

Bourne Conservation Commission Minutes January 5th, 2023

- I.** Chm. Robert Gray called to order the meeting of the Conservation Commission at 6:30 P.M. conducted in person and via remote access on Thursday, January 5, 2023, held in the Bourne Veteran's Community Building, 239 Main Street Buzzards Bay, MA 02532. 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 Section 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Chm. Gray asked if a member of the public wishes to comment they will first clearly state their full name for the record. Chm. Gray also reviewed the 5-5-5 Rule which allows the applicant or representative to make a five minute presentation to the Commission Members, Commission Members will then take five minutes to seek additional information if necessary, and then the public will be allowed five minutes for comment. If the matter is more complex, more time will be allotted. Chm. Gray asked if anyone was recording at this time, other than the Conservation Department.

Members present: Chm. Bob Gray, Greg Berman, Paul Szwed, Susan Weston, Tom Ligor, Melvin Peter Holmes and Rob Palumbo

Excused member until 7pm: Rob Palumbo

Others in attendance: Stephanie Fitch, Chip Coen, Stephen B. Nelson, Mike Ball, Zac Basinski

Present by remote access: Tom Ligor, Melvin Peter Holmes, Mr. Palumbo, Peri Jacoubs

II. Continuances:

140 Wings Neck Road, Pocasset continued to 1/19/2023	RDA File No. CC22-40
122 Wings Neck Road, Pocasset continued to 1/19/2023	DEP File No. SE7-2227
132 Wings Neck Road, Pocasset continued to 2/16/2023	DEP File No. SE7-2229
124 Wings Neck Road, Pocasset continued to 1/19/2023	DEP File No. SE7-2228
68 Elgin Road, Pocasset continued to 1/19/2023	DEP File No. SE7-2223
96 Megansett Road, Cataumet continued to 1/19/2023	DEP File No. SE7-2172

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III. Request for Determination:

1. **4 Wenaumet Bluffs Drive, Pocasset Kristin Seastrand % Stephen B. Nelson REHS/RS File No. CC22-41 Proposed Project:** Upgrade and replacement of a failed septic system. This project is located in an AE flood zone, within 100 ft. of a wetland resource area and within 200 ft. of a riverfront. **Continued from 12/15/2022.**

Mr. Nelson RS represented the project on behalf of Ms. Seastrand. Mr. Nelson said the lot size is small (4,800 SF) with a three bedroom house situated not very far off the road. There is a seawall that was built in the late 90's/ early 2000's. There currently is a 1,000 gallon septic tank with a small leaching area and concrete chambers that do not meet the required setback. They have proposed a new I/A septic system. Mr. Nelson used the new Conservation Department's nitrogen calculation sheet and found that the existing Title 5 system would produce 18 ppm nitrate. They have proposed to remove the septic tank and install a new 2,000 gallon two compartment H2O tank located in the driveway. They proposed to replace the existing leaching area with a GeoMat and remove the existing concrete chambers. The advantage of a GeoMat is a low profile and designed for maximum treatment and infiltration of wastewater into soil. The new nitrogen calculation came out almost in half to about 10.3 ppm. The erosion controls are shown on the plan and the control panel will be located under the deck in the back corner of the house. This system will be monitored quarterly and Mr. Nelson said he is licensed to be the contract operator.

Agent comment: Ms. Fitch reminded the Commission they might recognize this project from last September when it was approved under a Negative Two Determination for a tight tank. She recalled that it was an interim tight tank and now they are back before the Commission again with an I/A septic system plan. She stated they have filed concurrently with the Board of Health and explained that it's a really tight lot with no foreseen issues with the last proposed RDA. The erosion controls will be key in making sure the site stays clean. She had no further comments.

