

Town of Bourne
Conservation Commission
Meeting Minutes
Zoom Meeting Platform
February 17, 2022

TOWN CLERK BOURNE

2022 MAR -4 AM 10:41

RECEIVED

I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday February 17, 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, Rob Palumbo

Excused members: None.

Others in attendance: Stephanie Fitch, Jamie Bissonnette, Bradley Bertolo, Gail Donkin, William Donkin, John Ross, "Cara", Michael Kenny, George Seaver, Andrew Gorman, Robert Dewar, Bob Bishop, Diane, Reed-Hunt, Thomas O'Connor, Stacy Minihane, Tim Hashem, Donald Jones, Joe McGurl, Mark Dibb, Maureen York, Maureen Furzianti, "Bob", "Goyette", Ken Heisler, Curt Connors, Matina Heisler, Atty. Matt Watsky, "Christine's iPad", "Cyndy", John York, "LOAS Zoom Host", "mgalligan", "SB", "Kat's iPad", Emily Beal

Continuances:

Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
File Number: SE7-2172

Continued to March 3, 2022 hearing at the request of the applicant's representative

Chm. Gray recuses himself from the meeting for hearings 1-5 noted on the agenda. Mr. Palumbo steps in to lead the meeting.

Notice of Intent:

1. Applicant: Tim Hashem
Address: 191 Philips Road, Sagamore Beach
Representative: Zenith Consulting Engineers, LLC
File Number: SE7-2191

Upgrade of an existing septic system and construction of a deck and addition above on posts. This project is within an AE Flood Zone, and 100 feet of a Wetland Resource Area.

Mr. Jamie Bissonnette addresses the board, and announces the property owner, Mr. Tim Hashem, is in attendance with him. He requests to share his screen and reviews the proposed plan. He reviews the location of the proposed plan on the property. He notes the relation of the location of the work to the Resource Area. The work is proposed to be done on the southwesterly side of the house, with the Resource being on the northeasterly side of the house. Mr. Bissonnette discusses the type of system proposed to be installed; an advanced treatment micro-fast 0.5 unit, with a pump chamber, and a stone pipe and field system. The new system is proposed to be installed partially under the existing driveway. He reviews the plan to modify some of the proposed grading, as well as new proposed elevations. There is a new retaining wall included in the plan, proposed to be "a few feet" tall, and Mr. Bissonnette reviews the reasoning behind installing the proposed retaining wall. He opens the discussion to comments and questions.

Ms. Fitch comments that the proposed septic upgrade is a substantial improvement to the property. The concrete retaining wall was previously discussed at length with the applicant's representative. Ms. Fitch shares and reviews a photo of the existing conditions. She discusses that the area has already been altered, and reviews the language of the Coastal Manual regarding work in an altered area of barrier beach. She does not believe this project will cause further loss of the remaining function of the beach, and discussed this with both the Health Agent, and the engineer for the project. She offers the consideration of mitigation to the board to offset the work in the proposed plan. Ms. Fitch shares an additional photo, and identifies where the septic is proposed to go, as well as where the proposed deck is planned to be constructed. She also notes that there will not be an increase in the number of bedrooms in the dwelling.

Member comment: Mr. Szwed questions if there may be an opportunity to change some of the hard surfaces to assist with improvement in drainage. Mr. Tim Hashem, property owner, addresses the board. He states that it is being proposed to utilize either stone, or shell, or another permeable material for the driveway. He affirms that any asphalt that is removed will not be replaced with new asphalt. Mr. Ligor questions how much of the asphalt may be lost to the septic system. Mr. Hashem states that the asphalt will be by the garage area only. The remainder of the driveway will be a permeable material. Ms. Leduc-Fleming requests

clarification of the height of the retaining wall. Mr. Bissonnette shares a photo of the retaining wall, and reviews that the height is about 18 inches. He notes that the material that is proposed to be used inside of the retaining wall, underneath the deck, will be pervious material. Ms. Leduc-Fleming appreciates the explanation. Mr. Berman expresses that he had concern regarding the retaining wall, and appreciates the previous explanation. He appreciates the plan to remove some of the impervious driveway. He suggests a possibility to note the type of material that is proposed to be utilized for the driveway on the plan, if it is not already included in the plan. No additional member comment.

