

## **CONSERVATION COMMISSION MINUTES**

**Thursday, April 17, 2014 ~ 7 pm ~ Lower Conference Room, Bourne Town Hall**

Members present: Chm. Bob Gray, Betsy Kiebala, Rob Palumbo, Peter Holmes, and alternate member Thomas Ligor.

Members excused: V. Chm. Martha Craig Rheinhardt, Paul Lelito and Susan Weston

**Note this meeting is being televised and recorded. If anyone in the audience is recording or videotaping, they need to acknowledge such at this time – Michael Rausch recording tonight.**

Chm. Gray called meeting to order at 7:00 pm and explained the Commission's procedure pursuant to the Wetland Protection Act M.G.L. c. 131, s. 40 and the Bourne Wetland Protection Bylaw Article 3.7.

Note: Chm. Gray addresses the audience in regards to recording a public hearing. If anyone wishes to record a public meeting, they are free to do so, however, it must be known by the Board and the public. All cell phones are to be placed on vibrate or turned off during the meeting.

### **7:00) Requests for Determination of Applicability:**

<b><u>Applicant:</u></b>	Kenneth Vona
<b><u>File Number:</u></b>	CC14-11
<b><u>Representative:</u></b>	Barbara Frappier, Warwick & Associates, Inc.
<b><u>Project Address:</u></b>	34 Baxendale Road, Cataumet
<b><u>Proposed Project:</u></b>	Change existing licensed seasonal wooden dock to aluminum dock and reconfigure end float within an AE Flood Zone and within a Wetland Resource Area

Chm. Gray advised members in the audience that he has a common client with Warwick & Associates, Inc. through his company and would recuse himself from discussion and vote should there be any issue. No issue.

Ms. Frappier representing – applicant seeks to replace the wooden dock with an aluminum ramp with a composite float system. He seeks a minor modification to reconfigure the shape of the float which doesn't increase the overall footprint of the project. The composite is for durability and it is less disruptive to the actual land under the ocean. The open grating is aluminum.

Brendan Mullaney – this is a structure legally licensed in the same basic footprint which the DEP will allow, he feels it is not a major deal to push the pier out slightly further. The project seems like a modern version of most of the seasonal piers in town where it is easier to put in and take

out. The only issue is ½ ft less water with reconfiguration, not a huge deal but something to just consider.

No further board comment. No public comment.

Holmes moved and seconded by Kiebala a Negative Two Determination. Unanimous vote.

<b><u>Applicant:</u></b>	Darren Wesson
<b><u>File Number:</u></b>	CC14-12
<b><u>Representative:</u></b>	SAME
<b><u>Project Address:</u></b>	56 Fairview Road
<b><u>Proposed Project:</u></b>	Construct an addition and landing within an AE Flood Zone and within 100 feet of a Wetland Resource Area

Mr. Wesson representing – applicant is seeking to construct an addition and landing going down on each side on the ocean which involves footings as well. Applicant is seeking to square off house for a storage unit.

Brendan Mullaney – this is a fairly small project. The added footings and landing is in the flood zone and is not closer to resource that exists. No concerns with the project.

No board comment. No public comment.

Kiebala moved and seconded by Holmes a Negative Two Determination. Unanimous vote.

<b><u>Applicant:</u></b>	Elaine Balas
<b><u>File Number:</u></b>	CC14-13
<b><u>Representative:</u></b>	Barbara Frappier, Warwick & Associates, Inc.
<b><u>Project Address:</u></b>	52 Tide Way Road, Pocasset
<b><u>Proposed Project:</u></b>	Raze and rebuild existing garage and expand deck, including all associated grading, landscaping, and other appurtenances within an AE Flood Zone, within 100 feet of a Wetland Resource Area, and within the 200 foot Riverfront Area

Chm. Gray advised members in the audience that he has a common client with Warwick & Associates, Inc. through his company and would recuse himself from discussion and vote should there be any issue. No issue.

Ms. Frappier representing – The square footage will be appended to the deck and the deck will be widened. Applicant is reducing garage for the deck to be expanded.

Brendan Mullaney – because the proposed project is in the flood zone, it necessitates filing. It is a relatively flat lot. The project meets all criteria. No concerns with the project.

No board comment. No public comment.

Palumbo moved and seconded by Kiebala a Negative Two Determination. Unanimous vote.

**7:10) Notices of Intent:**

<b><u>Applicant:</u></b>	William & Mary Ann Schultz Revocable Living Trust
<b><u>DEP File Number:</u></b>	SE7-1888
<b><u>Representative:</u></b>	G.A.F. Engineering, Inc.
<b><u>Project Address:</u></b>	54 Fairview Road, Pocasset
<b><u>Proposed Project:</u></b>	Remove and reconstruct existing concrete seawall, patio, and retaining walls within AE and VE Flood Zones, within a Wetland Resource Area, and within 100 feet of a Wetland Resource Area

**Continued from March 20, 2014**

Bill Madden representing – applicant seeking to replace existing seawall and other structures. Some footings that were added over time as well as buttresses. Applicant is proposing to remove all additional structures, concrete buttresses, stairs and footing (apron) in front of the wall. The patio is constructed and tiered to the back yard. Applicant is replacing the cobble on the side wing walls. Applicant submitted a Chapter 91 license with the DEP. Applicant seeks to eliminate concrete stairs and use wood stairs. Applicant would like to use Brazilian ipe wood vs. pressure treated or concrete.