Member Comment: Mr. Berman confirmed with Mr. Nelson that they had 5 ft. separation from groundwater. He asked how close the high tide is to groundwater. Mr. Nelson said at the time of the perc test they had dug down a little over 9 ft. with running sand and the hole caving in, they were not more than 6 inches from groundwater. He further explained that at the request of the Health Agent they installed a monitoring well which they have been monitoring at high tides for the past couple of months and without the occasional storm tide that is how they determined the groundwater.

No public comment.

Mr. Holmes made a Motion for a **Negative Two Determination** seconded by Mr. Szwed.

Roll Call: Ms. Weston-yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Holmes-yes, Mr. Ligor-yes and Chm. Gray-yes. Motion carried. **6-0-0.**

2. **31 Little Bay Lane, Buzzards Bay Judy Kelly % Marsh Matters Environmental File No. CC22-42 Proposed Project:** Conversion of an exterior deck to enclosed sunroom. Location of proposed work is within the 100 ft. buffer zone to a coastal bank.

Mr. Ball represented on behalf of the Kellys. The property is located near the recourse area of Little Buttermilk Bay. He explained the proposed project is located outside of the 50 ft. buffer to the top of the coastal bank. They proposed to convert the existing deck into a sunroom and a

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smaller adjacent deck into a patio. The only areas of disturbance will be the existing structures being converted and some lawn area.

Agent comment: Ms. Fitch gave a brief history of the property. She said in 1995 there was a Negative Two Determination RDA issued for the deck which they now have proposed to convert to the sunroom. There are new owners now and in 2020 the Commission issued a Negative Three Determination RDA for vista pruning with the removal of five trees all on the eroding coastal bank. She said the previous Conservation Agent noted the applicant was amenable to planting native shrubs along the top of the bank and if the Commission was interested in any mitigation for the activity they proposed at that time. She has not spoken to the applicant and is not sure if they are willing to consider that for this project but it may be worth the conversation. Ms. Fitch shared photos and showed how it is just lawn onto an eroding coastal bank, so there is always room for mitigation. They have done a really nice job at cleaning it up but she stated again that the lawn is straight onto the coastal bank and they are keeping the shrubs pretty low along the bank.

Member comment: Chm. Gray asked Mr. Ball if he had any conversations with the client about taking some of the turf grass out and doing some replacement. Mr. Ball said no, other than confirming they had approval for the cutting because that was the first thing he noticed when he did a site visit. He did not ask if there was any mitigation as part of that original approval. He asked if they could put a condition on the Negative Two Determination. It's not something he has discussed with the client and that with the homeowner the view would be the main concern. Chm. Gray said if they condition the Determination could they all work together to get something with low growth. Ms. Fitch confirmed with Chm. Gray. Ms. Weston asked to clarify if it was suggested last time or made a condition. Ms. Fitch said it was the previous Agent who suggested it, she further explained the Kellys inherited what the past owners cut down and that's what got the Agent out there to clean it up. Mr. Berman asked if they have ongoing permission for the vista pruning. Ms. Fitch said she will have to look more into the condition and dates. She will work further with Mr. Ball to come up with a plan for a 5-10 ft. vegetative strip with shrubbery to mitigate any nitrate runoff if they fertilize the lawn.

No public comment.

Mr. Ligor made a Motion for a **Negative Three Determination** seconded by Ms. Weston.
Roll call: Ms. Weston-yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Holmes-yes, Mr. Ligor-yes and Chm. Gray-yes. Motion carried. **6-0-0**.

IV. Notice of Intent:

1. **83 Elgin Road, Pocasset Andrew Laurence % Bracken Engineering, Inc. DEP File No. 2226**

Proposed Project: Proposed precast concrete in ground plunge pool with utilities and appurtenances located within the Velocity flood zone and within 100 ft. of a wetland resource area.

Chm. Gray recused himself from this review and Mr. Berman stepped in as Chair.

