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TOWN CLERK BOURNE

**Town of Bourne**  
**Conservation Commission**  
**Meeting Minutes**  
Zoom Meeting Platform  
May 5, 2022

**I. Call to Order**

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday May 5, 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, Peter Holmes, Thomas Ligor, Rob Palumbo, Paul Szwed, Greg Berman, Elise Leduc-Fleming

**Excused members:** None

**Others in attendance:** Stephanie Fitch, John Chuckran, Peter Valeri, Jesse Hamilton, "Rob", Marissa Seifert, Doug Schneider, Kevin O'Keefe, William Kenney, "Michael", "owner", Di Woodside, Brian Wallace, "Jack", "Joseph", "RFL", Peter Lyons, Mike Ball

**Abbreviated Notice of Resource Area Delineation:**

1. Applicant: MassDOT Highway Division  
Address: Cape Cod Canal Area  
Representative: HNTB Corporation  
File Number: SE7-2181

Proposal 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 US 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 type of Wetland Resource Areas within the project limits.

This hearing was closed at the April 21, 2022 meeting, pending a Draft Order of Resource Delineation.

Ms. Stephanie Fitch reviewed the ORAD Document: WPA Form 4B, Order or Resource Area Delineation. In Section B under Order of Delineation, "accurate" has been checked off – "the boundaries described on the reference plans above and in the Abbreviated Notice or Resource Area Delineation are accurately drawn for the following Resource Areas: the BVW, as well as ILSF, LUW, Bank, land subject to coastal storm flowage, and coastal bank."

*Member comment:* Mrs. Leduc-Fleming questioned whether Chm. Gray attended the site visits with Ms. Fitch. Chm. Gray confirmed that he did initially visit the sites with Ms. Fitch, and he was pleased with the way things went. Mr. Holmes had previously expressed concern regarding areas that may not be subject to review at this time, but may need to be reviewed if there are changes to the plan in the future. Chm. Gray ensured that the only thing that is being approved are the areas that had been identified on the plans that came before the Commission. He confirmed that if there are additional areas that become a factor later, and were not shown on the plans presented to the Commission, they will need to be reviewed under a separate filing. Mr. Holmes appreciated the confirmation.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Ligor to move the Draft Order of Resource Area Delineation to final. **Motion carried 6-0-0.**  
**Order of Resource Area Delineation is issued.**

Mr. Rob Palumbo joined the meeting.

**Request for Determination:**

1. Applicant: Jeanne Nerolich  
Address: 98 Lake Drive, Pocasset  
Representative: Hamilton Tree  
File Number: CC22-13

After-the-fact filing for removal and replacement of failing landscape timber retaining walls with engineered concrete block retaining wall. Add to an existing retaining wall on both ends for bank stabilization. This project is within 100 feet of a Wetland Resource Area.

Mr. Jesse Hamilton addressed the board and shared his screen. He reviewed that the existing timber retaining walls that were failing could lead to questionable impact to the top of the inland bank. Mr. Hamilton discussed the manner at which the timber retaining walls were replaced, as well as the engineered concrete

material and gravel used in the project. He reviewed the installation of a wall to support the corner of an existing shed on the property to prevent it from sliding down the slope. There was also an addition of 12 to 15 feet to an existing wall that was crumbling where the bank was less steep. The surrounding area of this part of the project was seeded with a rye and fescue mix to assist with stabilization of the corners, not with the intention to add space. Photos of the site were reviewed. Mr. Hamilton noted that the existing oak trees shaded out any existing vegetation that was on the site, and there was silt running toward the pond whenever it rained. He also noted one oak tree that was permitted to be removed due to damage it suffered in a previous storm. The siltation barriers that are in place are planned to remain in place for about another six weeks to allow for the vegetation that was planted to grow in. Mr. Hamilton also reviewed that the driveway was leveled in order to help prevent runoff. He noted that the previously permitted wall was not appropriately constructed or graded.

