

**Bourne Conservation Commission
Public Meeting Minutes
November 2, 2023**

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Commission Members Present: Chair Bob Gray, Vice Chair Rob Palumbo, Joseph Soares, Jr., Sarah Butler, Susan Weston, Jacob Gadbois, and Melvin Peter Holmes.

Excused Members: Greg Berman 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 19th, 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-23-32, 0 Emmons Road (Bridge), Monument Beach, Town of Bourne c/o Tim Lydon, Town of Bourne Engineering Department.** Resurfacing of the bridge abutment to include replacing concrete posts, install posts and rope, grade road slope and place 2" binder course and topcoat of asphalt. The proposed project is located within a V flood zone and within 100' of a wetland resource area.

Tim Lydon, Town of Bourne Engineering Department, showed a screenshot of the abutment and the causeway of Emmons Road Bridge that goes to Tobey Island. He said that the Association on Tobey Island approached his department to do some work on this abutment. He said that the Town told them that it would get done quicker if they paid. He said that the Town is working together with the Association. He said that they have talked to the Select Board and they do have a license agreement for access and construction. He said that the construction should be quick, and the schedule is very limited. He said that it is a good thing for everyone because the Town will be getting a piece of town infrastructure, on the coast, repaired.

There was no public comment.

Motion to approve, under a Negative Two Determination, by Mr. Holmes and seconded by Ms. Butler. All in favor. **Motion Carried. 5-0-0**

2.) **Request for Determination File Number: CC-23-29, 0 Eel Pond Road and corner of Marilyn Road, Buzzards Bay, Town of Bourne c/o Tim Lydon, Town of Bourne Engineering Department.** Drainage improvements to the outfall off the existing waling path, to where it discharges to the Eel Pond (Pond). **Continued to 11/16/23.**

3.) **Request for Determination File Number: CC-23-30, 11 Benedict Road, Gray Gables, Joe Younis c/o Stephen Gagnon.** Replace the existing deck and add a three-season porch. The proposed project is in an AE flood zone.

Stephen Gagnon said that he is a retired builder helping the applicant, Joe Younis. He said that the project is a small addition. The commission looked at the plan. Mr. Gagnon said that they are basically removing a deck and replacing it with a 3-season porch.

Amalia Amado said that the Interim Conservation Agent, Chuck Katuska, conducted a site visit. He said that the 100-foot buffer zone to salt marsh includes the front portion of the existing house and any potential access to the rear of the property. The rear of the property is in the AE flood zone. She said that Mr. Katuska would like to know where the materials for construction will be stored, and he also said that erosion controls may be necessary to limit disturbed areas, confine sediments to the project site to the degree possible and revegetate disturbed areas. He also said that any trees needing to be removed for access should be identified. He also wanted to know where they will access the construction site.

Mr. Gagnon said that access will be to the left side of the house, and that no trees will be removed. He said that any materials for construction will be carried in from the trucks, and the staging area will be the driveway.

A neighbor from 5 Benedict Road asked if his property would be ok regarding water runoff from the roof of the new structure. Mr. Gagnon said that there are no plans for gutters, although he agreed that they could install a French drain, and the neighbor was ok with that plan.

Motion to approve, under a Negative Two Determination, by Mr. Holmes and seconded by Ms. Butler. All in favor. **Motion Carried. 5-0-0**

4.) **Request for Determination File Number: CC-23-31, 87 Tahanto Road, Pocasset, Darlene Carson c/o Rapoza Landscape, Inc.** Hardscape projects in front of the house including a fence, walkway, steps, and driveway. The proposed project is located in an AE flood zone, within 100 ft. of wetland resource and within 200 ft. of a riverfront.

Michael Burke of Rapoza Landscape explained the proposed project.

Ms. Amado read aloud Mr. Katuska's report:

- Applicant should identify the location and extent of any materials storage or laydown area which may be required for construction.
- Existing concrete stairs are fractured and will require the use of heavy equipment to remove.

- The Commission should establish requirements for erosion controls as may be necessary to limit disturbed areas, confine sediments to the project site to the degree possible and revegetate disturbed areas.
- Note that the existing house layout includes a “garage under”, accessed from the eastern side of the house. I am informed by the owner that this area is currently used for dry storage and access is entirely by foot. Consider the possibility that vehicular access to this garage under may eventually be desirable and confirm that further changes to the property to provide vehicular access to the garage under will require additional Conservation Commission review.

Mr. Burke said that they will be staging out of the driving path, and they will re-loam and re-seed any disturbed areas. He said that they will use filter fabric. They will be using a mini excavator and saws and jackhammers.

There was no public comment.

