. Holmes, Susan Weston, Paul Szwed, Thomas Ligor, Elise Leduc and Associate Member, Greg Berman.

**Excused Members:** Rob Palumbo.

**Also Present:** Sam Haines, Carol Mitchell, John P. Landers Cauley, Paul Gately, Gayle Sands, Laura Murphy, Neal Carriker, Paul Alfano, Theresa Sprague, Alex Zelfond, Jim Mulvey, Brendan Mullaney, Zac Basinski, Madlyn Coyne, Joe Agrillo III, Joe Agrillo Jr., Dan Ojala, Christopher Kirrane, Beth Russell, Bill Russell, Amy Ball, Jeff Lau, Ingrid Hammond, Steve Cook and Dan Chauvin.

### **Notice of Intent:**

1) Applicant: Alexander & Marina Zelfond

File Number: SE7-2005  
Representative: Falmouth Engineering, Inc.  
25 Pasture Rd, Pocasset

To demolish the existing dwelling and construct a new dwelling; license the existing revetment and access stairs; and perform vegetation management within a V Flood Zone and within 100 feet of a Wetland Resource Area.

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

Theresa Sprague of BlueFlax Design addressed the board. She indicated that the representative, Michael Borselli, was unable to attend the hearing. Ms. Sprague provided a brief overview of the project making note of the Resource Areas located on the property; which is located within a Velocity Flood Zone. Ms. Sprague stated the majority of the structure will be outside of the 100-foot buffer; however, there will be approximately 510 sq. ft. of the structure within the Conservation's jurisdiction. Ms. Sprague briefly discussed the proposed vegetation management. She referred to site photographs to describe the existing conditions. She explained that a big part of the plan is to restore the understory groundcover layer on this site. This will require tree removal to thin out the Oak canopy to allow light to reach the ground cover layer.

Board Comment – Chm. Gray asked if the foundation will be piles. Mr. Haines stated the Commission was not supplied with architectural drawings; however, the narrative states there will be piles support.

Mr. Ligor asked how many trees will be removed. Ms. Sprague stated fifteen trees are being proposed for removal within the fifty to one hundred-foot buffer, of which four or five of the trees will be removed in order to construct the house. Twenty-one additional trees are being proposed for removal within the zero to fifty-foot buffer. Ms. Sprague then discussed the proposed mitigation to restore the area; stating their goal is to entirely vegetate the fifty-foot buffer zone. Ms. Sprague referred to photographs to discuss a scarped area just above the revetment at the top of the Coastal Bank and their plans to cut that area back. Additionally, she provided detailed information regarding the proposed planting schedule.

Mr. Berman opened a brief discussion regarding the proposed plan for the scarped area of the top of the Coastal Bank.

Mr. Szwed questioned the net change in square footage of the proposed structure inside the one hundred-foot buffer. Ms. Sprague stated 510 additional sq. ft. is being proposed.

Agent Comment – Mr. Haines stated the proposed new structure will be elevated above the flood plain in order to meet the building code. Mr. Haines praised the proposed plan to

revegetate the ground cover. In his opinion, since the area being planted serves as mitigation, he feels it's appropriate to set as a 50' naturalized buffer. This would have to be applied as a condition of the Order of Conditions. The standard language about the vegetation growing to maturity and monitoring for a period of two years will also apply. Mr. Haines noted that the project description doesn't discuss any alteration of the stairs or the revetment, but they are within Mean High Water, which allows them to license it under Chapter 91. Although the proposed house is larger, he didn't identify any problems with the project.

Board Comment – Ms. Weston questioned whether the existing stairs and deck will remain as is. Ms. Sprague stated they will remain as is.

Public Comment – None.

Chm. Gray entertained a motion to close the public hearing. **Ms. Leduc moved, Mr. Holmes 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 1-5, 7, 9-12, 14-16, 18, 19, 21, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers, 2, 3, 5-9 with no additional Special Conditions.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 6-0-0.