*Member comment:* Mr. Berman had a question regarding the amount of fill that was brought in, and if it was brought in in an attempt to reconstruct land that eroded. He also questioned if there was any seaward advance of the newly constructed wall. Mr. Hamilton confirmed that the wall was not moved any closer to the water, and that the walls actually return back into the grade. He reviewed that most of the fill that was brought in was 1 ½ crushed stone in order to assist with drainage by the shed. Mr. Berman appreciated the response. He also made note that for future projects, permits for work like this are needed prior to the start of construction. Mr. Hamilton appreciated and verbalized understanding regarding this comment. He stated that he was unaware that the permit was not obtained prior to the start of construction. Mrs. Leduc-Fleming questioned if there was anything that needed to be changed on the site once Ms. Fitch was involved in the project. Ms. Fitch stated that erosion controls did need to be added to the site, and they were added right away. Mrs. Leduc-Fleming questioned if any remediation would need to be done to the site due to the fact that there were originally no erosion controls in place. Ms. Fitch confirmed that she does not believe any remediation would need to be done as she got involved with the project in a timely manner.

*Public comment:* None.

Motion made by Mr. Palumbo and seconded by Mr. Ligor to approve under a Negative Two Determination. **Motion carried 7-0-0. Request for Determination is approved under a Negative Two Determination.**

2. Michael G. Libin  
Address: 110 Elgin Road, Monument Beach  
Representative: Peter Valeri  
File Number: CC22-14

Proposed septic upgrade within an AE Flood Zone.

Mr. Peter Valeri addressed the board and shared his screen. He reviewed the existing system failed a Title V inspection. The proposed plan is to remove the existing 1,000 gallon tank, and replace it with a 1,500 gallon tank, as well as three 500 gallon chambers. There are two trees that are proposed to be removed. There are also some existing Rhododendron bushes that will be transplanted to a different part of the yard. He opened the discussion to questions.

*Member comment:* None.

Chm. Gray abstained from a vote on this matter as the plan was prepared by Bracken Engineering.

*Public comment:* None.

Motion made by Mr. Holmes and seconded by Mr. Palumbo to approve under a Negative Two Determination. **Motion carried 6-0-1. Request for Determination is approved under a Negative Two Determination.**

3. Applicant: Thomas Gagne  
Address: 32 Buzzards Bay Avenue, Bourne  
Representative: River Hawk Environmental, LLC  
File Number: CC22-15

Proposed septic system repair in an AE Flood Zone.

Mr. Bill Kenny addressed the board and shared his screen. There is an existing cesspool. The proposed plan is to replace the cesspool with an updated septic tank and leeching field. There are two existing white oaks that are proposed to be removed in order to install the new system. The AE Flood Zone is the only Resource Area on the site.

*Member comment:* None.

*Public comment:* None.

Motion made by Mr. Palumbo and seconded by Mr. Ligor to approve under a Negative Two Determination. **Motion carried 7-0-0. Request for Determination is approved under a Negative Two Determination.**

Mr. Palumbo left the meeting.

**Notice of Intent:**

1. Applicant: Padraig Duncan  
Address: 9 Wallace Point Road, Buzzards Bay  
Representative: John S. Chuckran  
File Number: SE7-2206

Rebuild existing sea wall within an AE Flood Zone, V Flood Zone, and within 100 feet of a Wetland Resource Area.

Mr. John Chuckran and Mr. Rob Derosiers addressed the board and shared the plan. Mr. Derosiers reviewed the existing conditions, noting the existing wall was failing, and riprap was added in front of it in an effort to protect the wall. The proposed plan is to remove the existing wall and construct a small riprap revetment in the same location as the existing wall with a continuous reinforced concrete cap.

Ms. Fitch reviewed that this property was originally in front of the board due to a violation regarding the work done to the wall.

*Member comment:* Mr. Berman questioned the reasoning behind proposing a 1:1 slope, as it is steeper than the best management practice of 1.5:1. Mr. Derosiers stated that they are attempting to stay behind the existing wall, and the existing grade behind the wall slopes up. He feels that the location of the wall is less exposed, and noted that he has done successful projects with a 1:1 slope in other locations. Mr. Berman reviewed that the area is in a high energy zone as it is in a VE Flood Zone per the FIRM Maps. He noted he has not seen a cap proposed on a small rock revetment, such as the one in the proposed plan. Mr. Derosiers stated that the cap is being proposed to assist with stabilizing the soil behind the wall. Mr. Berman stated the 18 inches of vertical surface that is proposed is not ideal in a velocity zone. He would like to get as close to best management practice as possible. He expressed that the side wall of the existing structure does not appear to have been a wall, but debris that had been piled up in an attempt to control erosion. He does appreciate the attempt to round the corner of the wall in the proposed plan, but would like to see less of a "corner" than what is proposed. Mr. Berman also suggests the possibility of adding a sediment nourishment calculation. Mrs. Leduc-Fleming questioned how long the process may take to remove the existing wall and install the new one. Mr. Chuckran stated it would take weeks. Mrs. Leduc-Fleming expressed concern regarding the lower half of the wall is below the high water line. She questioned what may be proposed to accommodate the lower half of the wall being inundated periodically throughout the day. Mr. Chuckran stated there is a proposed turbidity fence, as well as silt fence that would be installed two feet seaward of the wall. He also stated that the wall will be removed and replaced in sections. Site photos are reviewed. Discussion ensued regarding the siltation curtain and the turbidity fence, as well as the potential resources in the benthic zone. After further discussion of the

above concerns, decision is made to continue the hearing to June 2, 2022 pending revisions to the current plan.

