

# Conservation Commission Meeting Minutes

Zoom Meeting Platform

January 20, 2022

## I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday January 20, 2022, held via Zoom Platform. Chm. Gray explained all reviews, unless otherwise stated are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131 § 40, Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. If the Act or the Bylaw don't mutually apply to the review, it will be indicated at the time of review which instrument of law they will be reviewed under.

Note: The meeting was being held via the Zoom platform, and was being recorded, as noted per the "Recording in Progress" icon that was displayed. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed, and other items not listed may be discussed due to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

**Members present:** Bob Gray, Greg Berman, Peter Holmes, Elise Leduc-Fleming, Thomas Ligor, Paul Szwed

**Excused members:** Rob Palumbo, Associate Member Steve Solbo

Others in attendance: Stephanie Fitch, Pam Alden, BVWILSF, Bryan Cordeiro, Amalia Gallo, Cyndy Hurley, Donald Jones, Mark Kononoski, Joe McGurl, "Patty", Jonathan Polloni, Joe Ray, Marisa Seifert, Debbie Sundman, Dexter T., Michael Turgeon, "Zoom User",

## Continuances:

Martin A. Raynor  
15 Bay Drive, Bourne  
*Continued to February 3, 2022*

Cape Club Building, Inc  
96 Megansett Road, Cataumet  
File Numbers SE7-2171 and SE7-2172  
*Both file numbers continued to February 3, 2022*

John Sweeney  
198 North Road, Pocasset

RECEIVED  
2022 FEB -7 PM 12:26  
TOWN CLERK BOURNE

*Continued to February 3, 2022*

**Abbreviated Notice of Resource Area Delineation**

1. Applicant: MassDOT Highway Division  
Address: Cape Cod Canal Area  
Representative: HNTB Corporation  
File Number: SE7-2181  
*Continued from January 6, 2022*

The proposed project is to develop transportation alternatives in Bourne and Sandwich, MA in the area of the Cape Cod Canal. Additionally, this project will consider alternatives for the Bourne and Sagamore Bridges, which are under the U.S. Army Corp. of Engineers stewardship and jurisdiction. The reason for filing this ANRAD is to aid in the development of preliminary design alternatives, and to formally establish the boundaries and types of Wetland Resource Areas within the project limits.

Materials Reviewed: Slideshow presentation

Mr. Mark Kononoski addresses the board, and requests that Wetland scientist, Ms. Marisa Seifert, to share the plan. Mr. Kononoski thanks the Commission for their time in reviewing the presentation. The agenda for the plan is reviewed. The program team involved with the program, as well as their respective roles in the program, are also reviewed. Mr. Kononoski notes the proposed projects involved in the program:

- Addressing the age of the Bourne and Sagamore Bridges
- Improvements to the roadway network approaching the Bridges
- Utility relocation, the extent of which is not known at this time

Mr. Kononoski then reviews the status of the program development, and the steps that have been taken thus far, iterating that the program is in still early stages of development. He then addresses some uncertainties of the program at the present time; no currently identified Federal Funding, no lead Federal Agency. With no Federal Agency currently involvement, there is limitation with initiation of the National Environmental Policy Act (NEPA) process. The NEPA process would involve various levels of documentation of potential environmental impacts. With these limitations in place, specifications regarding timeline of the program cannot be currently addressed. The Cape Cod Canal Transportation Study is then reviewed, as well as the recommendations made by the Major Rehabilitation and Evaluation Report (MRER), completed in 2019 and 2020, respectively. Mr. Kononoski mentions that a Field Survey, Wetland Delineation, Vertical Assessment, and Threatened and Endangered Species Habitat Assessment were completed, as well as a number of additional studies and data collection assessments. A preliminary draft Purpose and Needs Statement, including its importance to the NEPA process is discussed. Mr. Kononoski turns the presentation over to Ms. Marisa Seifert. Ms. Seifert reviews additional portions

of the plan specific to existing conditions and Wetland delineations. The components that were utilized in the conduction of the Delineation Report are discussed, and it was noted that the report was conducted in accordance of the Federal Wetland Delineation Manual. Results of the Delineation Report are reviewed. Ms. Seifert opens the discussion to questions.