2) Applicant: Joseph Botti Company  
File Number: SE7-  
Representative: Farland Corp. Engineering  
819 Head of the Bay Road (Lot 1), Buzzards Bay

To construct an attached garage and a subsurface sewage disposable system within 100 feet of a Wetland Resource Area.

**(At the request of the applicant, the matter is continued to April 19, 2018)**

3) Applicant: Joseph Botti Company  
File Number: SE7-  
Representative: Farland Corp. Engineering  
819 Head of the Bay Road (Lot 2), Buzzards Bay

To construct a single-family dwelling and attached garage; install a new Title 5 septic system; and all associated grading, landscaping, utilities, and appurtenances within 100 feet of a Wetland Resource Area.

**(At the request of the applicant, the matter is continued to April 19, 2018)**

A member of the public was present and asked to be heard on the matter because he will not be available to attend the April 19<sup>th</sup> meeting. Mr. Haines explained that the public hearing wasn't being opened. He suggested the individual email his comments to him and the agent will read them at the public hearing on the 19th. The individual agreed.

Chm. Gray deferred the Wings Neck Road Realty Trust hearing because the representative had not arrived yet.

**6) Applicant: Joseph A. Agrillo III**  
File Number: SE7-2008  
Representative: Bracken Engineering, Inc.  
60 and 62 County Road, Bourne

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

Materials Reviewed – Site Photographs, Site Plan of Record, Project Narrative, FEMA 1999 and 2014 Flood Maps and DEP Wetlands Change Mapping.

*Chm. Gray recused himself from discussion and vote. Ms. Leduc chaired the hearing.*

Brendan Mullaney of Bracken Engineering described the location of the two lots. He provided a brief history of the property, which he stated was subdivided in 2008. He compared the 1999 and the 2014 flood maps of the property, stating in both 1999 and 2008, no Coastal Bank was identified on the property. However, because of a Flood Zone mapping change; based on DEP Coastal Bank Policy 92-1, the Flood Zone elevation and the slope of the landform, a Coastal Bank is now located on the property. A delineation of the Bank is noted on the plan. Mr. Mullaney explained there are two points on the parcel where flood waters could enter. They are proposing to bring in supplemental fill material, install erosion control blankets, regrade and plant vegetation to stabilize the area. This will raise the elevation of the two points approximately two feet above the base flood elevation shifting the Flood Zone off the property, in turn shifting the Coastal Bank. FEMA would also have to approve the proposal under a Conditional Letter of Map Revision based on fill. Should the Commission approve this request, they will then seek approval for the map revision from FEMA. He stated ultimately the property owner would like to construct a dwelling on the property. Mr. Mullaney provided detailed information regarding the proposed fill.

Additionally, he discussed a depressed area on the property that holds water and the likelihood that this area is a Vernal Pool; however, it may be too early in the season to tell.

Board Comment – Mr. Berman asked if the erosion control blankets will be biodegradable. Mr. Mullaney stated they will be. Mr. Berman stated when he and the agent visited the site they heard peepers. Mr. Mullaney stated there is a large swamp located nearby.

Mr. Ligor asked what type of fill they are proposing. Mr. Mullaney stated it will be a sand/loam mix, compacted in one-foot lifts.

Ms. Leduc asked if the sand/loam mix is consistent with what's existing on the site. Mr. Mullaney stated it will be.

Ms. Leduc said the site appears to be forested. She asked how they will access the areas where the additional fill is being proposed. Mr. Mullaney explained there are some old agricultural bog roads on the property. They will access the areas using those pathways. She questioned whether there would need to be any tree removal. Mr. Mullaney stated no there wouldn't be.

Agent Comment – Mr. Haines stated he does not have a problem with the fill. He doesn't see any change in the ability of the site for storm damage prevention or for flood control. The site is 1,500 feet away from the nearest Coastal Resource Area. Mr. Haines expressed concern about the isolated wetland. While he didn't see any egg masses, he feels the conditions are favorable for obligate amphibian species. He suggested the Commission request a formal Vernal pool survey; not necessarily prior to the approval of this project, but prior to the construction phase of the dwelling. Mr. Haines discussed the jurisdictional wetlands located on the property.