Public comment: None.

Motion made by Ms. Leduc-Fleming, and seconded by Mr. Holmes to close the hearing. **Motion carries 6-0-1. Hearing is closed.**

Draft Order of Conditions:

All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:

1, 2, 3, 4, 5, 7, 10, 11, 12, 14, 15, 18, 19, 27, 28

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

5, 6, 7, 9

Additional Special Conditions:

The driveway from the garage to the house must be of pervious material.

Motion made by Mr. Ligor, and seconded by Ms. Leduc-Fleming to move the Draft Order of Conditions to final. **Motion carries 6-0-1. Order of Conditions is issued.**

2. Applicant: 39 Philips Road, LLC
Address: 39 Philips Road, Sagamore Beach
Representative: JC Engineering, Inc.
File Number: SE7-2189

Coastal Dune restoration. This project is within 100 feet of a Wetland Resource Area, and within a V Flood Zone.

Mr. Brad Bertolo addresses the board, and shares his screen to review the plan. Mr. Bertolo discusses that this property was subject to an Order of Conditions in 2013. He briefly reviews the projects that were approved under that Order of Conditions. He shares photos of previous conditions from 2019, as well as current conditions from 2021. The proposed plan is to bring 300 yards of "beach

compatible sand” back into the area, in an attempt to restore the Coastal Dune. Temporary coir logs are being proposed at the base of the sand fill to assist in stabilizing the toe of the sand while the natural vegetation regenerates. Mr. Bertolo states that the coir envelopes will eventually decompose and erode away. Accessibility to the site is reviewed, and Mr. Bertolo mentions there is limited access for equipment on the site due to the extent of development on the site. Proposed accessibility via boat ramp and beach is discussed. Mr. Bertolo states a Chapter 91 license would not need to be obtained as the area of proposed project is above mean high water. He opens the discussion to comments and questions.

Member comment: Ms. Leduc-Fleming comments on a deteriorating coir envelope that was depicted in a previous photo that was shown. She questions if the parts that are exposed may be cut and removed to prevent them from becoming debris in a future storm. She also comments, and expresses concern regarding grain size of the sand proposed to be utilized in the project. She questions whether a sieve analysis has yet been completed. Mr. Bertolo states a sieve analysis has not yet been done. Ms. Leduc-Fleming recommends the possibility of performing this analysis prior to starting the project. She also expresses concern regarding the proposed plan to allow the coir logs to degrade and wash into the ocean. She suggests that if they are to be removed due to storm activity, that the applicant would be responsible for removing the debris. She comments regarding the access as well, questioning if the equipment proposed to be utilized would be capable of traversing the terrain. Mr. Bertolo states he will clarify the access point, as well as the terrain, but believes there is equipment available to them that would be sufficient. Expected time frame for the project to begin is briefly discussed. Ms. Fitch shares a photo of a possible access point. The terrain is discussed, and will be discussed further pending additional photos. Mr. Szwed comments regarding the access, stating additional details would be helpful. Mr. Palumbo comments regarding permission from abutters to travel in front of their homes to gain access to the property. Mr. Bertolo states that the property that would be utilized to gain access to the property in discussion is owned by the Town of Bourne. Ms. Fitch states that the Town of Bourne Select Board would need to grant a Temporary Construction Access Easement, which would be listed in the Special Conditions if the project is approved. Mr. Berman suggests the utilization of sand ramps during the project. He notes the sturdy drift fence is not noted on the cross-sections of the plan. He requests confirmation of the material used for the fiber rolls. Mr. Bertolo responds, stating the material is biodegradable. Mr. Berman expresses concern regarding the location of the fiber rolls in a V Zone, and recommends having a tagging system in place on the rolls in case they are dislodged. No additional member comment.

Public comment: None.

Continued to March 3, 2022 with the consent of the board and the representative.