Chm. Gray questions whether specific areas noted would be subject to the Town of Bourne Wetlands Protection Bylaw. Mr. Kononoski states that MassDOT is not subject to, and does not need to comply with municipal bylaws. Chm. Gray disagrees with that statement at this time. Chm. Gray requests confirmation whether the non-jurisdictional areas that are not covered under the Massachusetts Wetlands Protection Act are subject to Federal jurisdiction under Section 404. Mr. Michael Turgeon, another Wetland scientist involved in the program, responds with explanation that those decisions will need to be made on a case by case basis with the Army Corp. of Engineers. Chm. Gray appreciates the response.

*Member comment:* Ms. Leduc-Fleming questions whether the program will be far enough from the Canal that Coastal Banks and Marine Waters would not need to be discussed or delineated. Ms. Seifert responds, stating that Mean High Water of the Canal will be utilized in delineation, but in most other areas the program will not be close enough to those Resource Areas for them to be delineated. Mr. Turgeon adds that the boundary of the Canal will be established by elevation as opposed to delineation. Ms. Leduc-Fleming comments on the timeframe of when the Wetland delineation was completed, during April and July of 2020, and notes that the summer of 2020 was a severe drought. She cautions that there may be areas that were missed, or areas that may be larger than what were evaluated during the Wetland Delineation. She also comments that if approved, the timeline for the ANRAD may not line up with the timeline for the bridge. Mr. Kononoski appreciates the point made by Ms. Leduc-Fleming, and notes that the team would like to continue to collaborate with the Commission throughout project development. Mr. Ligor comments on the reference of Joint Base Cape Cod as its previous name, "Otis Air Force Base." Mr. Kononoski recognizes this error, and notes that it will be updated. Mr. Berman commends the presentation. He also recommends the potential for an independent review further down the road. Mr. Holmes commends the presentation as well. Chm. Gray questions whether there may be any depictions of Wetlands that were delineated, with flagging stations and layout of the Wetland vs. the Upland. Ms. Seifert shares the requested information on the screen. Chm. Gray requests clarification as to how the delineation was obtained. Ms. Seifert provides requested clarification. Chm. Gray states that due to the manner that the delineations were obtained, the result, in most cases, may be an overcompensation in the size of the delineated area. Chm. Gray questions whether the presenting team may be able to explain how the flagging stations were set, for the purpose of public understanding. Ms. Seifert reviews this process. Chm. Gray then requests confirmation that by the process of soil evaluation within both the Wetland and the Upland, hydrology would be able

to be evaluated, even without the presence of surface water. Ms. Seifert confirms this information is correct. Mr. Holmes questions the manner that vernal pools were obtained, if any were found during the delineation process. Mr. Kononoski states that the Vernal Pool Assessment was conducted independently during a Wildlife Habitat Assessment in the early spring. No additional member comment.

*Public comment:* None.

Mr. Kononoski again thanks the Commission for their time, and the understanding that this program will be a process.

With consent of the representative and the board, continued to March 3, 2022

**Extension Request:**

1. John and Ann Black  
Address: 388 Scraggy Neck Road, Cataumet  
Representative: Falmouth Engineering  
File Number: SE7-1914

New single-family dwelling.

Mr. Michael Borselli submitted a letter to the Commission with explanation as to why the applicant is requesting an extension. Ms. Fitch reviews the extension request, including when the initial Order of Conditions was issued (February 2015), an initial one year extension (February 2018), and a subsequent three year extension with an amended Order of Conditions (October and November 2018). Mr. Borselli notes in the letter that due to circumstances beyond the applicant's control, he has been unable to complete work on the proposed project, and is requesting an additional three year extension on the existing Order of Conditions. Ms. Fitch reviews a site visit that was done in November in 2018. She states that work, including restoration work, that were outlined in the amended plan has been completed on the property. Ms. Fitch does not believe the work to have any adverse impact on the Resource Areas, and notes that the work needs to begin on the proposed dwelling, pool, and driveway.