Zac Basinski PE from Bracken Engineering, Inc. represented on behalf of the Laurences. He explained this is the exact same project that was before the Commission in June of 2021. He gave a brief history and stated it is an existing developed single family house lot. The property was issued an Order of Conditions back in 2016 to rebuild some decks on the house, to do some work on the house and rebuild a retaining wall in the back which was an old timber wall removed and replaced by a stone wall. This has unfortunately become the coastal bank under the new project.

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He moved on to explain the proposed project which was before the Commission in 2021. At the time they had gone back and forth with the previous Agent to try and site different areas on the property which lead back to putting it right at the top of the wall. This location gets it out of the food zone and on the back side of a manmade structure already on the property. He explained the project was rescinded back in 2021 after the Commission had asked for some extra mitigation planting. The Laurences were hesitant about it and wanted to think more on it which they have since and have asked BEI to refile the same application. The homeowners think that there is already a dedicated buffer zone through the back and have a small existing access to get down to the pier. Mr. Basinski confirmed there is a Ch. 91 on file for the pier and he further explained the reason for not wanting to put the extra plantings was that it is a small area. Mr. Basinski said they are cordially asking if the project can be approved as proposed. The wall is in place and they have spoken with local contractors. A prefab pool will be put straight down in place supported underneath by helical piles and will not damage or disturb the existing wall that is there today. Mr. Basinski turned it back over.

Agent comment: Ms. Fitch recapped the prior discussions on this previous filing and several recommendations that were made by the Commission and reminded the Commission that this is the exact same project presented without any of those recommendations. The previous Agent's comments were based upon past precedent and the bylaw language which read that they would not be proponent to a swimming pool within the 50 ft. buffer unless the mitigation constitutes a unique environmental opportunity. Ms. Fitch further said the prior discussions were on the primary bank that comes up naturally to the retaining wall. Another comment was suggested that they remove some of the patio to move the pool back further northwest on the property. The setback will not allow the pool to move to the side and Ms. Fitch felt the Commission gave some suggestions that were reasonable. She said the unique mitigation opportunity would be the lawn because the bank goes straight down and was disappointed to see the exact same plan come back before the Commission. She would also like to see a dry well to try and avoid illicit discharge to the bank. She saw that both abutting properties have pools and she looked into any precedent there but the pool at 85 Elgin Road was installed at least prior to 1989 which again was prior to the Town bylaw and the other is out of the 50 ft. buffer. As per the dock, the Ch. 91 license's only condition states that the float cannot be stored on salt marsh or dune vegetation. Therefore, they are adhering to their Ch. 91 license. No additional comments. Ms. Fitch turned it over to the Commission.

Member comment: Ms. Weston said she liked what was recommended by the Commission the first time and it is the standard practice to ask for mitigation within the 50 ft. buffer and especially at the top of the coastal bank. Mr. Szwed said he would like to see potential relocation and or mitigation measures to offset the proximity to the resource area. Mr. Ligor asked since it is a precast pool how do they deliver to the back portion of this property and mitigate any erosion into the resource area below. Mr. Basinski said there is a silt barrier below to catch any sediment runoff and then for access it can be carried around the side of the house and then brought to the back. Mr. Basinski will get the weight of the pool and number of helical piles for the next meeting. Mr. Holmes stated he recalled the prior recommendations by the Commission and is not enthused with the plan as proposed. Mr. Berman said the site plan called out a primary bank and that should be called out carefully because they don't want secondary banks anywhere. He said that naturally the bank is going to have a higher value than the stone wall. Mr. Berman doesn't love the stone wall to begin with because it's in a velocity zone, he either was out voted or missed the meeting but definitely not a fan of vertical walls in the velocity zone. He said looking at the cross section for the pool it looks like the pool has a vertical surface in the V zone. Mr. Berman said he would be in favor of pulling it back or having the planting for mitigation. Mr. Basinski

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cordially asked for a continuance to discuss with his client and bring it back to the next meeting.
Continued to 1/19/2023.

No public comment.

Mr. Palumbo joined the meeting via Zoom.