3. Applicant: Thomas P. and Diane O'Connor

Address: 9R Main Street, Buzzards Bay
Representative: JC Engineering, Inc.
File Number: SE7-2188

Construction of a two-family dwelling within an AE Flood Zone, and within 100 feet of a Wetland Resource Area.

Mr. Brad Bertolo addresses the board and shares his screen. He reviews the plan, as well as the reasoning for continuance from the last meeting. A Certificate of Compliance was requested for the property as well. Mr. Bertolo notes that the property owner has been working with multiple Conservation Agents. He states that the property owner was told by a previous Conservation Agent that it was "okay" to put the crushed stone in the current location on the property. This matter was discussed at the last meeting and brought up as a concern of some board members. Mr. Bertolo defers the decision to the board regarding permission of whether or not to leave the crushed stone. He reviews potential benefits of leaving the crushed stone. There is a catch basin being proposed to collect driveway runoff. Additional proposed means of collecting surface water runoff are discussed.

Mr. Palumbo requests clarification whether there were any changes made to the current plan. Mr. Bertolo confirms that no changes have been made to the plans.

Ms. Fitch reviews the former Order of Conditions and Certificate of Compliance for this property. She opens the discussion to the Commission regarding whether the secondary Coastal Bank noted on the previous plan would presently be considered as a Resource Area.

Member comment: Ms. Leduc-Fleming questions if the plan that was approved under the previous Order of Conditions included the secondary Coastal Bank. She adds that if it is on the previously approved plan, it would count as a Resource Area. Ms. Fitch confirms that plan included the secondary Coastal Bank. Mr. Berman comments that there would not be much room to work with on the property if the aforementioned information applies. Mr. Bertolo comments that the site was previously developed. Discussion ensues. Ms. Fitch shares the previously approved plan as well as the Special Condition that states: "All new habitable buildings, and accessories there to, should be set back at least 50 feet from any Wetland Resource Area, as per Article 3.7 of the Town of Bourne Wetlands Protection Bylaws, unless the Commission has specifically approved a lesser setback distance." The Top of Coastal Bank is noted on the previously approved plan as well. Discussion continues. Mr. Bertolo believes that adding the proposed dwelling would be an overall benefit to the area, due to the fact that the area will be stabilized, and surface water runoff will be controlled with the proposed drainage. Mr. Berman requests clarification regarding the Special Condition that was discussed, stating that the applicant would not be permitted to do anything less than 50 feet from the Wetland Resource Area, unless permission

is granted by the Commission to do so. Mr. Palumbo provides clarification, confirming Mr. Berman's comment that the Commission would be able to permit construction if they elect to do so. No additional member comment.

Public comment: None.

Motion made by Mr. Holmes, and seconded by Mr. Ligor to close the hearing.
Motion carries 6-0-1. Hearing is closed.

Draft Order of Conditions:

All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:

1, 2, 3, 4, 7, 9, 10, 12, 14, 15, 16, 18, 19, 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. Holmes, and seconded by Mr. Ligor to move the Draft Order of Conditions to final. **Motion carries 5-1-1. Order of Conditions is issued.**

4. Applicant: John and Colleen Mitchell
Address: 217 Presidents Road, Gray Gables
Representative: Bracken Engineering, Inc.
File Number: SE7-2190

Maintenance and stabilization of an existing granite bulkhead. This project is within a V Flood Zone, and within 100 feet of a Wetland Resource Area.

Mr. Rob Dewar addresses the board, shares his screen, and reviews the plan. He describes the location of the proposed project, as well as the history of the property. Photos are reviewed, and depict existing fill washing away from the bulkhead, causing a sink hole. Mr. Dewar comments that the bulkhead is destabilizing. He reviews the details of how the proposed plan will be carried out. A 20 foot temporary access ramp is proposed to be installed for the duration of the project that may cause some impact to some natural areas. Any areas that are impacted by the temporary ramp are proposed to be restored. He opens the discussion to questions or concerns.

