

**Bourne Conservation Commission  
Public Meeting Minutes  
October 19, 2023**

*Note this meeting is being audio recorded by Bourne Conservation Department. If anyone in the audience is also recording or videotaping, they need to acknowledge such at this time.*

**Commission Members Present:** Chair Bob Gray, Susan Weston (6:50 to 8:45), Joseph Soares, Jr., Sarah Butler, Melvin Peter Holmes, and Greg Berman.

**Excused Members:** Vice Chair Rob Palumbo and Paul Szwed.

**Professional Staff in Attendance:** Amalia Amado, Conservation Department.

Chair Bob Gray called to order the meeting of the Conservation Commission at 6:30 PM, conducted in person on Thursday, October 19<sup>th</sup>, 2023, and held in the Bourne Veterans Community Building, 239 Main Street, Buzzards Bay, MA 02532, and held virtually by Zoom. Chair Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetland Protection Act, M.G.L. Chapter 131, Section 40, and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. Chair Gray said that they follow a 5-5-5 rule, and he explained the rule. Chair Gray said that if a member of the public wishes to comment they will first clearly state their full name for the record. Chair Gray asked if anyone was recording at this time other than the Conservation Department.

**REQUEST FOR DETERMINATION**

- 1.) **Request for Determination File Number: CC-23-29, 0 Eel Pond Rd. and corner of Marilyn Rd., Buzzards Bay, Town of Bourne c/o Green Seal Environmental, LLC.** Drainage improvement to the outfall off the existing walking path, to where it discharges to the Eel Pond (Pond). **Continued to 11/2/23.**
- 2.) **Request for Determination File Number: CC-23-19, 18 Windsor Road, Cataumet, John LoMedico.** Post-facto filing of an upgrade to an existing boathouse. This project is located in a VE flood zone and within coastal wetland resource areas. **Continued from 10/05/2023.**

**Negative 2 Determination on 10/5/23.**

Chair Gray said that this is a closed review.

Amalia Amado said that Mr. LoMedico sent in the 2 proposals that he received for the salt marsh restoration. He said that he is going to choose the proposal from Wilkinson Design. She said that they would like to see an NOI filed for that portion. Ms. Amado also said that she does not have anything yet in writing that officially secures Wilkinson Design.

Motion that by conditioning the Negative 2, the applicant files the Notice of Intent within 6 weeks, by Mr. Berman and seconded by Ms. Butler. **Motion Carried. 4-0-0**

TOWN CLERK BOURNE  
OCT 19 2023 12:11:10

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## NOTICE OF INTENT

- 1.) **Notice of Intent: DEP File Number: SE7-2263, 7 Eustis Lane, Cataumet, Alan Patrick and Cynthia Croatti c/o Cape and Islands Engineering, Inc.** Proposed installation and maintenance of a walkway, seasonal pier, ramp, and float. The work will take place within a V flood zone and 100' of a wetland resource area.

**Withdrawn.**

- 2.) **Notice of Intent: DEP File Number: SE7-2260, 80 Megansett Road, Cataumet, Bishop-Megansett Family Limited Partnership c/o Cape and Islands Engineering, Inc.** Proposed seasonal installation and maintenance of a timber pier with an aluminum ramp and a pile-supported 8 x 12- foot float in the waters of Squeteague Harbor. The work will take place in a V-Flood zone, within 200 ft. of a riverfront area and 100 ft. of wetland resource area. **Continued from 9/21/23.**

Chair Gray said that he reviewed the tape from the last meeting in which this was discussed, and he reviewed all the materials, except for the materials that were submitted today. Mr. Berman said that he reviewed that tape from the meeting also. Chair Gray said that he also reviewed some DEP adjudicatory decisions and some court cases relative to procedures involving 131-40 and bylaws relative to definitions and regulations as they pertain to this review. He said that this hearing and the Notice of Intent that is before the Commission for 80 Megansett, is being reviewed subject to the Wetlands Protection Act and its regulations, the Bourne Wetlands Bylaw, and the Bourne Wetland Regulations. No other regulations or definitions apply to the Notice of Intent review.

Chair Gray said that there is no specific definition for mooring in the Bourne Wetland Regulation 1.0 to 1.16. Chair Gray explained that 1.16 was written over 22 years ago, and has not been used much, and is one reason why the Bourne Conservation Commission struggles with some of the text in 1.16. He talked about what the text says and how it does not talk about the direction and what to do.