2. **28 Wenaumet Bluffs Drive, Pocasset Scott R. & Melissa C. Murphy % Bracken Engineering, Inc. DEP File No. SE7-2225 Proposed Project:** Installation of an Innovative/Alternative Title 5 septic system and all utilities and appurtenances. This project is located in an AE flood zone and within 100 ft. of a wetland resource area. **Continued from 12/15/2022.**

Mr. Basinski PE from Bracken Engineering, Inc. represented on behalf of the Murphys. The proposed project is to replace two daisy chain cesspools with a new I/A septic system. A Title 5 perc test was done with the Health Department and reviewed during high tide. Groundwater was confirmed. The nitrogen calculations will be a vast improvement from 17.1 ppm down to 10 ppm. It is a very small lot and all of the septic proponents have been proposed as far landward as possible, giving the greatest separation to Buzzards Bay. A concrete seawall is the closest resource area. There will be a new Microfast pump chamber with a Title 5 leaching system.

Agent comment: Ms. Fitch said this has been concurrently filed with the Board of Health, which is great. It is a significant improvement to the site and she is glad to see the placement of the system as far south on the property as possible, away from the resource areas. She asked if there were any concerns of saturated soils under the SAS that would destabilize the variable rock wall or the very tiny bank. Mr. Basinski said he was not concerned with that considering how porous the sand was. Ms. Fitch said then the proposed system should not impact the function of the coastal bank as a vertical buffer.

No public comment.

Ms. Weston made a Motion to **close the public hearing** seconded by Mr. Holmes.
Roll call: Ms. Weston- yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Holmes-Yes, Mr. Palumbo-yes, Mr. Berman-yes and Chm. Gray- abstained. Motion carried. **6-0-1**

Ms. Fitch read the draft Order of Conditions to include: *All general conditions and special conditions pursuant to M.G.L. Ch. 131 section 40: 1,2,3,5,7,10,12,18,19, 27, 28 and 29*
Special conditions pursuant to the Bourne Wetland Bylaw article 3.7 include: 5 6 7 and 9

Ms. Weston made a Motion to **approve** seconded by Mr. Holmes.
Roll call: Ms. Weston- yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Holmes-Yes, Mr. Palumbo-yes, Mr. Berman-yes and Chm. Gray- abstained. Motion carried. **6-0-1**

V. **Request to Extend Order of Conditions:**

1. **60 Arlington Drive, Buzzards Bay Edward & Peri Jacoubs % Bracken Engineering, Inc. DEP File No. SE7-2096 Proposed Project:** To construct a garage, deck addition, upgraded septic system, associated grading, landscaping and utility work within a 100 feet of a wetland resource area. Request to extend the Order of Conditions issued under the local bylaw only. OOC was issued on 2/21/2020.

Ms. Fitch said the project was appealed at the state level but not at the local level. She followed up with Town Counsel and Dan Gilmore of DEP to further understand the situation. She said basically they are operating under two separate Order of Conditions, one at the DEP level which, due to the appeals process, was not issued until a year and a half later. The Order under the local bylaw only expires in February 2023, which is why they are requesting the extension.

The applicant Peri Jacobs present by Zoom said the request is for a three year extension due to ongoing litigation. It would bring it in compliance with the Superseding Order of Conditions and it would allow them to get through the current litigation which will not be heard until May of 2023. Due to past history, she is anticipating that the ruling will be appealed again. It will probably be a three year review at this stage of the game to be able to finalize that litigation and being building without any further litigation from the abutter.

Ms. Weston made a Motion to grant a **three year extension** seconded.
Motion carried. **6-0-1**

VI. Request for Certificate of Compliance:

9 Wallace Point Road, Buzzards Bay DEP File No. SE7-2206

Ms. Fitch said she did not receive any information on a Ch. 91 license. She had reached out to the contractor working on the project and there was some confusion going on. Ms. Fitch said it is up to the Commission but a COC could not be issued at this time. She asked the Commission if they wanted to continue or deny and have them come back at a later time.