Ms. Leduc feels this may be an appropriate time to conduct the Vernal pool survey. A discussion transpired regarding conditioning the Order to require a survey be conducted during the 2018 growing season. This would allow the Commission to issue an Order of Conditions without delaying the project. A discussion ensued.

A brief discussion transpired regarding the approval also needed from FEMA.

Mr. Berman opened a brief discussion regarding the limit of work.

Public Comment – Mr. Agrillo expressed disappointment that the lot may not be a buildable lot due to the presence of a Vernal pool. Mr. Haines stated the presence of a Vernal pool does not necessarily make the lot unbuildable.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Ligor seconded to close the public hearing.** With no discussion the motion carried. 5-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-4, 7, 9, 10, 12, 14, 15, 18, 19, 21, 26-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 2, 4-7 with the following Additional Special Condition (1) that a Vernal pool survey must be conducted during the 2018 amphibian growing season and the results will be submitted to the Bourne Conservation Commission. Mr. Haines stated a buffer zone has not been established, that will be done during the construction phase.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 5-0-0.

*Chm. Gray returned to chair the meeting and changed the order of the agenda.*

**4) Applicant: Wings Neck Road Realty Trust**  
File Number: SE7-2006  
Representative: Down Cape Engineering, Inc.  
430 Wings Neck Rd (Lot 1), Pocasset

To construct a pool, patio, landscaped pathway, coastal stairway, and perform vista pruning within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record, Project Narrative, Vista Pruning Protocol and DEP Wetlands Change Mapping.

Dan Ojala addressed the members. He provided a brief history of the parcel and discussed the Resource Areas. He explained the adjustments that were made to plan based on the agent's site visit and described the proposed project. He provided the members with additional information regarding the proposed vista pruning.

Board Comment – Mr. Berman opened a brief discussion regarding the Bank's transects.

Agent Comment – Mr. Haines mentioned that he appreciated the vista pruning protocol the representative provided. He discussed the existing sapling layer that will need to be removed in order to properly establish a vista view. Mr. Haines feels as mitigation for the disturbance, conditioning the fifty-foot buffer to remain naturalized in perpetuity is appropriate. Mr. Ojala agreed.

Mr. Szwed asked if the walkway is existing. The representative replied no, there's a bit of a path, but it's unsafe.

Public Comment – Abutter, Madeline Coyne, asked for the meaning of the term transects. Mr. Ojala explained its meaning. Mr. Haines elaborated further.

Ms. Coyne asked if two stairways are being proposed. Mr. Ojala stated there is one stairway per lot being proposed.

Chm. Gray entertained a motion to close the public hearing. **Mr. Holmes moved, Ms. Leduc 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; 1-7, 9-12, 14-16, 18, 19, 21, 22, 27-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 2, 3, 5-9, with the following Additional Special Conditions (1) the coastal access stairs shall not contain back risers on the stairs, risers prohibit the light penetration and vegetative growth on the Coastal Bank, (2) prior to any vista pruning, the contractor must set up an on-site meeting with the Conservation Agent to ensure that there's an agreement on the vegetation removed. Shrubs within the vista view shed shall be maintained at a height of 6' or greater.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 6-0-0.

**5) Applicant: Wings Neck Road Realty Trust**

File Number: SE7-2007

Representative: Down Cape Engineering, Inc.

430 Wings Neck Rd (Lot 2), Pocasset

To construct pool/patio, proposed walk way and stairs; vista pruning; retaining wall attendant to proposed dwelling within a V Flood Zone, AE Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record, Project Narrative, Vista Pruning Protocol and DEP Wetlands Change Mapping.

Dan Ojala addressed the members and provided information regarding the size of the lot. He described the proposed project, the Resource Areas, the transects and the proposed vista pruning.

Board Comment – Ms. Leduc questioned the species of Evergreen they'll be planting along the border. Mr. Ojala stated a specific species hasn't been chosen yet; but he is open to suggestions.