Ligor – asked how they are proposing to break up the concrete. Applicant will use a hydraulic splitter or a jack hammer. There is limited access and will start at the seaward side but will leave it to the contractor. The house was built in 1960.

Brendan Mullaney – the wall is in serious disrepair. Most of the shore in this area is armored. The wall and structure has existed for a long time, something definitely needs to be done. He asked the applicant what kind of machine would be used down there. A small kabota and/or a bobcat to be used to assist by bucket and get into a 10 wheel dump. The DEP came with some comments (Chapter 91 license which has been addressed, general permit category 1 – didn't speak to anyone yet).

Brendan Mullaney – suggested the applicant speak to someone and get in writing as soon as possible to get in motion. There was a diagram of a little dam for erosion control. The applicant said depending on the contractor, they would excavate for the footing. Methodology can be incorporated into the Notice of Intent, but it is on the plans.

Ms. Frappier – requested applicant do research on the ipe wood. There is much destruction for in the rainforest to obtain the ipe.

Holmes moved and seconded by Palumbo to close the public hearing. Unanimous vote.

Brendan Mullaney – Draft Order of Conditions: General Conditions pursuant to MGL, Chapter 131, Section 140 and Special Conditions 1,2,3,5,9,10,12-13 16-24 and 16-24 Special Conditions to the Bylaw 7,8,9 and add Special Condition 20-24 to continue in perpetuity.

Holmes moved and seconded by Kiebala to move Draft Notice of Intent to Final Notice of Intent. Unanimous vote.

**Applicant:** Richard & Janis Shepherd  
**DEP File Number:** SE7-  
**Representative:** Bracken Engineering, Inc.  
**Project Address:** 14 Cannonicus Avenue, Pocasset  
**Proposed Project:** Raze and rebuild existing single family dwelling including all site work, utilities, and appurtenances within an AE Flood Zone  
**Hearing Under State Act Only**

Continued to the next meeting per request of the applicant.

**Applicant:** David W. Crane Living Trust  
**DEP File Number:** SE7-  
**Representative:** Bracken Engineering, Inc.  
**Project Address:** 250 Shore Road, Bourne  
**Proposed Project:** Construct a 1500 square foot addition and associated site driveway work within an AE Flood Zone  
**Hearing Under State Act Only**

Continued to the next meeting per request of the applicant.

**Applicant:** Ellen Burns  
**DEP File Number:** SE7-  
**Representative:** Barbara Frappier, Warwick & Associates, Inc.  
**Project Address:** 66 Arlington Drive, Buzzards Bay  
**Proposed Project:** Install a seasonal pier, ramp, and floats within an AE Flood Zone and within a Wetland Resource Area

Chm. Gray advised members in the audience that he has a common client with Warwick & Associates, Inc. through his company and would recuse himself from discussion and vote should there be any issue. No issue.

Ms. Frappier – Applicant seeks to add a seasonal dock. This will be the same type and the same helical tie down as the dock discussed earlier. She has given a shellfish survey done by Jack Vaccaro as part of the application and it was concluded not enough shellfish to meet your definition of substantial shellfish habitat. There is no DEP number and no Natural Heritage response due to sending to the wrong address.

Chm. Gray read Harbormaster Tim Mullen’s letter into the record. The shellfish resources for construction of a seasonal deck as noted by DMF is low and rarely used as better harvest locations exist in the area. He doesn’t expect to see populations increase.

Brendan Mullaney – the velocity zone is one issue that precludes most docks from being built but that is not the case here, and the provision of Natural Heritage is another but the board chose to defer to the State agency to determine whether project would have an adverse effect based on their review. Other than that, the proposed dock meets all applicable regulations. This hearing will have to be continued since there is no DEP number or NHESP comment.

Mr. Mulvey – does the harbor master have to permit the float? The board answered yes which is an annual occurrence.

Ligor moved and seconded by Holmes to continue hearing to 5/1/14 for DEP and Mass. Natural Heritage. Unanimous vote.

<b><u>Applicant:</u></b>	Dan Maurice & Jim Rossignol
<b><u>DEP File Number:</u></b>	SE7-1889
<b><u>Representative:</u></b>	SAME
<b><u>Project Address:</u></b>	550’ west of Toby’s Island, 4300’ southeast of Mashnee Island, and 1700’ northwest of the mouth of the Pocasset River, Monument Beach
<b><u>Proposed Project:</u></b>	Install and operate a commercial aquaculture operation within a VE Flood Zone and within a Wetland Resource Area

Mr. Maurice representing – this is a similar agriculture proposal as Mr. Ross who was approved at a nearby location. They plan to grow Atlantic quahogs and oysters. Natural Heritage had no issue. Applicant is hoping to assist in denitrification of the waters in Bourne.