Ms. Fitch confirms a site visit was performed. She believes this is a straightforward project proposed to be done on an existing coastal engineering structure. The sink holes are becoming hazardous. She notes that this property was before the Commission in 2020 for invasive species management. She believes the replanting of native shrubs that may be damaged during construction is the most important item of this project.

Member comment: Mr. Ligor agrees that any native plantings should be replanted. Mrs. Leduc-Fleming notes that some of the stones are bowing in. She questions whether there will need to be support provided to the wall during construction. Mr. Dewar responds, stating that that is something that would need to be discovered during excavation. A back up plan discussed in the event that the wall does start to collapse. Mr. Szwed requests clarification regarding the work being done on the granite blocks, confirming that the work is being proposed to be done from the interior of the wall, and not the exterior. Mr. Dewar confirms all work is proposed to be done from the interior of the wall. Mr. Berman comments that he would prefer to see the structure slope down to a revetment instead of a bulkhead, but has no additional questions.

Public comment: None.

Motion made by Mr. Ligor, and seconded by Mr. Holmes to close the hearing.
Motion carries 6-0-1. Hearing is closed.

Ms. Fitch requests clarification from Mr. Dewar that all work will be done from the upland side. Mr. Dewar confirms this is correct. Ms. Fitch questions whether the Commission would request to see an as-built for this project. The Commission declines necessity of an as-built.

Draft Order of Conditions:

All General Conditions as well as Special Conditions pursuant to Chapter 131 § 40 include:

1, 2, 3, 7, 10, 12, 14, 18, 19, 21, 26, 27, 28,

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

5, 6, 7

Motion made by Mr. Holmes, and seconded by Mr. Ligor to move the Draft Order of Conditions to final. Motion carries 6-0-1.

5. Applicant: Michael Kenny
Address: 3 Red Brook Pond Drive, Cataumet
Representative: Bracken Engineering, Inc.
File Number: SE7-2185

The construction of a single-family dwelling, Title V septic system, and all associated landscaping, grading, utilities, and appurtenances. This project is

within 100 feet of a Wetland Resource Area, an AE Flood Zone, and within 200 feet of a River Front.

Mr. Rob Dewar addresses the board, shares his screen, and reviews the plan. He addresses the bordering vegetated Wetland, and notes that it is marked off with flags. He adds that the AE Flood Zone on the property is delineated in a similar manner as the vegetated Wetland. An area of Coastal Bank is delineated on the plan as well, along with 25, 50, and 100 foot Buffer Zones. The proposed location of the micro-fast denitrification septic tank is discussed, as well as the reasoning for the proposed location; i.e. ground water separation, and for the intent of keeping it as much out of the 100 foot Buffer Zone as possible. Additional details of the project are discussed. Plans for proposed drywells are discussed, to control roof, storm water runoff, and surface runoff. Mr. Dewar reviews that the project was reviewed with the previous Conservation Agent as well. He opens the discussion to comments and questions.

Member comment: Mr. Ligor questions how many trees are proposed to be removed. Mr. Dewar provides requested clarification regarding the square footage of clearing that is proposed to be done, and that a "handful" of mature trees would be proposed to be removed. He notes that most of the trees are outside of the location of proposed clearing.

Ms. Fitch reviews the project. She notes that a majority of the property falls within bordering vegetated Wetlands, and Buffer Zone. She appreciates that most of the work is proposed to be done outside of the 50 foot Buffer Zone. A site visit was done, during which Ms. Fitch noticed that the site seems to have become a "dumping ground for neighborhood yard debris." She would recommend a special condition be included in the Order of Conditions, if approved, of removal of the yard debris. She agrees with Mr. Ligor's concern regarding the number of proposed trees to be removed, and did discuss this concern with the engineer. It was concluded that due to the location of the Soil Absorption System (SAS), it would be difficult to navigate the piping around the existing trees. She questions if there would be a possibility redirect water from an existing catch basin into one of the proposed catch basins or swales. Mr. Dewar does not believe there would be an option to accomplish this without a hydrologic analysis of how much is actually being collected into the existing catch basin. He also notes that alternative septic systems were researched, but the one that is proposed was selected due to the proposed location of the septic system.

