

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

September 1, 2016

I. Call to order

Chairman Robert M. Gray, called to order the meeting of the Conservation Commission at 7:00 PM on September 1, 2016. Chm. Gray explained all of the reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection By-law.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rule; which allows the applicant / representative five minutes to make a presentation to the commission members, commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. Additionally, he asked for all cell phones to be placed on vibrate and asked if anyone in the audience was audio or video recording the meeting to acknowledge that.

II. Members Present: Chm. Robert M. Gray, Thomas Ligor, Betsey Kiebala, Melvin P. Holmes, Susan Weston and Paul Szwed.

Excused Members – Rob Palumbo

Also Present: Sam Haines, Elise Leduc, Carol Mitchell, Jim Mulvey, Jared MacDonald, Joseph Federico Jr., Mrs. Federico, Steve Poole, Gary Moore and Grace C. Moore.

Request for Determination of Applicability:

1) Jared MacDonald

Jared MacDonald– Representative
File Number CC16-45
809 Scenic Highway, Bourne

Demolition of an existing porch and construction of a new expanded covered porch within Riverfront Area and 100 feet of a Wetland Resource Area.

Jared MacDonald addressed the board. He stated the proposed project is an expansion of the existing porch approximately 8 feet on each side; going from a small front porch to a full farmers porch.

Agent Comment – Mr. Haines performed a site visit on August 9, 2016. Mr. Haines noted that the construction of the porch had already started; however, the applicant stopped work once he was notified that he needed to file with the Commission. The work is located approximately 90 feet from the Bank, is over 100 feet from the water, is 175 feet from the Herring River (across the street) and is located within an ACEC and the Bournedale Overlay District. The proposed work will be performed on an existing landscape area and will be supported by sonotube footings. Mr. Haines does not feel the project presents a risk to either of the Resource Areas; but discussed an exemption that is open for interpretation and may apply under the Wetland Protection Act. It talks about accessory structures outside 50 feet of the mean high water line in a River Front Area or Bank; but doesn't include covered porches.

Board Comment – None.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Holmes moved and Mr. Ligor seconded a Negative Two Determination.** The motion carried unanimously. 6-0-0.

Chm. Gray briefly explained the Determination to the applicant.

In an effort to abide by the timeline listed on the Agenda, Chm. Gray deferred the Notices of Intent and moved to the Other Business section of the Agenda.

Other Business:

- Approval of Minutes - Chm. Gray entertained a motion to approve the minutes of the August 18, 2016 meeting. **Ms. Kiebalá moved and Mr. Holmes seconded to approve, as written, the minutes of the August 18, 2016 meeting.** With no discussion, the motion carried. 6-0-0.

- Report of the Conservation Agent – Mr. Haines discussed correspondence he received from Attorney Jerry Condon who wrote a letter to inform the Commission that he believes erroneous information was presented to the Commission by the representatives for 90 Circuit Avenue, on May 19, 2015. At that meeting, the board discussed the location of a particular tree; which at the time, was believed to be located on the abutter's property. In the attorney's opinion, the tree is located on the project property. Attorney Condon wants this noted for the record and the file. A brief discussion ensued. No board action is required.

Notice of Intent:

1) Joseph Federico Jr.

Steve Poole – Representative; Lakeview Engineering Associates

DEP File Number SE7-1955

1 Captains Row, Bourne

Replacing stones on existing jetties within a VE Flood Zone and within a Wetland Resource Area.

Mr. Poole addressed the board and discussed the proposed project. Mr. Federico would like to take stones that have fallen from the two stone jetties and dry fit them back onto the jetties. A small excavator with an attached claw will be used to pick up the rocks and place them back onto the jetty. The site will be accessed from the Federico's driveway and by an existing pathway that goes down to the beach. Mr. Poole referred to photographs he submitted to describe the proposed work. An erosion control barrier will be used during low tide and will be removed daily.

Board Comment – Mr. Ligor expressed concern with using any type of machinery. A brief discussion transpired pertaining to the type of equipment that will be used, the size of the rocks that will be lifted and the possibility of the equipment leaking oil or hydraulic fluid from the equipment.

Ms. Leduc asked if Mr. Federico will be performing the proposed work himself and whether or not he has built a jetty before. Mr. Federico stated he will be performing the work himself and that he has built walls before but not in the water. Ms. Leduc expressed concern that the repair work will not be able to withstand the force of the water. Mr. Federico stated he does not want to rebuild the jetty, he simply wants to dry fit many of the rocks that have washed out over time. Ms. Leduc opened a brief discussion with regard to the erosion control barrier that will be used.

Mr. Ligor reiterated his concern concerning the possibility that the excavator could leak fluid at the proposed site. Additionally, he discussed the possibility of disturbing vegetation and/or wildlife. A brief discussion ensued.

Chm. Gray inquired as to the status of obtaining a Chapter 91 license. Mr. Poole stated the previous agent recommended the applicant first obtain an Order of Conditions and then apply for a Chapter 91 permit.

Mr. Holmes asked if the applicant has any knowledge as to how old the jetties are. Mr. Federico stated they are listed on the deed and appear to have been built sometime in the 1940's. Chm. Gray stated they were most likely constructed prior to the Wetlands Protection Act. Once the Order of Conditions has been given and the Chapter 91 license obtained, periodic maintenance of the structure will be required. A discussion ensued.

Mr. Ligor asked for clarification with regard to how the stones will be secured. Mr. Federico stated they will be dry fit, no cement will be used.