Agent Comment – Mr. Haines stated the proposed project is almost identical to the previous project except for the fact that this is an undeveloped lot as opposed to the raze and rebuild on Lot 1.

Public Comment – Ms. Coyne asked what the setback of the house to the lot line is. Mr. Ojala stated he'd have to scale it, but it's approximately sixty feet.

Ms. Coyne asked what the height of the proposed evergreen screening will be. Mr. Ojala stated they are proposing plants that are six-foot high to start but depending on the species, they can grow to a height as high as twenty-five feet. He said he is willing to work with abutters on landscaping issues.

Chm. Gray entertained a motion to close the public hearing. **Mr. Holmes moved, Ms. Leduc 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; 1-7, 9-12, 14-16, 18, 19, 21, 22, 27-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 2, 3, 5-9, with the following Additional Special Conditions (1) the coastal access stairs shall not contain back risers on the stairs, risers prohibit the light penetration and vegetative growth on the Coastal Bank, (2) prior to any vista pruning the contractor must set up an on-site meeting with the Conservation Agent to ensure that there's an agreement on the vegetation removed. Shrubs within the vista view shed shall be maintained at a height of 6' or greater.

Chm. Gray entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Ms. Leduc seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 6-0-0.

Chm. Gray changed the order of the agenda.

**Request for Certificate of Compliance:**

- 1) Applicant: Catherine Leach Tr., Dan Chauvin  
File Number: SE7-1521  
Representative: Same  
5 Fabyan Way, Buzzards Bay

New single-family dwelling, Title V SAS, utilities and other appurtenances within 100 feet of a Wetland Resource Area.



Agent Comment – A site visit was performed on April 5, 2018. Mr. Haines stated he could not determine compliance. The original Order stated there would be a fifty-foot no touch buffer. When he visited the site, the entire back yard including the Coastal Bank had been altered. Also, the site plan for the as-built the Commission received did not contain topography, Resource Areas etc. nor was certification received from the engineer showing the project is in compliance. Mr. Haines does not recommend issuing the certificate. He stated the entire no touch buffer is currently lawn. The entire area will need to be replanted in order to comply.

Public Comment – Mr. Chauvin addressed the members. He stated time is of the essence so he's asking for expeditious and defined guidance as to what's needed in order to comply. Chm. Gray instructed Mr. Chauvin to work with the agent. The matter will be addressed at the next hearing. A discussion ensued.

The matter was continued to April 19, 2018.

*Chm. Gray recused himself from discussion and vote. Ms. Leduc chaired the next three hearings.*

**Notice of Intent (cont.)**

7) Applicant: Adrian & Mary Zaccaria Tr

File Number: SE7-2010

Representative: Bracken Engineering, Inc.

Project Address: 87 Monument Neck Road, Gray Gables

To construct an accessory dwelling, upgrade existing septic system, and reconfigure driveway, including all associated grading, landscaping, utilities and appurtenances within an AE Flood Zone.

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

Brendan Mullaney addressed the members and discussed the proposed project. He discussed the location of the property, the Resource Areas on the property and the proposed location of the upgraded septic system. He explained that they will try to retain as many trees as possible.

Board Comment – Mr. Szwed asked if any work is being proposed on the existing garage. Mr. Mullaney stated no work is being proposed on the existing garage.

Mr. Ligor asked how many mature trees will be lost. Mr. Mullaney stated approximately nine trees will be removed out of five or six dozen that are located on the lot. Mr. Ligor asked if any mitigation is being proposed. Mr. Mullaney stated they are not proposing any mitigation, maintaining they made every effort to minimize the number of trees to be removed. A discussion ensued.

Agent Comment – Mr. Haines stated the work is located within the ACEC and subject to jurisdiction under the bylaw. Based on the DEP Coastal Rivers Mapping, the work is not located within the Riverfront Area. The proposed work is located on a level lot, the delineation is acceptable and Mr. Haines did not identify any issues with the project as long as it meets the building code and Board of Health regulations.

Board Comment – None.