Additional member comment: Mr. Ligor questions whether the property owner is planning to protect the swans that are located near the property. Mr. Dewar believes there should be sufficient Buffer Zone between the cleared area and the pond for the swans. Mr. Szwed requests to discuss the planting plan for the area of clearing within the 50 foot Buffer Zone. Mr. Dewar reviews the planting plan, and states that it is currently proposed to be loamed and seeded. Mr. Szwed questions if there would be a possibility to go with native plantings. Mr. Dewar

confirms this possibility could be reviewed. Mrs. Leduc-Fleming requests clarification of where the drainage daylight on the plan. Mr. Dewar states it is quite hidden, and would be difficult to see on the plan, but provides approximation of where it would be located on the plan. Further discussion ensues regarding the potential for native vegetation and location of this possibility. Mrs. Leduc-Fleming appreciates the efforts made in the plan to keep everything as far away from the Buffer Zone as possible. Mr. Berman agrees with previous comments made by Commission members regarding native vegetation in the 50 foot Buffer Zone. No additional member comment.

Public comment: Mr. Michael Kenny addresses the board. He addresses the previous comments made regarding the swans. He states he will usher the swans back to the pond if he does encounter them. He also responds to the comments made regarding native vegetation plantings, stating he is a fan of native vegetation, and would entertain the possibility of not having lawn grass to cut. He addresses the desire to correctly maintain the existing catch basin, as well as the removal of the debris that has accumulated on the property. He thanks the board. Mrs. Gail Donkin, an abutter to the property, expresses concern regarding the wildlife habitat in the area. She specifically discusses the swans in the area, and the location of their nesting and mating grounds. She also expresses concern regarding the trees that are proposed to be removed. Mrs. Donkin notes there is a fish ladder in the area as well and questions what the effects would be on the fish ladder. Mr. Palumbo requests clarification if the fish ladder is on this property. Mrs. Donkin states it is across the street. She expresses concern regarding the existing swale and drywell, and whether the water will be directed onto her property. Mr. Dewar responds, clarifying how the water will be captured, and that if it does overflow, it will actually flow across the applicant's property toward Red Brook Pond. Mrs. Donkin questions whether the island noted on the plan is part of the property. Mr. Dewar confirms the island is believed to be town property, and not part of the applicant's property. Mr. William Donkin expresses concerns regarding the swans, stating that they would not be able to be "chased away." He questions if the type of material proposed to be used for the driveway is going to be permeable. Mr. Dewar confirms that permeable options can be discussed. Mr. Donkin also questions what the property owner plans to do with "the other piece of property." Mr. Palumbo clarifies that the Commission can only review plans that are presently in front of them. That part of the property is not part of this discussion. Mr. Donkin questions if there is a plan showing what house is proposed to look like. Mr. Palumbo responds, stating that while other departments that review this plan require architectural plans, the Conservation Commission does not require architectural designs. They review the footprint of the plan, and the surrounding areas. Mr. Kenny responds regarding the material of the driveway, stating he would be amenable to review options for permeable materials. He is also happy to share the architectural plans with the neighbors.

Native vegetation options, as well as options of permeable materials for the driveway are discussed amongst Commission members and Mr. Dewar. Mrs.

Leduc-Fleming questions if there is a planned timeframe to begin the work. Mr. Kenny responds, stating he would prefer to start this spring. Mrs. Leduc-Fleming suggests holding off on work during the active nesting season of the swans until late May or June. Mr. Kenny is amenable to this suggestion.

Continued to March 3, 2022 with the consent of the board and the representative.

Mr. Holmes has left the meeting. Six members remain. Chm. Gray rejoins the meeting.

6. Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
Representative: Cape and Islands Engineering, Inc.
File Number: SE7-2171

To raze existing cottage/dwellings, utilize the existing shed for storage, and remove portion of one of the existing dwelling 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. This project is within an AE Flood Zone.