*Public comment:* None.

Continued to the June 2, 2022 meeting with the consent of the representative and the board.

2. Applicant: Mitchell Mashnee Realty Trust  
Address: 60 Rope Walk, Bourne  
Representative: Holmes & McGrath  
File Number: SE7-2203

Proposed project includes the demolition of the existing house and the construction and maintenance of a single-family house with attached garage, deck, relocated septic tank, reconfigured driveway, generator, walkway, retaining wall, and all associated excavation, grading, and landscaping. This project is within an AE Flood Zone.

Mr. Doug Schneider addressed the board and shared his screen. The only Resource Area for this site is AE Flood Zone elevation 18. The proposed dwelling will be in full FEMA compliance. The septic system is not proposed to be replaced as it was installed in 2016, but just relocated to accommodate relocation of the proposed house.

*Member comment:* Mr. Szwed questioned the location of the new septic. Mr. Schneider pointed out the new location of the septic system, as well as the location of the new leeching field. Ms. Fitch suggested the possibility of proposing a pervious driveway to further protect the interest of the Wetlands Protection Act. Mr. Schneider noted that the property owner would like to have a paved driveway to enter the attached garage. Discussion ensued and site photos were reviewed. Ms. Fitch commented that the recommendation is being made as the footprint of the house is proposed to increase, so the pervious surface would be recommended to balance the increase in impervious surface. No additional member comment.

*Public comment:* None.

Continued to the May 19, 2022 hearing with the consent of the representative and the board, pending discussion of the possibility of pervious surface for the driveway with the homeowner.

3. Applicant: James Morrison  
Address: 31 Buttermilk Way, Buzzards Bay  
Representative: Collins Civil Engineering Group, Inc.  
File Number: SE7-2205

Proposed razing and reconstruction of a residential single-family home. This project is located within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Mr. Peter Lyons addressed the board and shared his screen. The site location and lot size are reviewed. The existing house, including the foundation, is proposed to be removed, and moved slightly further way from the Resource Area. A 12-inch straw wattle is proposed for erosion control. There is no proposed changed in grading on the site. Four drywells are proposed to accommodate roof runoff. Mr. Lyons opened the discussion to questions.

*Member comment:* Mr. Ligor questioned whether there are photos of the stone seawall on the property. Requested photos are reviewed. Mr. Ligor questioned if the existing seawall will act as a revetment, or just a wall. Mr. Lyons confirmed that the use of the wall will not change, so it will remain as just a wall. Mr. Ligor questioned the current condition of the wall. Mr. Lyons confirmed that it is currently stable with no significant cracking. Mr. Berman commended the proposal to move the structures further from the Resource Area. He requested clarification regarding the proposed de-watering pit on the plan. Mr. Lyons stated that he is uncertain why the de-watering pit is on the plan as there is no proposed digging for the project, so he does not believe any ground water will be encountered. No additional member comment.

*Public comment:* None.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Ligor to close the hearing. **Motion carried 6-0-0. 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, 11, 12, 14, 16, 18, 19, 27, 28, 29*

*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 carried 6-0-0. Order of Conditions is issued.**

4. Applicant: John Williamson  
Address: 1 Kerna Drive, Buzzards Bay  
Representative: JC Engineering, Inc.  
File Number: SE7-2204

Chm. Gray recused himself from this hearing. Mrs. Leduc-Fleming stepped in to chair the meeting.

Proposed demolition of an existing house and the construction of a new four-bedroom dwelling with associated utilities, septic system, site grading, and hand removal of invasive vines and vegetation. This project is within 100 feet of a Wetland Resource Area, and AE Flood Zone, and a V Flood Zone.