Public Comment – Mr. Agrillo stated they are willing to plant screening as a means of mitigation.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Ligor seconded to close the public hearing.** With no discussion the motion carried. 5-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-4, 7, 9, 10, 12, 15, 18, 19, 27-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 2, 4-7, with the following Additional Special Condition (1) any trees removed for the construction of the septic and new garage shall be mitigated for with new native plantings.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Ligor moved, Mr. Holmes seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 5-0-0.

8) Applicant: James Halliday  
File Number: SE7-2009  
Representative: Bracken Engineering, Inc.  
160 Red Brook Harbor, Cataumet

To construct a single-family dwelling, install a new Title V septic system, renovate an existing boathouse, and perform invasive species management and restoration, including all associated grading, landscaping, utilities and appurtenances within an AE & V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Invasives Management Plan, Invasive Species Narrative, Planting Plan and DEP Wetlands Change Mapping.

Brendan Mullaney addressed the members and described the proposed project. He explained there is an existing boathouse on the property which will require some updating. Should they find there's significant changes needed, that will be under a separate filing. Mr. Mullaney briefly discussed the invasive species management plan.

Board Comment – Mr. Holmes asked whether the area serves as turtle habitat. Mr. Mullaney stated it is not mapped as such.

Agent Comment – Mr. Haines stated the house and the septic system appear to be in general compliance with the bylaw and past precedent. The nitrogen calculation is higher than the target for coastal areas. At a previous site inspection the agent had discussed a reduction in the northern grassy area as mitigation for some of the other work, but that isn't reflected in the plan. According to the representative, there will be approximately 6,500 sq. ft. of lawn within jurisdiction when the project is completed. Mr. Haines recommended at the very least, given that the rest of the area is currently naturalized, that the Commission cap the lawn at 6,500 sq. ft. Mr. Haines stated he typically requests some form of demarcation when a wild flower meadow is being proposed to delineate the meadow from the grassy area.

Mr. Mullaney stated the property owner is willing to demarcate the wild flower meadow to prevent it from becoming lawn.

Board Comment – Ms. Weston asked what's being proposed in the areas other than the lawn and wildflower meadow where invasive species will be removed. Mr. Mullaney stated in those areas, the existing native species will simply be allowed to regrow. Mr. Haines noted there is a significant amount of invasive species in the area and he's not sure how much bare earth will be left once they are removed. He thinks the bare areas may need to be supplemented with additional native plants and shrubs. Ms. Weston suggested conditioning the Order that a post site inspection be performed once the invasive species have been removed. Mr. Haines stated the Order could be conditioned such that bare earth created as a result of the invasive species management must be replanted with native plantings.

A brief discussion regarding the shape of the lot transpired.

Mr. Berman opened a brief discussion regarding the slope of the Coastal Bank.

Public Comment – Abutter, Gayle Sands, questioned how many trees will be removed. Mr. Mullaney stated he doesn't have a specific number, but most of the vegetation in the front

and adjacent to the street will be removed, as well as most of the trees where the house is being proposed.

Ms. Sands asked if any Variances are required for this project. Mr. Mullaney stated the proposed project meets all of the zoning requirements.

Ms. Sands asked if it's possible to condition the Order requiring a natural fertilizer be used. Mr. Haines stated they prefer no fertilizer be used which is why they try to keep the lawn at a minimize size. He explained that it's difficult to enforce such a condition.

Ms. Sands questioned what will be used as screening along the property line. Mr. Mullaney stated red cedar and white pines are being proposed as screening along the lot line.

Ms. Sands asked if there are plans to extend the size of the boathouse. Mr. Mullaney stated at this time they are proposing to structurally stabilize the existing boathouse. If additional work is required they will file an amendment to the permit. Mr. Haines explained stabilization to the boathouse has been approved under a previous NOI.

Ms. Sands commented on the amount of Bittersweet growing on the property and asked what AE and V Flood Zones mean on the plan. Mr. Haines explained the variations.