Atty. Matt Watsky addresses the board, and introduces Mr. Mark Dibb, project engineer. Mr. Dibb shares his screen. Atty. Watsky reviews the issues addressed in an amended plan that was submitted to the Commission:

- Concern regarding elevation of the pool and patio surface being below the flood elevation, and proposed excavation of the Coastal Bank, with potential of increase of flood waters coming inland within the site. The revised plan addresses this concern, and puts the patio and pool above the 100 year flood elevation.
- Concern regarding the steepness of the slopes that constitute the Coastal Bank. The revised plan depicts these slopes at a 10:1 ratio, making them more gradual than the existing condition.
- Concern regarding the geotechnical conditions of the soils and subsoils, and the ability for them to remain stable with the proposed construction. A report was compiled by J&M GeoTech and submitted to the Commission. Soil borings were taken from the site, and the conclusion was made by J&M GeoTech that the soils are capable of supporting the proposed construction.
- Concern regarding the amount of impervious surface included with the proposed driveway has been revised. The "loop" of the driveway that was proposed to be within the outer River Front Area has been removed from the plan.
- Previously proposed mitigation remains on the plan.
- Question from a previous hearing regarding whether an alternatives analysis would be required was addressed. Atty. Watsky states that per

310 C.M.R. 10.58(5), an alternatives analysis would not be required for this application.

Additional details of the proposed removal of existing buildings, as well as revegetation of these areas is discussed. Atty. Watsky expresses that the proposed condition is an improvement over existing conditions, and goes on to discuss the reasoning behind this statement. He turns the discussion over to Mr. Mark Dibb. Mr. Dibb reviews the above noted revisions made to the plan in greater detail. He notes an additional change from impervious material to pervious material for a proposed walking path. A restoration plan is discussed. He also reviews a letter he submitted to the Commission summarizing how the Coastal Bank will continue to function as it currently does; i.e. as a vertical buffer, and a non-eroding coastal bank. He and Atty. Watsky review and discuss a previous plan in comparison to the revised plan. Atty. Watsky reviews the inclusion of offsite mitigation in the deed-restricted parcel across the street from the property, conveyed to be held in conservation in perpetuity. He opens the discussion to comments and questions.

Member comment: Mrs. Leduc-Fleming requests clarification of the location of the pool patio retaining wall in relation to the salt marsh, questioning if the distance on the current plan is closer to the salt marsh than previously proposed. Mr. Dibb confirms that the revised plan is "about two feet closer", and goes on to discuss a significant area that has been pulled away from the salt marsh as a tradeoff. The height and material of the proposed retaining wall is discussed. The tennis court area, including grading, is also discussed. It is noted that a retaining wall, similar in design to the one surrounding the pool patio, is proposed to keep the area of the tennis above flood plain. Mr. Szwed questions if there would be any possibility of adjusting the siting of the house in relation to the septic system, to move it further from the top of the Coastal Bank. Mr. Dibb responds, stating that there may be potential to shift the house further from the bank in this area in question. Mr. Szwed acknowledges the changes and improvements made to the plan.. Mr. Berman also acknowledges the improvements made to the plan. He requests clarification of the "bench sitting" area. Mr. Dibb provides requested clarification that the area in question is a couple of stairs and a bench in a sitting area aimed toward the bay. No additional member comment.

Public comment: Ms. Fitch reads a comment into the record made by Mr. Joe McGurl via the "chat box": "If the bank is regraded, and the pool and the house with all the impervious surfaces are built on and in front of the bank, are you going to turn a 'non-functioning Coastal Bank' into a malfunctioning Coastal Bank? This situation may get worse as sea levels rise." Mr. Dibb provides clarification of the comment, stating that this is a functioning Coastal Bank, but a non-eroding Coastal Bank. He adds that the proposed plan will not affect the function of the Coastal Bank. Mr. John York expresses that he sees the proposed plan as a structure that is on top of, and seaward of a Coastal Bank, not as maintenance of the current function of the Coastal Bank.