Motion to approve, under a Negative Two Determination, with a condition to reference the erosion controls, by Mr. Holmes and seconded by Ms. Butler. All in favor. **Motion Carried. 5-0-0**

NOTICE OF INTENT

- 1.) **Notice of Intent: DEP File Number: SE7-2264, 10 Sunny Lane, Gray Gables, Dennis Lee c/o JC Engineering, Inc.** Septic System upgrade in an AE flood zone, within 100 ft. of wetland resource area and 200 ft. of a river front.

Sam Iamele of JC Engineering explained the project. He said that most of the project, by definition, is considered a coastal bank, and he said that they have been given their site limitations.

Ms. Amado summarized Mr. Katuska’s report: “The engineered elements of this proposal appear to be as environmentally sound as is feasible, given site conditions and limitations. I note in passing that, although the design appears to be adequately protective of the public interests under the MAWPA and the Bourne Wetlands Bylaw, there is no specific mitigation proposed. Based on the Commission’s regular practices, the Commission may wish to consider some aspect of vegetative mitigation for the loss of the mature oak forest in the area of the new leaching field.”

Mr. Iamele said they are proposing to do a seed mix, post construction, which will help stabilize the bank and provide vegetative cover. He said that planting trees and shrubs in the location of the system is not ideal as the roots could impact the function of the system. He also said that any other trees that are not necessary should be removed so they do not impact the system.

There was no public comment.

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

Ms. Amado said that draft conditions are not ready and will be for the next meeting on 11/16/23.

- 2.) **Notice of Intent: DEP File Number: SE7-2260, 80 Megansett Road, Cataumet, Bishop-Megansett Family Limited Partnership c/o Cape & Island 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 10/19/2023.**

Mark Dibb, Cape & Islands Engineering, said that they created a plan to show water widths. He submitted the engineered water width plan which showed a wider view of the water body. He said that the pier had not changed.

Ms. Amado said she does not have an updated report from Mr. Katuska. She said that Rob Palumbo did sign the certificate of review.

Ms. Butler asked Mr. Dibb for the plan that he showed at the last meeting so they can compare. Ms. Weston asked for an explanation of what they are being shown.

Mr. Dibb explained the lines on the new width plan. He said that he added some data regarding mean high water and mean low water to create another line on the plan. He said that they did their best by using definitions of the water body because there is no outline out there that shows how to measure the width of a water body. There was more discussion about the width plan.

John York, a member of the public, talked about the bylaw and how it is written. He also said that engineering needs to be understandable and repeatable, and he said he had stated this during a previous meeting. He said that there are two depictions of the engineer's proposed method – one is the text description of the method, and the other is the plans that have been shown following that method with what the result produces, and Mr. York said that they do not seem to align with each other, which is problematic if you are going to try to reproduce it, because you need to know which to follow. He said that there are errors on the plan including the mouth of the water body.

Chair Gray asked Mr. York if it is his opinion that the proposed dock does not meet one fifth across the water body, based on his analysis of this plan. Mr. York said that this plan isn't sufficient to make that determination.

Joe McGurl, a member of the public, said that he sent a response to the Commission regarding the engineering plan in the applicant's application. He said that this is the third attempt for the engineers to explain the logic behind their measurements, and it doesn't get the project any further down the road. He said that at the August hearing regarding 96 Megansett, it was determined that the distance across the waterway was measured to the nearest point across the waterway, so he asked why they are looking for a different way to measure. He also talked about the bylaw and how it compares to definitions of the word "across" in the dictionary. Chair Gray said that they do not really know what the logic was

when the bylaw was written, and it is pure speculation. There was more discussion about lines across the waterway.

Ms. Weston said that Mr. McGurl's explanation makes so much more sense, and she said that based on how they did 96 Megansett, she does not see how they can change it and do it differently on this request.

Ms. Butler said that the term perpendicular is still being brought up and she understands the ambiguity of the regulation by using the word "across." She asked everyone to please remember that they can't speak hypotheticals and that the Commission can only work with what the wetland bylaws and regulations state, which paraphrased is "no pier length allowed one fifth across the waterway." She also said to remember the recent lift of the moratorium makes this project an initial and delicate plan and an example for future projects for this town. She said that she personally feels as though the engineer's plans have been inconsistent and insufficient, which concerns her. She asked if they would consider continuing this until the bylaw is specified after the winter.

Mr. Holmes said that he believes that it doesn't meet the one fifth across a waterway requirement.

Mr. Palumbo had no question or comment. Mr. Soares said that he was not sure because the interpretations that they are getting have different answers on what is right and what is wrong.