Brendan Mullaney – Mr. Ross was the first awarded this program in Bourne. The Selectmen granted authority and is subject to conditions adopted through the Selectmen. This will have to be surveyed by DMF and give a formal report. The Army Corp. of Engineers permit will be required. This project has met all criteria at this stage, but applicant will still have to go to both State and Federal agencies.

Selectmen Meier – the Selectmen endorsed this application and want to see more of this type of thing in town. They have nothing but praise for projects like these.

Palumbo moved and seconded by Holmes to close the public hearing. Unanimous vote.

Brendan Mullaney – Draft Order of Conditions: General Conditions pursuant to MGL, Chapter 131, Section 140 and Special Conditions 1,2,3,12,13,18-22 and 24, Special Condition ASC-1) Project is subject to all conditions, restrictions, and regulations as determined by applicable local, state, and federal authorities.

Palumbo moved and seconded by Kiebala to move Draft Notice of Intent to Final Notice of Intent. Unanimous vote.

**Certificates of Compliance :**

<b><u>Applicant:</u></b>	William & Evelyn Rhatigan
<b><u>DEP File Number:</u></b>	SE7- 1333
<b><u>Representative:</u></b>	Brett A. Sanidas, Esq.
<b><u>Project Address:</u></b>	165 Wings Neck Road, Pocasset
<b><u>Proposed Project:</u></b>	Perform renovations on existing dwelling and install a new Title V septic system within a VE Flood Zone and within 100 feet of a Wetland Resource Area

Brendan Mullaney – a site visit conducted and found to be compliant with orders that have been set by the board and recommends the board to grant.

Holmes moved and seconded by Kiebala to issue Certificate of Compliance. Unanimous vote.

<b><u>Applicant:</u></b>	Sean Burke
<b><u>DEP File Number:</u></b>	SE7-1451
<b><u>Representative:</u></b>	Stephen Doyle, Stephen Doyle and Assoc.
<b><u>Project Address:</u></b>	6 Long Pond Way, Cataumet
<b><u>Proposed Project:</u></b>	Construct a new dwelling, septic system, and appurtenances within 100 feet of wetland resource areas.

Brendan Mullaney – a site visit was conducted and found the project to be compliant with orders set and recommends the board to grant.

Holmes moved and seconded by Ligor to issue Certificate of Compliance. Unanimous vote.

<b><u>Applicant:</u></b>	Richard Prevett
<b><u>DEP File Number:</u></b>	SE7-1811

<b><u>Representative:</u></b>	SAME
<b><u>Project Address:</u></b>	829 Shore Road, Pocasset
<b><u>Proposed Project:</u></b>	Raze and rebuild single family dwelling, including landscaping, grading, utilities, and appurtenances within an AE Flood Zone, within 100 feet of a Wetland Resource Area and within the 200 foot Riverfront Area

Brendan Mullaney – a site visit was conducted and found the project to be compliant with orders set and recommends the board grant.

Kiebala moved and seconded by Holmes to issue Certificate of Compliance. Unanimous vote.

**Other Business:**

► Indian Trail / Coastal Bank Erosion, Sagamore Beach - Discussion and possible vote on use of town owned Conservation Land by private parties, or other action determined to be necessary. Discussed on Tuesday's meeting. Brendan said there is no discussion tonight but put on the agenda in case there was addition discussion.

► Open Meeting Law Complaint – review and discussion  
Brendan Mullaney – read the violation of Open Meeting Law complaint filed by Mr. Mulvey. The consensus of the board was to forward to Town Counsel. He discussed with the Town Clerk. He takes the blame for this situation. He wasn't aware that he could amend the agenda the day of the meeting but the Town Clerk informed him it is possible if an emergency arises. The discussion went on longer than it needed to. The Town Clerk asked to make sure members received copies of the updated open meeting guide. The Town Clerk also gave a list of classes on the Open Meeting law. If he can make one, Brendan Mullaney can attend to be more educated on how the Open Meeting Law works.

Kiebala – feels this wasn't a violation. There was no vote on the matter that night.

Ligor – he would characterize as a fact-finding discussion and not a deliberation.

Mr. Mulvey - tried to dissolve the discussion and suggested the board to only take information from the contractors. Then the board had a full deliberation. He filed as a violation.

Ligor – does not believe there was any violation

Chm. Gray – if we made a mistake we will find out and move forward.

► Vote – Excuse Absent Members, if necessary  
Ligor moved and seconded by Holmes to excuse absent members V. Chm. Martha Craig Rheinhardt, Paul Lelito and Susan Weston. Unanimous vote.

- ▶ Any other business that may legally come before the Commission
  - ▶ Report of the Conservation Agent
  - ▶ Questions and Answers re: MGL Chapter 131 §40 and 310 CMR 10.00-10.99
  - ▶ Questions and Answers re: Town of Bourne Wetland Protection Bylaw (Article 3.7) and BWR 1.00-1.16

### **Adjourn**

Palumbo moved and seconded by Holmes to adjourn. Meeting adjourned at 8:30 pm.  
Unanimous vote.

Respectfully submitted - Lisa Groezinger, sec.