He requests clarification from the Commission regarding the inclusion of the parcel across the street in the mitigation for the property. Discussion ensues, and clarification is provided that the parcel in question is not being requested to be included in the mitigation "credit" for the property. Mr. York expresses concern regarding the effect of wave action this property. Ms. Fitch reads an additional comment into the record from Mr. McGurl: "So can everyone in town regrade their yard to build on a Coastal Bank? Are you opening a can of worms?" Mr. George Seaver provides additional comment regarding the sale of the parcel across the street from the property, stating that notification was not given to the abutters of that parcel. No additional public comment.

Mr. Dibb provides clarification regarding the comment made about the Coastal Bank, stating that the Wetlands Protection Act allows work on a Coastal Bank when it is non-eroding, and will continue to function as a vertical buffer. He also comments that the site is a "very previously developed site."

Additional discussion ensues regarding adjusting the location of the house to remove the corner of the house from the Coastal Bank. Discussion regarding the potential to move the tennis court toward the SAS ensues as well. The location of the tennis court in relation to the Flood Zone is reviewed. Following this discussion, as well additional clarification and potential alternatives provided by the representatives, members decide that relocation of these parts of the plan would be insignificant in relation to other aspects of the project.

Members discuss the regulations, and note that there is no specific language under M.G.L. Chapter 131 § 40 Article 3.7 to support denial of this project.

Atty. Watsky requests on behalf of the applicant to close the hearing this evening.

Motion made by Mr. Ligor, and seconded by Mrs. Leduc-Fleming to close the hearing. **Motion carries 6-0-0. Hearing is closed.** Draft Order of Conditions is pending and will be reviewed at the March 3, 2022 hearing.

Chm. Gray temporarily excuses himself from the meeting. Mr. Palumbo steps in to lead the meeting.

Request for Certificate of Compliance

1. Applicant: Donald M. Duberger
Address: 760 Shore Road, Pocasset
Representative: J.E. Landers-Cauley, P.E.
File Number: SE7-2093

Three part project:

- a. Expand and convert 12ft x 15ft sunroom to year-round 15ft x 22ft room, and construct new deck
- b. Upgrade existing Title V system to a three-bedroom system
- c. Remove four selected, flagged trees

This project is within an AE Flood Zone, and within 100 feet of a Wetland Resource Area.

Chm. Gray rejoins the meeting.

Ms. Fitch reports that a site visit was performed, photos and the as-built were reviewed, and she reviewed this information in a meeting with the homeowner. With all of this information, she recommends issuance of the Certificate of Compliance.

Motion made by Mr. Ligor, and seconded by Chm. Gray to issue the Certificate of Compliance. **Motion carries 6-0-0. Certificate of Compliance is issued.**

2. Applicant: Robert A. and Margaret L. Dwight
Address: 43 Maryland Avenue, Monument Beach
Representative: Holmes and McGrath
File Number: SE7-2156

Reconstruction of a Seawall and Cap. Replanting of Dunes and regrading/loaming seeding of the lawn within an AE Flood Zone, V Flood Zone, and within 100 feet of a Wetland Resource Area.

Ms. Fitch reports that a site visit was performed, and the as-built was reviewed. She recommends issuance of the Certificate of Compliance.

Motion made by Mr. Ligor, and seconded by Mrs. Leduc-Fleming to grant the Certificate of Compliance. **Motion carries 6-0-0. Certificate of Compliance is issued.**

3. Thomas and Diane O'Connor
Address: 9R Main Street, Buzzards Bay
Representative: JC Engineering, Inc.
File Number: SE7-1843

Reconstruction of an existing retaining wall, driveway extension, and remove shed. This project is within an AE Flood Zone, and within 100 feet of a Wetland Resource Area.

Ms. Fitch states a site visit was performed. She opens the discussion to the Commission regarding the upland side of the wall, whether they would

request to remove the crushed stone that is currently there and replace it with loam and seed, or permit the crushed stone to remain. She would otherwise recommend issuing the Certificate of Compliance.