Chair Gray said that his recommendation about the 1/5 in the text is to follow the way that it is written and let the engineers interpret it. He said that they cannot change language in the middle of a hearing, and that they will be looking at making changes to this regulation in the winter of 2024. He talked more about the regulations that were written many years ago, by who, and why they were written the way that they were.

Chair Gray said that regarding this case and a few others, they cannot change the language because it makes more sense, and they can only change the language if there is a public hearing on that issue alone. He said they are going to take the applicants input and professional input and talk about it as a group and vote on it. He said that this is planned for February.

Mark Dibb of Cape and Islands Engineering talked about a few minor changes that have been made since the last hearing. He said that the landing point on land of the pier was relocated slightly to achieve 25 feet from the property line. He said that there is an upland area set aside for float storage. He said that they did supply responses to 2 comments that came up in the last meeting, with one being about the regulation of the waterbody. He said that he agrees with Chair Gray that the wording is not optimal. There was some discussion about anchoring and



the mooring. Mr. Dibb also questioned whether this regulation is even applicable. He talked about what was asked of them at the other hearings, and that at the other meetings they were directed to measure perpendicular distances.

Chair Gray said that in Mr. Dibb's letter, he talked about shellfish habitat value and had referenced regulation in terms of commercial value and recreational value. He said that he wanted to caution Mr. Dibb, and any other engineer, that the shellfish survey is referencing commercial value, recreational value and historical data indicating the use of the area by recreational and commercial shell fishermen.

Joe McGurl said he has spoken before about this project and the project at 96 Megansett, and he said that they are related because they are next to each other and share the same issues. He showed some diagrams that he drew about measuring across the water body. He said that when measuring across the water body, you need to measure for where the constriction is, where it is the narrowest, and not where it is the widest. It said it is simple. He said that he drew the true center line on his diagram, and he said that it could not be any clearer. Mr. Berman said that he drew a similar diagram himself.

John York said that if it is an engineer determination, then it might make sense to defer to the engineer. He said that the engineer should present this and present the information sufficient for somebody else to follow his logic and check that the result that was given is what follows from the method the engineer is following. He talked about the engineer providing the information necessary to generate the center line.

There was more discussion about mooring anchors, the language of the regulation, and possible discussion in court. There was also discussion about the waterway regulations. Mr. York also brought up the topic of docks complying with ADA requirements. Chair Gray said that he has no idea whether the ADA would supersede town regulations. He said that he has found that Conservation Departments try their best to meet the ADA requirements. There was some discussion about ADA requirements. Chair Gray said that this should be put on the agenda for the meeting in February and for the Commission to get some input from the powers in the town government that deal with this.

Rachel Watsky, Counsel for the abutter at 96 Megansett Rd., reiterated what was written in the October 10<sup>th</sup> letter that was submitted from her office regarding this project. She said that they do support the issuance of a pier Order of Conditions for 80 Megansett Rd., in the condition that the existing mooring is required to be either moved or relocated so that this property does not interfere with the access and navigational rights of the owner of 96 Megansett.

A resident of 53 Bryant Point Road in North Falmouth said that she supports Mr. Bishop and agree with what his engineers have done. She said that she looked at prior minutes and the one fifth rule and she said that she did see that the materials that were shared and that the Commission was looking for perpendicular across the water analysis. She said she also looked at anything related to the dock requirements of being 100 feet from a mooring or a dock. She said that she found that the Commission's view was consistent with what the applicant is thinking. She said that in the context of the bylaw amendments there was a consideration of 2 rules in the regulations that both dealt with distance from a mooring area, and there was a decision made by the Commission to amend the rule that dealt with the distance of a dock from the mooring area to change it to the distance from the dock to a mooring anchor. She said it

was noticed a few months later that there was some inconsistency and she said that there was some discussion about it. She read aloud what was said in a meeting in which the inconsistency was discussed on July 21, 2022. There was more discussion about the definition of “across” in this regulation and case.

Mr. McGurl asked Mr. Dibb to explain the center line. Mr. Dibb said he would like to answer that, with an expanded view, at a future date, since this will be continued.

Mr. Berman said that regarding the mooring anchor, he feels that this is not an anchor, and he feels that it is more of a temporary pile, as it is securing the corners and post. He said regarding the ADA that it is something to look at in the future when they look at the regulations, and it does not apply to this project. He said that regarding the one fifth, and after everyone has looked at it, he thinks they all say that it is more than one fifth of the way across, and he does not think that they can get past this hurdle.