Laura Murphy expressed concern over the invasive species removal. Mr. Mullaney explained the methodology for invasive removal. A discussion ensued.

Jim Mulvey asked if a condition may be applied to require that a follow up site visit be performed to assure that the revegetation has officially taken hold to perform its function. Mr. Haines stated yes and explained the general condition that applies. He also reiterated the additional special condition suggested by Ms. Weston earlier.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Ligor seconded to close the public hearing.** With no discussion the motion carried. 5-0-0.

Mr. Haines briefly discussed applying a special condition to restrict foliar spraying.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-5, 7, 9-12, 14-16, 18, 19, 21, 25-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 1, 2, 5-7, 9 with the following Additional Special Conditions (1) herbicide application must be performed by a licensed applicator. Grubbing, mowing or foliar spraying of herbicide is permitted only in areas approved by the Conservation agent. The contractor must arrange an on-site meeting with the agent prior to any invasive species management. In areas that are not

approved for grubbing, mowing or foliar spraying, the applicator must apply the herbicide directly to the cut stem of the invasive plant, (2) The restoration management of the meadow wild flower area must be demarcated in the field by a permanent structure such as a boundary marker or fence, (3) bare earth as a result of the invasive species management shall be replanted with native plantings.

Mr. Szwed questioned whether erosion control measures should be required as a condition. Mr. Haines stated condition #14 addresses erosion control issues.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Mr. Ligor seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 5-0-0.

9) Jason Cheng  
File # SE7-2004  
Representative: Bracken Engineering, Inc.  
825 Scenic Highway

To install a new Title V septic system and associated site work, abandonment of the existing failed system within 100 feet of a Wetland Resource Area and within 200 feet of a River Front Area.

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

**(Continued from 3/15/2018)**

Zac Basinski addressed the board and discussed the proposed project. Mr. Basinski explained that the matter was continued because the DEP file number hadn't been issued.

Mr. Haines stated that's all the Commission was waiting for. Mr. Haines spoke with the Board of Health agent who feels this is a significant improvement.

Board Comment – None.

Agent Comment – Mr. Haines stated essentially, this is a series of cesspools that are being converted into one Title V system. He did not identify any issues with the project.

Public Comment – None.

Ms. Leduc entertained a motion to close the public hearing. **Mr. Holmes moved, Mr. Ligor seconded to close the public hearing.** With no discussion the motion carried. 5-0-0.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40 numbers; 1-3, 5, 7, 10, 12, 14, 15, 18, 19, 21, 27-29, Special Conditions pursuant to the Bourne Wetlands Protection Bylaw Article 3.7 numbers; 2, 5 and 9.

Ms. Leduc entertained a motion to move the Draft Order of Conditions to the Final Order of Conditions. **Mr. Holmes moved, Mr. Ligor seconded to move the Draft Order of Conditions to the Final Order of Conditions.** With no discussion, the motion carried. 4-0-1. Ms. Weston abstained.

*Chm. Gray returned to chair the hearing.*

**10) Steve Cook**

File # SE7-2003  
Representative: Civil Environmental Engineering  
165 Jefferson Road, Gray Gables

To raze the existing house; construct a new single-family residence; driveway; swimming pool and perform filling and grading and all usual appurtenances within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record (revised 3/21/18), Septic System Plan, Project Narrative, Architectural Plans, Planting Plan, Application for Supportive Finding for Bourne ZBA, Letter of opposition from abutter Jeff Lau, Untitled before and after computer generated renderings supplied by the abutter, Wetlands Program Policy 86-1 of the Wetlands Protection Act, Horsley Witten Group Letter dated April 5, 2018 and DEP Wetlands Change Mapping.

**(Continued from 3/15/2018)**

Chm. Gray explained the matter was continued because there was a question at the previous hearing as to whether the applicant had applied to the Zoning Board of Appeals. He asked whether that's been done. Attorney Christopher Kirrane stated it has been done.