Member comment: Mr. Berman would like to attempt to vegetate the area. Ms. Leduc-Fleming expresses concern regarding the disturbance that may be caused by removing the crushed stone. Mr. Ligor would recommend attempting to vegetate the area. Clarification is provided regarding the type of vegetation that would be proposed: loam and seed. Ms. Leduc-Fleming feels less strongly about removing the stone with this information. Mr. Holmes agrees with Ms. Leduc-Fleming. No additional member comment.

Motion made by Mr. Holmes, and seconded by Mr. Ligor to grant the Certificate of Compliance. **Motion carries 5-1-1. Certificate of Compliance is issued.**

Discussion Regarding Violation:

1. Address: 81 Philips Road, Sagamore Beach

Atty. Curt Connors addresses the board, and introduces Ms. Stacy Minihihane. He thanks the board for their time and consideration. He notes that the applicant does not have any intention to pursue a Notice of Intent to keep the existing wall, but to remove the wall, discuss a restoration plan. He reviews three parts of the plan:

- Existing "in-out" driveway, and request by the applicant to keep the driveway as is. Explanation is provided as to why the applicant requests to keep the driveway; i.e. for safety purposes, due to the speed of traffic that travels on the road
- Existing ornamental stones that may be able to remain, and incorporated into the restoration plan
- Plantings recommended to be included in the restoration plan

Mr. Ligor has left the meeting. Five members remain.

Ms. Minihihane addresses the board. She states a site visit was performed, and the Resource Areas were identified. Ms. Fitch reviews her discussion with DEP. Per the DEP representative, riprap is not permissible around the dune, and reiterates the proposed removal of the rock wall. She reviews a drawing that was included in the previous Order of Conditions under File Number SE7-2040, as well as the restoration plan that was approved in 2019 under that File Number. Discussion ensues. Differences between existing conditions are compared to previously proposed and approved conditions. Chm. Gray provides resources to the property owner and representatives to research appropriate plantings to utilize in the restoration plan. Further discussion ensues. Chm. Gray opens the discussion to member comment.

Member comment: Mr. Berman comments regarding previous conditions. He notes that the Commission would likely desire to see the conditions almost exactly as they were previously. He provides comment regarding the in-out driveway as well. He offers options of areas of restoration, as well as the option to increase the amount of natural dune on the property. With the option of being able to have more dune than there previously was on the property, he would potentially entertain allowing the in-out driveway to remain. Mr. Palumbo and Mr. Szwed agree with Mr. Berman's comments. Mrs. Leduc-Fleming understands the request to keep the in-out driveway. She states that even to be able to get back to a 1:1 replication of vegetation lost to the driveway, expansion of naturally vegetated areas would need to be done. She also shares the option of a permeable surface for the driveway. Members overall agree with the manner of proceeding with the violation by way of the current Enforcement Order, as opposed to requesting a new Notice of Intent. Mr. Berman suggests using the existing stones in alternate areas to potentially designate a "no mow zone", as long as they are not arranged as a wall. Atty. Connors appreciates the suggestions made by the board. Ms. Minihane questions if the plan may be presented to the Commission in a specific manner. Chm. Gray is agreeable to this manner.

Possible Enforcement Action:

Address: 623 Head of the Bay Road

Ms. Fitch shares the site plan, and a photo of current conditions. She reviews the history of the original Order of Conditions, and notes that they have clear cut beyond the approved limit of work. A violation notice was issued in 2009. It is being brought before the Commission in order to issue an Enforcement Order so the engineer may be able to present a restoration plan under the Enforcement Order as opposed to filing a new Notice of Intent.

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Palumbo to ratify issuing the Enforcement Order. **Motion carries 5-0-0. Authorization given to Ms. Fitch to issue the Enforcement Order.**

Approval of Meeting Minutes:

- February 3, 2022
 - Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Palumbo to approve the minutes, with requested corrections. Motion carries 5-0-0. Minutes are approved
- March 4, 2021
 - Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Palumbo to approve the minutes as written. Motion carries 5-0-0. Minutes are approved.

Vote to excuse absent members:

Not applicable. All members were in attendance.

II. Adjournment

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Palumbo to adjourn meeting. Motion carries 5-0-0. Meeting adjourned at 10:02PM