Mr. Brian Wallace addressed the board and shared his screen. The proposed house is proposed just behind the existing dwelling in order to utilize the existing slope of the yard to allow for a walk-out. A four-foot wide path is proposed to allow for access to the beach area, which would be comprised of pressure-treated steps and landings on Sonotubes with a pervious path between the steps and landings. The invasive vines on the property are climbing up many of the trees, and are proposed to be removed by hand. He reviewed the Resource Areas on the property:

- Coastal bank
- AE Flood Zone elevation 17
- Coastal beach
- Salt marsh
- Tidal area

He reviewed how the coastal bank was delineated. The terraces that are on the property leading down the beach are man-made. The topography to the left and the right of the property was reviewed in order to assist with the delineation of the coastal bank. Mr. Wallace opened the discussion to questions.

Ms. Fitch appreciated the explanation of how the coastal bank delineation was found. She reviewed the language of the Coastal Manual regarding delineation of coastal banks when manmade features are involved. She also suggested that certain labels on the plan, such as edge of marsh grass and top of coastal bank, were not confirmed by a wetland scientist. Due to the fact that they were not confirmed, those Resource Areas cannot be used in future projects.

*Member comment:* Mrs. Leduc-Fleming questioned how the additional Resource Areas were obtained. Mr. Wallace confirmed that the features were picked up during the survey of the property by a staff member who is just not a professional wetland scientist. He is willing to revise the plan to note that information. It is noted that these features are outside of the 100 foot Buffer Zone of the current project. Mr. Ligor questioned if there are photos of the slope of the property. Mr. Wallace shared the requested photos. Mr. Ligor appreciated the photos. Mrs. Leduc-Fleming questioned if there will be any intent to change any of the vegetation outside of where the proposed house would be going. Mr. Wallace confirmed there would not be any change to the vegetation in question, with the exception of hand removal of invasive vines. Mr. Holmes questioned if there are photos of the walkway going down to the beach. Mr. Wallace stated the walkway



is proposed, not yet existing. A photo of one set of existing stairs is reviewed. Clarification is provided regarding the location of the proposed stairs and pervious walkway. Mr. Berman discussed the manmade landforms leading down to the beach. He appreciated the explanation provided by Mr. Wallace regarding the delineation of the coastal bank. Mrs. Leduc-Fleming commented regarding the seaward advance of the dwelling, and that it is not typically something the Commission would prefer to see. She did note that the proposed structure is still about 100 feet from the top of the coastal bank, and the slope is well vegetated. Mr. Wallace made note of existing impervious areas cover about 4,400 ft<sup>2</sup>, and the proposed impervious areas would cover about 3,400ft<sup>2</sup>. No additional member comment.

*Public comment:* None.

Mr. Wallace requested confirmation that the current coastal bank delineation would be appropriate to keep on the plan. **Members voted 5-0-1 to approve the current coastal bank delineation.**

Continued to the May 19, 2022 hearing with the consent of the representative and the board, pending plan revisions.

#### **Certificate of Compliance:**

1. Applicant: Patti and Kevin O'Keefe  
Address: 130 Wings Neck Road, Pocasset  
Representative: Marsh Matters Environmental  
File Number: SE7-1993

Reconstruct and enlarge a deck, permit an existing dog enclosure fence, remove a paver walkway and replace with elevated saltmarsh boardwalk, and invasive species management within a V Flood Zone, and within 100 feet of a Wetland Resource Area.

Mr. Mike Ball addressed the board. The applicants were before the board in 2018 with this request. The permit was granted in May 2018, and has since expired. The work that has been completed is before the board now for the Certificate of Compliance. The work that has been completed includes the elevated deck expansion. The boardwalk was not completed due to financial constraints. The invasive Phragmites has been controlled mostly by mechanical means, even though both mechanical and chemical means were approved for control. A portion of the fence was moved back onto the property line as it was encroached on the neighboring property. Mr. Ball noted that he has visited the site at least once per year in order to file an assessment report regarding the Phragmites as well as the impact of the fence on the salt marsh. He commented that he believes the mechanical control of the Phragmites is "fine" as long as permanent cutting would be allowed for the long term. He also noted the cost of chemical control of

invasive Phragmites is significant for the applicant. He noted native species returning on the site from the removal of the Phragmites. The pavers that were in place in the marsh were removed. He opened the discussion to questions.

Ms. Fitch recommended issuance of the Certificate of Compliance for the deck and removal of the pavers. She opened the discussion to the board regarding continued control of the Phragmites.