Jack Landers Cauley addressed the board. He introduced Christopher Kirrane and property owners, William and Beth Russell. Mr. Landers Cauley discussed the layout of the property and the Resource Areas that are located on the property. He described the proposed project and discussed the increase in the footprint of the house, the floodplain requirements, nitrogen calculations and mitigation for some of the impacts of the proposed design.

Board Comment – Mr. Szwed opened a brief discussion regarding the proposed planting area as part of the proposed mitigation.

Mr. Haines asked for the depth of the ground water at this site. Mr. Landers Cauley stated he believes it's 2.3 feet.

Agent Comment – Mr. Haines stated he checked and the applicant has applied for a Special Permit with the ZBA. He stated the Commission has received architectural plans which show the home being elevated above the V Zone elevation. The applicant also provided a planting plan as requested at the previous meeting. Mr. Haines stated some of the proposed plants may not be suitable for that area. He is happy to work with the applicant to ensure proper plants are selected. Mr. Haines noted the applicant is currently working with the Board of Health regarding the nitrogen calculations. The driveway is currently gravel. If the Commission wishes for it to remain permeable and help reduce some of the nitrogen load, the Commission may condition the Order to reflect that. Mr. Haines noted the plan does not identify a dry well location which will be a required condition.

Mr. Haines opened a brief discussion regarding the construction of the proposed pool.

Chm. Gray made note that the saltmarsh isn't properly identified on the plan. Mr. Haines stated the plan will need to be revised.

Mr. Berman opened a brief discussion regarding the existing concrete slab.

Public Comment – Attorney Alexander Joyce, representing the direct abutters, addressed the board. He stated in the fall, the applicant obtained a permit from the Zoning Board of Appeals to winterize and expand the existing seasonal cottage on the property to make it year-round use. He discussed the proposed septic system and the need for a Variance.

Mr. Joyce introduced abutter Jeff Lau. Mr. Lau discussed his opposition of the project. He submitted before and after renderings to illustrate potential impacts to the Resource Area should this project be approved. Chm. Gray explained most of this project is in a Wetland Resource Area called a Flood Zone. He stated it's the only Wetland Resource Area that the state gives no performance standards on. In a project such as this, the applicant has to prove that they're in compliance with the State Building Code and FEMA regulations. He stated if the land was vacant, they'd have more authority on the placement of the structure in order to meet the fifty-foot setback requirements. With a raze and rebuild, the fifty-foot setback does not apply. Attorney Joyce argued that this project is not a raze and rebuild. He stated the house is being relocated, expanding and elevated. He feels a precedent will be set if the project is approved. Chm. Gray argued that because the proposed structure is no closer to the Resource Area than what's existing, the Commission's hands are tied when it comes to enforcing the fifty-foot setback requirement. Attorney Joyce submitted the Wetlands Program Policy 86-1 of the Wetlands Protection Act for the record.

Amy Ball of Horsley Witten Group spoke on behalf of the abutter's. She submitted a letter for the record which discusses concerns she has with the submitted plan; i.e.; outdated information, incorrect identification of Resource Areas, lack of information regarding dry wells etc. She expressed runoff concerns with the presence of a larger house. Additional concerns are the lack of specifications provided for the proposed in-ground swimming pool and the plants selected as part of the proposed planting plan. Ms. Ball suggested the Commission continue the matter.

Attorney Kirrane asked that the Commission disregard zoning issues raised by the abutter. Mr. Landers Cauley stated information regarding the dry wells will be provided and Mr. Cook will work with the agent to ensure the plant selection is modified appropriately. Mr. Landers Cauley stated the proposed house will be elevated to the height required by FEMA regulations. He stated he doesn't want the proposed pool to delay this project. The applicant can always seek to amend the permit at a later date if they can design a pool to meet performance standards. Attorney Kirrane stated they are willing to address the dry well and planting concerns. He feels the proposed project is a substantial improvement over what's existing and noted the positive aspects of the project.