Continued to 3/02/2023

VII. Approve minutes 11/17/22 & 12/01/2022:

Mr. Berman made a Motion to **approve minutes 11/17/22** seconded.

Roll call: Ms. Weston - abstained, Mr. Berman- yes, Mr. Swed- yes, Mr. Holmes-yes, Mr. Ligor-yes, Mr. Palumbo-yes and Chm. Gray-yes. Motion carried. **6-0-1**

Mr. Berman made a Motion to **approve minutes 12/01/22** seconded.

Roll call: Ms. Weston - abstained, Mr. Berman- yes, Mr. Swed- yes, Mr. Holmes-yes, Mr. Ligor-yes, Mr. Palumbo-yes and Chm. Gray-yes. Motion carried. **6-0-1**

VIII. Report of the Conservation agent:

Ms. Fitch spoke with the DNR and Shore and Harbor Committee regarding the 100 ft. setback to mooring anchors to get clarification once more. She spoke with Mr. Southwood, DNR Director, and Rich Libin, Chair of the Shore and Harbor Committee. Both believe the 100 ft. setback is protective and makes things fair and equal for all including the folks who have owned these moorings for years. They want to make sure there is still a healthy balance between those mooring holders and the new dock owners. They talked about this issue at length last year and Mr. Libin remembers David Crane who he says is the member with the most experience being very confident with it and really it's a public safety issue. Ms. Fitch explained that there is no set

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length of the line attached to the mooring anchor and tackle. Therefore, you may end up with just a 30 ft. channel between a moored boat and the edge of a float. DNR is worried about the navigation through situations like that. They feel that 100 ft. is a reasonable setback to try to avoid anything narrower that may cause accidents on the water. The next Shore and Harbor meeting is January 12th, 2023 and they are happy to revisit this question if the Commission would like.

Mr. Palumbo said the only question he posed was in the limited instances where there is eelgrass that would go another 10 or 20 ft. into it. He agreed with the 100 ft. setback as is.

Mr. Ligor agreed with Mr. Palumbo and also Mr. Berman agreed with Mr. Palumbo from a conservation point of view. They agree it's a tough spot to be put in and would make sense to reduce the space between moorings to preserve eelgrass. But they are also working with DNR and SNH for public safety and it's not really the Commission's charge. Mr. Berman said in the end he is comfortable with the 100 ft. setback.

Ms. Fitch said moorings are considered private property and it's up to the owners to work that out and not the Town, the location has to be approved. Chm. Gray further explained at some point if someone really wants a dock, they might offer someone who has a mooring to pay to move it 10-20 ft. to get the 100 ft. setback and that will have nothing to do with the Commission, DNR and nothing to do with the Town. They can do what they want to accommodate the distance. There is currently no language for any waivers, only hardships. Maybe it's something the Town council can look into if they want to have that language there.

The Commission further dissected current and possible language for the bylaw and regulations regarding waivers and variances.

Public comment: Chip Coen, resident of Bourne, has done extensive research regarding docks and eelgrass. He asked the Commission if anyone had any knowledge of flow through grading. Mr. Berman said they have talked about it and DMF has not done that study, he's not sure if any peer review studies do that but they want to see the science behind it and not just what the manufacturers are saying. Ms. Fitch responded to Mr. Coen's email and reread the shading reviews.

General discussion continued.

VIII. Motion to adjourn seconded.

Roll call: Ms. Weston - yes, Mr. Berman- yes, Mr. Swed- yes, Mr. Holmes-yes, Mr. Ligor-yes, Mr. Palumbo-yes and Chm. Gray-yes. Motion carried. **7-0-0**

Minutes typed by: Amalia Amado, Conservation Secretary II

Audio recorded and minutes edited by: Stephanie Fitch, Conservation Agent

Recorded by Zoom