*Member comment:* Photos of the site were reviewed. Mr. Ball stated that the applicant would like to continue with mechanical means of controlling the Phragmites from the fence line seaward. Mr. Holmes stated the chemical and mechanical approach to the Phragmites removal would be best, but he is not against the mechanical approach. Mr. Berman requested clarification of the original violation. Ms. Fitch discussed the original violation. Mr. Berman questioned if anything has been in violation since the approval of the Notice of Intent. Ms. Fitch confirmed nothing has been in violation since the Notice of Intent approval. He questioned how quickly the Phragmites is growing, and at what height it is being cut to. Mr. Ball confirmed that the Phragmites is not being cut lower than four inches, which is what was approved in the Order of Conditions. He is uncertain what the rate of growth is. The Order of Conditions did approve cutting two to four times per year, and Mr. Ball commented that he does not believe four times per year would be necessary, but that two, maybe three times would be appropriate. Mr. Berman questioned if there may be a possibility of mowing to 12 inches seaward of the fence. Mr. Ball commented that the ideal cutting height would be before the first node on the grass to not allow for the leaf to grow. Mr. Berman appreciated the rationale for the cutting height. Mrs. Leduc-Fleming requested clarification regarding what is being approved with the Certificate of Compliance. Mr. Ball confirmed that the boardwalk is being removed from the request, and would be brought back in front of the Commission if it were re-proposed at a later time. Mrs. Leduc-Fleming also requested clarification regarding the duration of the request for mechanical control of the Phragmites. Ms. Fitch stated that she believes it was being requested in perpetuity, but would open the discussion to the board. Mr. O'Keefe commented that he has noticed, although slow, the return of native vegetation and would request continuation in perpetuity if possible. Discussion ensued regarding duration of the mechanical control of the Phragmites. Mrs. Leduc-Fleming questioned what the plan may be to traverse the area where the pavers were. Mr. O'Keefe stated that he did submit a link to Ms. Fitch regarding a proposed elevated walkway, but is aware that it would be a discussion for a later time.

*Public comment:* None.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Holmes to issue the Certificate of Compliance, with the condition that the owner can continue the mechanical removal of the Phragmites on the property, both in and outside of the fenced in area, not to exceed the frequency in the original permit, and not go

lower than the original height restriction of the original permit, and for the homeowner to check back in with the Commission every five years, with photo evidence. **Motion carried 6-0-0. Certificate of Compliance is issued.**

2. Applicant: John R. Ball and Suzanne F. Ball  
Address: 284 Scraggy Neck, Cataumet  
Representative: Bracken Engineering, Inc.  
File Number: SE7-2058

Additions and alterations to existing residence including redesign of east wing and deck with landscape mitigation. This project is located within an AE Flood Zone, V Flood Zone, and within 100 feet of a Wetland Resource Area.

Ms. Fitch stated there was a site visit made, and she recommended granting the Certificate of Compliance.

*Member comment:* None.

*Public comment:* None.

Motion made by Mr. Holmes and seconded by Mr. Szwed to issue the Certificate of Compliance. **Motion carried 6-0-0. Certificate of Compliance is issued.**

3. Applicant: John R. Ball and Suzanne F. Ball  
Address: 284 Scraggy Neck, Cataumet  
Representative: Bracken Engineering, Inc.  
File Number: SE7-2101

Rip rap wall reconstruction, located in an AE Flood Zone, V Flood Zone and within 100 feet of a Wetland Resource Area.

Ms. Fitch stated there was a site visit made, and she recommended granting the Certificate of Compliance.

*Member comment:* None.

*Public comment:* None.

Motion made by Mr. Holmes and seconded by Mr. Ligor to issue the Certificate of Compliance. **Motion carried 6-0-0. Certificate of Compliance is issued.**

#### **Vote to Excuse Absent Members:**

- Motion made by Mr. Ligor and seconded by Mr. Holmes to excuse absent members. **Motion carried 6-0-0.**

**Approval of Meeting Minutes:**

- March 3, 2022
  - Motion made by Mr. Ligor and seconded by Mr. Holmes to approve the minutes with recommended corrections. **Motion carried 6-0-0. Minutes are approved.**
- April 7, 2022
  - Motion made by Mrs. Leduc-Fleming and seconded by Mr. Holmes with recommended corrections. **Motion carried 6-0-0. Minutes are approved.**

Mr. Ligor left the meeting.

**Adjournment:**

- Motion made by Mr. Holmes and seconded by Mrs. Leduc-Fleming to adjourn. All in favor. Meeting adjourned at 9:24PM