**Continued to 11/2/23.**

- 3.) **Notice of Intent: DEP File Number: SE7-2234, 18 Lester Avenue, Monument Beach, Gail Corbett c/o Cape & Islands Engineering, Inc.** Replace existing failed licensed seawall with revisions to wall replacement design and addition to propose beach nourishment. Proposed removable beach access stairs to replace existing concrete steps. The work will take place in a V flood zone and on or within 100 ft. of other coastal wetland resource areas. **Continued from 10/6/23.**

Mark Dibb handed out copies of the beach and monitoring and maintenance plan that Raul put together. He said that it outlines his intent on how the annual monitoring maintenance will take place. He said that the approach would be to take a northerly point of the project, which is approximately 6 feet from that and measure down from the wall and that is where the nourishment would start. He explained the area in which the monitoring would take place. He said that it may change also.

Susan Weston asked if they were going to do the beach grade elevation measurement annually. Mr. Dibb said that the plan says once a year. Mr. Berman asked if there was a specific date by which the report will be provided to the Commission in the plan, and if it is not, it would be good to have it. He also talked about erosion rates. Peter Holmes asked about the grain size analysis, and Chair Gray said that it should be provided and, they should provide the Commission with the source of the material. The Commission requested more detail in the monitoring plan.

**Continued to 11/2/23.**

- 4.) **Notice of Intent: DEP File Number: SE7-2261, 12 Scotch House Cove Road, Cataumet, Robert Denormandie c/o Falmouth Engineering, Inc.** To construct a driveway, including minor regrading and shaping of the landform, installation of a crushed stone base and creation of two small drainage depressions. The work will take place in an AE flood zone, V flood zone and within 100 ft. of wetland resource area. **Continued from 10/5/23.**

Michael Borselli, Falmouth Engineering, handed out revised plans. He said that they submitted revised plans after their initial hearing and due to comments from the interim agent Chuck



Katuska, and feedback from the Conservation Commission. Mr. Borselli said that he talked to his client, and they adopted the recommendations that were made at the last hearing. He said that they were removing the tree removals from the project plan, and that they might add gravel around the circle.

Motion to close the hearing made by Mr. Holmes and seconded by Ms. Weston. **Motion Carried. 5-0-0.**

Needs draft conditions.

- 5.) **Notice of Intent: DEP File Number: SE7-2259, 394 Scraggy Neck Road, Cataumet, Thomas Cibotti c/o Falmouth Engineering, Inc.** Install a pile supported residential small, elevated pier, ramp, and float. The work will take place within a V flood zone and within 100 ft. of wetland resource areas. **Public hearing closed on 10/5/23.**

Amalia Amado said that the draft Order of Conditions is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40. She said they have 1, 2, 3, 7, 8, 9, 10, 12, 18, 19, 22, 27, 28, and 29. She said special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 – 5, 6, 7, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25. Ms. Amado read aloud the special conditions.

Ms. Weston asked why they were doing the eel grass survey after, and Mr. Borselli said they did a shellfish and eel grass survey and shared the results. He said there was a meeting with the Harbormaster on site that gave them an opportunity to lengthen the docks somewhat to get them into deeper water. He said that they wanted to make sure there was no eel grass even further out.

Chair Gray asked if they started processing the Chapter 91 application, and Mr. Borselli said no. There was discussion about the timeline for the project.

Motion to move the draft to the final by Mr. Berman and seconded by Ms. Weston. **Motion Carried. 5-0-0.**

- Review draft Conservation Restriction and draft (CR) plan for DEP File Number: SE7-2171.

Chair Gray took this agenda item out of order and he wanted everyone to know about the draft of the Conservation restriction that was required for 96 Megansett, for the amended Order of Conditions. He said that it is on the agenda in case anyone has any questions that will be directed to Town Counsel. Ms. Watsky gave a brief overview of the amended conditions.

Chair Gray asked how many pages the actual restriction document language is, and Ms. Watsky said that it varies and tends to be about a maximum of 20 pages. She said that it needs to be approved by Town Counsel, Atty. Bryan Bertram. Chair Gray said that Ms. Amado will follow up with Atty. Bertram. There was more discussion on how the CR plan is processed.