Ms. Leduc asked if the low tide line on the plan is approximate. Mr. Poole stated the surveyor didn't topo the low tide line. Ms. Leduc asked if the applicant will forego repairing any part of the jetty that may be in the water. Mr. Federico stated yes, he will not complete any repairs in the water.

Agent Comment – Mr. Haines clarified that the intent of the proposed project is to work with the rocks in the immediate vicinity of the jetty. He performed a site inspection on August 23, 2016, as previously discussed, the DEP had two comments with regard to the need of a Chapter 91 license and coordination with the U.S. Army Corps of Engineers. There is active work being performed on the property along the top of the Coastal Bank under an Order of Conditions; SE7-1874. Mr. Haines stated erosion controls need to be updated until the grass has stabilized. The path leading down to the beach is approximately 6-8 feet wide with Cedar Trees on either side. He suggested adding an additional Condition; should any trees need to be removed, replacing it with in-kind Cedar Trees will be required. Mr. Haines expressed concern with the proposed silt fence/anchors at the mean low water mark. He clarified that the barrier will need to be completely removed with each tide. Mr. Haines suggested requiring the use of spill controls to address concerns with regard to leaking fluid from the equipment. He also suggested stockpiling erosion controls on site.

Mr. Szwed asked for clarification of the proposed work site. Mr. Poole stated the work will be performed between the two jetties.

Public Comment – None.

Chm. Gray entertained a motion to close the hearing. **Ms. Kieballa moved and Ms. Weston seconded to close the hearing.** With no discussion, the motion carried. 6-0-0.

A brief discussion transpired pertaining to By-law Special Condition 12.

Mr. Haines - Draft Order of Conditions: All General Conditions, Special Conditions pursuant to M.G.L. Chapter 131, Section 40, numbers 1-3, 9, 12, 13, 16, 17, 19, 20, 21,

22, 24 and Special Conditions pursuant to the Town By-law, numbers 8, 9, and 14; with four additional Special Conditions; (1) replanting in-kind native vegetation should any be removed, (2) erosion control stockpiled on site in the case of ground disturbance, (3) spill controls to be kept with the equipment at all times and (4) coordination with Army Corps. required and provide evidence to the Commission.

Mr. Ligor moved and Ms. Weston seconded to move the Draft Order of Conditions to Final Order of Conditions. The motion carried unanimously. 6-0-0.

Request for Extension Permit for Order of Conditions

1) Noreen P. Michienzi Trust
Holmes and McGrath, Inc.
DEP File Number SE7-1865
1 and 11 Trowbridge Road, Bourne

Construction and maintenance to an existing commercial building, and to reconfigure and improve existing parking lot.

Agent Comment - Mr. Haines stated the Order will expire on September 20, 2016. The applicant is requesting a one year extension. The applicant would like to reconfigure two parking spaces to more safely access their parking lot. He feels this is minor and will most likely work with the applicant administratively.

Board Comment – Ms. Kiebala opened a brief discussion pertaining to this request and the applicant’s request for an easement. Chm. Gray stated the easement request is a separate issue and has no bearing on this request.

Ms. Weston moved and Mr. Holmes seconded to grant the extension for one year. With no discussion, the motion carried. 6-0-0.

Request for Certificate of Compliance

1) Agrillo Family Trust
Grace C. Moore (Trustee)
DEP File Number SE7-1740
23 Quamhasset Road, Bourne

Construct a combination fixed and float pier within a Wetland Resource Area.

Agent Comment – A site inspection was performed. Mr. Haines stated the only deviation he observed was the use of 3” steel pilings instead of 2.5” as shown. He recommends issuing a certificate.

Board Comment – None.

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

2) Paul Weiner

DEP File Number SE7-1844

460 Wings Neck Road, Pocasset

Vegetation Removal for lawn, vista pruning, and clear a new path for beach access within AE & VE Flood Zones and within a Wetland Resource Area and the 100 foot buffer.

Agent Comment – Mr. Haines performed a site visit. The landscaping appeared to be as shown on the approved plan. He recommends issuing a certificate.

Board Comment – None.

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

3) Maria Hickey Landscapes

DEP File Number SE7-1270

160 Wings Neck Road

Construct a single family home with attached garage, guest house, septic system, in-ground pool, gazebo and associated utilities and grading.

Agent Comment – A site visit was performed. Mr. Haines stated a COC was originally denied in 2003; the plan showed a 30’ vegetated setback that was not complied with at

that time. The applicant has since planted with a mixture of native species; it appears that a substantial effort was made to become compliant. He recommends issuing a certificate.

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

- Vote – Excuse Absent Members – Chm. Gray entertained a motion to excuse absent members. **Mr. Ligor moved to excuse Mr. Palumbo and Mr. Holmes seconded.** With no discussion, the motion carried. 6-0-0.

- Any other business that may legally come before the Commission –

Mr. Haines briefly discussed an administrative approval of a hazardous tree removal at 2 Jefferson Road. Additionally, he discussed his meeting with the Army Corps., regarding the Gray Gables saltmarsh restoration. A discussion ensued.

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

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

III. Adjournment

Chm. Gray entertained a motion to adjourn. **Mr. Kiebala moved to adjourn. Ms. Weston seconded.** With no discussion, the motion carried. 6-0-0. The meeting adjourned at 7:47 PM.

Minutes submitted by: Carol Mitchell