Chair Gray asked Mr. McGurl why he didn't hire an engineer to review the plan in order to validate his comments. Mr. McGurl said that he tried, and he couldn't get anyone to do it in time. Chair Gray said that the dilemma is that they require a stamped engineered plan, and they have the engineer here who prepared and stamped the plan. Chair Gray said that he specifically asked this engineer if he was of the opinion that the proposed project meets the one fifth and he replied yes. He said now they have Mr. McGurl's information, in which several commissioners said that they think it is nice and clear, but it isn't backed by an engineer's stamp. He continued to say that the issue is if this becomes the reason for denial and it goes to court, the judge will defer to professionals who prepare plans versus the public who has critiqued the plan.

Ms. Weston said that she is questioning the engineer's plan, and they need a consultant, or another engineer. Chair Gray said that they will try it, although the applicant may not consent to another continuance for that purpose. There was more discussion on how they determined the one fifth measurement for the 96 Megansett dock application. Mr. Watsky spoke about 96 Megansett and he said that they designed a dock which was dictated by the rules and regulations of the Conservation Commission, and they were denied. He talked about the design differences between 80 and 96 Megansett. He said that he believes that their means of measuring is accurate and applicable to this project.

Mr. York said that Mr. Dibb's comment about the measurements being done the same way as 96 Megansett is not correct. He said that the 96 Megansett pier is in the space between the two choke points, and they drew a straight line and used that. He said it is not possible to say that it is being done the same way.

There was more discussion about the channel, and Bob Bishop said that not many people use the channel. Mr. Bishop said that he watched over a 3-week period and saw about 30 people use the waterway. There were some more comments from the public that were opposing the proposed project at 80 Megansett, and a few that were in favor. There were many people speaking at once, and Chair Gray had to ask all to stop to let one person speak at a time. There was more conversation about the measurements.

Chair Gray tabled this discussion for the time being, per request of the applicant. After more business was conducted, the applicant requested a continuance.

Continued to 11/16/23, by request of the applicant.

- 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 10/19/23.**

Raul Lizardi-Rivera of Cape & Islands Engineering presented on behalf of the applicant. There was some discussion about samples of beach sand. The sand will come from various distributors, and it is typical sand of the Cape. Mr. Lizardi-Rivera said that the applicant will do beach nourishment, although they will not do a required minimum a year because the beach may not need it and could possibly hurt the environment more than benefit it. He also said that the sieve analysis has been sent out, and once received he will submit it to the Commission.

Ms. Weston thanked the applicant for doing the sieve analysis, and she agrees with the points that were just made.

Motion to close the hearing by Mr. Holmes and seconded by Ms. Weston. **Motion Carried. 4-0-1.** Mr. Palumbo abstained.

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, 8, 9, 10, 12, 14, 26, 27, 28, and 29. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 6, 7, 10, 12, 15, and 18. She said that additional special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 as follows:

1. – All recommendations included in the Division of Marine Fisheries letter dated April 5th, 2022-2023, and signed by Amanda Davis, are to be incorporated into this Order of Conditions, including a time of year restriction from May 1st to July 31st.
2. – the contractor shall develop a spill manage plan for any hazardous materials that may be employed during work in the buffer zone, salt marsh, or over the water, specifically they must effectively deal with spillage of fuel or hydraulic fluids from equipment. The contractor

must maintain an appropriate spill kit, at the project site, at all times. General conditions numbers 2 and 3 and bylaw conditions numbers 15 and 18 above, shall continue in perpetuity beyond the limitations of the order and with the sale of the property to others.

Motion to move the draft to final and in doing so, issue the order, by Mr. Holmes and seconded by Ms. Weston. **Motion Carried. 4-0-1.** Mr. Palumbo abstained.

- 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. **Public Hearing closed on 10/19/23.**

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, 7, 9, 10, 12, 13, 15, 18, 19, 24, 27, 28, and 29. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 4, 5, 6, and 7.

Motion to move the draft to final and in doing so, issue the order, by Ms. Butler and seconded by Ms. Weston. **Motion Carried. 4-0-1.** Mr. Palumbo abstained.

- Approve minutes 10/5/2023.

Motion to accept the minutes of 10/5/23 as written made by Mr. Palumbo and seconded by Ms. Butler. **Motion Carried. 5-0-0.**

- Vote to approve 2024 Bourne Conservation Commission Meeting Schedule.

Motion to accept and approve the 2024 Bourne Conservation Commission Meeting Schedule made by Ms. Butler and seconded by Ms. Weston. **Motion Carried. 5-0-0.**

- Vote to excuse absent members.

Motion made to excuse absent members from the meeting by Mr. Palumbo and seconded by Mr. Holmes. **Motion Carried. 5-0-0.**

- Adjourn

Motion made to adjourn made by Mr. Holmes and seconded by Ms. Butler. **Motion Carried. 5-0-0.**

The meeting was adjourned at 9:00 PM.

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

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