- 6.) **Notice of Intent: DEP File Number: SE7-2262, 52 North Beach Avenue, Bourne, Peter Perroni & Mavis Robinson c/o Goddard Consulting** To construct a two-story addition with a farmer's porch within 100' of a wetland resource area and in an AE flood zone. **Continued from 10/5/23.**

Amalia Amado said that there is a draft Order of Conditions which is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40: 1, 2, 3, 4, 7, 10, 12, 13, 15, 18, 19, 27, 28, and 29. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 4, 5, 6, 7, and 9. She said that additional special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7, special condition number 15 and bylaw conditions number 4 and 9 above shall continue in perpetuity and the limitations of the order and with the sale of the property.

Motion to move the draft to the final by Mr. Holmes and seconded by Mr. Berman. **Motion Carried. 4-0-0.**

- 7.) **Notice of Intent: DEP File Number: SE7-2258, Parking lot off 0 Sagamore Road, Sagamore Beach, Town of Bourne c/o BSC Group, Inc.** The proposed project at the site involves upgrading the parking lot and the stormwater management system, as well as repairing the existing emergency access ramp, walkover stairway, and beach nourishment. The project is located on or within 100 ft. of coastal wetland resource areas and in a V flood zone. **Continued from 10/5/23.**

Amalia Amado said that there is a draft Order of Conditions which is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40: 3, 7, 10, 12, 14, 18, 19, 26, and 30. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 4, 5, and 6.

Motion to move the draft to the final by Mr. Berman and seconded by Ms. Butler. **Motion Carried. 4-0-0.**

- 8.) **Notice of Intent: DEP File Number: SE7-2257, Parking lot off 280 Standish Road, Sagamore Beach, Town of Bourne c/o BSC Group, Inc.** The proposed project at the site involves upgrading the parking lot and its stormwater management system, as well as repairing the existing emergency access ramp, walkover stairway, and beach nourishment. The project is located on or within 100 ft. of coastal wetland resource areas and in a V flood zone. **Continued from 10/5/23.**

Amalia Amado said that there is a draft Order of Conditions which is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40: 3, 7, 10, 12, 14, 18, 19, 26, and 30. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 4, 5, and 6.

Motion to move the draft to the final by Ms. Butler and seconded by Mr. Berman. **Motion Carried. 4-0-0.**



## REQUEST FOR CERTIFICATE OF COMPLIANCE

**1.) DEP File Number: SE7-2098, 11 Buttermilk Way, Buzzards Bay, Massachusetts State College Building Authority c/o Green Seal Environmental, LLC.** Certificate of Compliance requested for order of conditions issued on 12.14.2020. To remove existing building and construct a 72-bed cadet housing dormitory with associated parking, utilities, stormwater improvements, and landscaping within a V flood zone.

Ms. Amado said that there was a site visit on October 10<sup>th</sup> by Chuck Katuska and he did note some issues, as he felt the as-built plan was lacking sub service detail on the stormwater management system components required under the order of Conditions. He also said that there is a silt sack remaining in the catch basin located in the landscape in between the northern side of the building and Buttermilk Way. Ms. Amado read aloud more of Mr. Katuska's report of his site visit.

**Not issued.**

- Approve minutes: 9/21/2023.

Motion to approve the minutes of 9/21/23 made by Mr. Holmes and seconded by Ms. Butler. **Motion Carried. 4-0-0.**

- Report of the Conservation Agent.

Ms. Amado said that regarding 7 Eustis, who had an application in, Mr. Katuska had started his review of it before they requested to withdraw. She said that they have an Order of Conditions in and there was a restoration plan. She said she will double check with Mr. Katuska regarding his findings.

Ms. Amado said that off Finch Lane, there is a development called Bourne Oaks. She said that on the wetland map it shows that there is a fresh swamp there and Ms. Fitch went out there last year to meet with a landscaper after she received a call. There have been many calls regarding this area, and it appears that there are a lot of leaves being dumped in that area. The reports are regarding dumping in the wetlands. There was discussion about educating the public about the bylaws.

- Vote to excuse absent members.

Motion made to excuse absent members from the meeting by Mr. Holmes and seconded by Ms. Butler. **Motion Carried. 4-0-0.**

Ms. Amado reported that while Chair Gray was out the Conservation Commission approved a letter in support of the Pollinator Pathways project. She said that she can send the letter off to Assistant Town Manager Liz Hartsgrove once the letter has been signed.

- Adjourn

Motion made to close the hearing by Mr. Holmes and seconded by Ms. Butler. **Motion Carried. 4-0-0.**

The meeting was adjourned at 9:04 PM.

Meeting minutes typed by – Kim Johnson, Recording Secretary  
Audio recorded by the Conservation Department

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