Chm. Gray opened a discussion regarding the Wetlands Program Policy 86-1 of the Wetlands Protection Act submitted by Attorney Joyce. He asked Mr. Landers Cauley if any of the components of the septic system; i.e., the septic tank or the leaching facility (SAS) will be located within a Coastal Bank, a Coastal Beach, a Coastal Dune or a saltmarsh. Mr. Landers Cauley replied no. Chm. Gray asked for the distance of the SAS. Mr. Landers Cauley stated the distance is sixty-three feet. Chm. Gray asked Attorney Joyce how 86-1 applies in this case. Attorney Joyce discussed the Board of Health bylaw regulations and its setback requirements. Chm. Gray stated the Commission doesn't have authority to act on behalf of the Board of the Health. Attorney Joyce would like the Order to be conditioned that the project must receive a Variance from the Board of Health prior to any commencement of work. Mr. Haines read one of the Commission's standard conditions that addresses Mr. Joyce's concern. Mr. Landers Cauley provided a brief history regarding the existing septic system and discussed the benefits of the proposed system. A discussion ensued.

Chm. Gray opened a brief discussion regarding the possibility of pivoting the house.

Ms. Weston discussed the Commission's history with applying the fifty-foot setback regulation on a raze and rebuild.

A brief discussion transpired regarding the homeowner's decision to raze and rebuild vs. renovating the existing home in order to bring it up to current standards.

Mr. Ligor suggested eliminating the existing cottage to gain additional space.



Further discussion transpired regarding the existing septic system and possibly eliminating the pool to create additional space.

The abutter at 160 Jefferson Road discussed impacts to his view of the water if the proposed house is shifted or pivoted. He disagrees with the suggestion to tear down the existing cottage on the site.

Ms. Ball provided closing comments.

Because the Commission requires additional information regarding the proposed pool, the planting selection, the dry wells, the nitrogen load, the concrete pad and a revised plan defining the Resource Areas, the Commission continued the matter to April 19, 2018.

A brief discussion transpired regarding eliminating lawn and increasing the number of plantings.

**11) Tahanto Associates, Inc.**

File # SE7-1999

Representative: Design Consultants, Inc.

0 Tahanto Road, Pocasset

To demolish an existing 30' wooden pedestrian bridge and replace it with a 35' aluminum pedestrian bridge within a V Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record, copy of Chapter 91 License, updated Construction Methodology, stamped Structural Civil Engineering Plans and DEP Wetlands Change Mapping.

**(Continued to 4/19/18)**

**Other Business:**

- Vote excused absent members, if necessary – **Mr. Holmes moved, Ms. Leduc seconded to excuse Rob Palumbo.** With no discussion, the motion carried. 6-0-0.

- Acceptance of Previous Meeting Minutes – Chm. Gray entertained a motion to approve the minutes of the January 18, 2018 meeting. **Ms. Leduc moved, Mr. Ligor seconded to approve the minutes of the January 18, 2018 meeting.** With no discussion, the motion carried. 6-0-0.

- Report of the Conservation Agent – Mr. Haines announced there's a new Wetland's Circuit Rider. Her name is Kimberly Roth. She will be available to provide guidance on the Wetland's Protection Act.

Chm. Gray asked for a status update on the clean up operations on Phillips Road. Mr. Haines stated Phillips Road is nearly complete but there are several properties on Wings Neck and Fisher Road still in progress. The emergency declaration has been extended until May 2<sup>nd</sup> for projects that were in the pipeline as of the close of business on April 2<sup>nd</sup>. Mr. Haines stated numerous projects came in on April 2<sup>nd</sup>.

A brief discussion transpired regarding the Crab Rock Way beach access project.

- Public Comment Period on Non-Agenda Items – None.
- Questions and Answers re: M.G.L. Chapter 131 §40 and 310 CMR 10.00-10.99 – None.
- Questions and Answers re: Town of Bourne Wetland Protection Bylaw (Article 3.7) and BWR 1.00-1.16 – None.

## **II. Adjournment**

**Ms. Leduc moved, Mr. Holmes seconded to adjourn.** With no discussion, the motion carried.6-0-0. The meeting adjourned at 10:40 PM.

Minutes submitted by: Carol Mitchell