*Member comment:* Ms. Leduc-Fleming questions whether it would be more appropriate to grant the extension for one year as opposed to an additional three years. Mr. Holmes and Mr. Ligor agree with the suggestion. Chm. Gray questions whether any construction has begun on the dwelling. Ms. Fitch confirms there has not been any construction initiated. Mr. Ligor recommends compromise with two years, Mr. Holmes agrees. Mr. Berman agrees with the possibility of a one or two year extension, with the potential for a three year extension if necessary. Mr. Szwed states that a three year extension may be too long. Chm. Gray recommends the consideration of granting a two year extension.

Motion made by Mr. Ligor, and seconded by Mr. Holmes, to grant a two year extension. Ms. Leduc-Fleming suggests adding a condition that if no significant work is done by the end of the next extension that the applicant would need to refile for a new extension. Chm. Gray approves the request for additional condition. **Motion carries 6-0-0.**

2. Applicant: Stanley Davitoria  
Address: 10 Harbor Way, Pocasset  
Representative: Jonathan M. Polloni, Esq.  
File Number: SE7-1933  
*Continued from January 6, 2022*

Construction of a single-family home with associated site work and utilities within an AE Flood Zone.

3. Applicant Stanley Davitoria  
Address: 0 Lighthouse Lane, Pocasset  
Representative: Jonathan Polloni, Esq.  
File Number: SE7-1934

Installation of a septic system on 10 Harbor Way, with associated filtration for 0 Lighthouse Lane.

Atty. Jonathan Polloni addresses the board regarding applications for both 10 Harbor Way, Pocasset, and 0 Lighthouse Lane, Pocasset. He notes that he was previously unaware that the extension for 0 Lighthouse Lane needed to be submitted separately, and has since done so. He reviews the reasoning regarding the request for extension for both properties, the plans for the properties, and that the applicant is requesting a three year extension for both File Numbers. He states the previous litigation regarding the properties has been resolved. The applicant has obtained a building permit for the properties. Atty. Polloni also clarifies that there have been no changes to the previously approved plans under the original Order of Conditions.

*Member comment:* No member comment for either filing.

Motion made by Mr. Ligor, and second by Mrs. Leduc-Fleming to grant a three year extension for **10 Harbor Way, Pocasset. Motion carries 6-0-0.**

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Ligor to grant a three year extension for **0 Light House Lane, Pocasset. Motion carries 6-0-0.**

#### **Approval of Meeting Minutes:**

- December 16, 2021

Motion made by Mr. Holmes, and seconded by Mrs. Leduc-Fleming to approve meeting minutes. **Motion carries 6-0-0.**

- January 6, 2022  
Motion made by Mr. Szwed, and seconded by Mr. Ligor. **Motion carries 5-0-1.**

**Vote to Excuse Absent Members:**

- Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Ligor to excuse absent members. **Motion carries 6-0-0.**

**Report of the Conservation Commission:**

- Mr. Holmes opens discussion about a member of the board representing the Commission at the Sewer Commission. Discussion is opened among the members. Follow up regarding this matter will be discussed at a subsequent time.
- Chm. Gray briefly reviews the material for the February 3, 2022 meeting. Additional member discussion ensues, and is subsequently resolved.
- Mrs. Leduc-Fleming opens discussion to the Commission regarding the potential for putting up "Coastal Pine Barrens" signs. The board shows interest, and plans for carrying out the project are discussed.
- Ms. Fitch briefly reviews a violation update for 81 Philips Road.

**II. Adjournment**

Motion made by Mrs. Leduc-Fleming, seconded by Mr. Ligor to adjourn meeting.  
Motion carries 6-0-0.

Meeting adjourned at 8:30PM