

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

6:30 P.M. – Called to order.

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, February 02, 2023, held in the Bourne Veterans 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.

Commission members present: Chm. Robert Gray, Greg Berman, Paul Szwed, Susan Weston, Tom Ligor and Rob Palumbo

Excused members: Melvin Peter Holmes

Professional staff in attendance: Stephanie Fitch, Zac Basinski and Mark Dibb

Present by remote access: Tom Ligor, Rob Palumbo and Mark Dibb

Continuances:

44 Baxendale Road, Cataumet continued to 2/16/2023	RDA File No. CC23-3
83 Elgin Road, Pocasset continued to 2/16/2023	DEP File No. SE7-2226
134 Wings Neck Road, Pocasset continued to 2/16/2023	DEP File No. SE7-2228
96 Megansett Road, Cataumet continued to 2/16/2023	DEP File No. SE7-2172
122 Wings Neck Road, Pocasset continued to 2/16/2023	DEP File No. SE7-2227

Notice of Intent:

Chm. Gray recused himself and Mr. Berman took over the review

1. **68 Elgin Road, Pocasset Timothy Bernard c/o Bracken Engineering, Inc. DEP File No. SE7-2223 Proposed Project:** Construction of a single family dwelling, Title V septic system, and all associated landscaping, grading, utilities, and appurtenances. Work will take place within an AE flood zone and within 100 ft. of wetland resource area. **Continued from 1/05/2023.**

Zac Basinski PE from Bracken Engineering, Inc. represented on behalf of the applicant. Mr. Basinski explained that this project was before the Commission last fall. This is an 18,000 SF lot

RECEIVED
2023 MAR -3 PM 12:09
TOWN CLERK BOURNE

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

located in the AE flood zone and containing a fragmented coastal bank based on the topography and Policy 92-1. Previously, the Commission had questions about some trees which they since have added to the plan and changed the limit of work to preserve some of the significant trees on the lot. Also at that time, staff had asked them to take a look at the history of the area and see if there was any previous disturbance on this lot. Supplemental information was submitted which showed that there was an old house built in the 1930's that took up multiple lots on Handy Point. The house existed up until sometime in the 1950's. The lot was subdivided in 1966. Mr. Basinski explained pretty much all of the abutting properties are developed in the area and most recently the abutting property at 72 Elgin was approved by the Commission, which is also owned by this current homeowner. The approved project at 72 Elgin is very similar to the current proposal for 68 Elgin. Mr. Basinski overlaid the flood zones on the property from the GIS map to show how the water would come in on both sides of the property during a flood event. The section in the middle of the lot is a 500 year flood zone depicted by FEMA. They have designed the house to be in the middle and upper portion of the property as much as possible to maintain site grades. The coastal bank doesn't provide sediment to other resource areas. The new redevelopment of the project is a flood compliant structure that's being built into the bank with flood compliant storage underneath the house. The existing bank would be re-shaped off to the side of the property, without redirecting water to any of the abutters or increasing velocities. They believe the new reconfiguration will protect the upland area and protect the neighboring properties. They shrunk the house down to a three (3) bedroom and it will have a nitrogen reducing septic system.

Agent comment: Ms. Fitch said the project proponent bears the burden of demonstrating that either the bank is not significant to the interest of the Act or, if the bank is significant, that the work will meet the performance standards to ensure the interest is protected. She recommended the Commission decide whether the coastal bank plays a role in storm damage prevention and flood control due to it being a vertical buffer. Ms. Fitch reminded the Commission that 72 Elgin, which also had a fragmented coastal bank which likely was formed from previous fill, set the precedent for this one. If the coastal bank doesn't have any performance standards then the flood zones would be the only concern on this site. If it still meets the standards of a coastal bank after the house is built then the grading on site needs to make sure it does not destabilize the bank, making it more susceptible to storm water impacts.

Member comment: Ms. Weston clarified that the Commission determined the coastal bank to be non-significant at 72 Elgin Road. Mr. Szwed asked what the decision was on the retaining wall. Mr. Basinski said it is to keep it flood compliant with the basement area. They need to allow water in and out of the back and if they closed that area off they would need to get a Conditional Letter of Map Amendment (CLOMA) from FEMA. This maintains the ability to keep the flood vents on both sides and allows the structure to have water come in and out. The purpose of the fill on the other side of the house is for the site grades because the house is going to be sticking out of the ground really high. Mr. Basinski showed the site grades to the Commission. Mr. Ligor asked how much of the coastal bank will be impacted by the new dwelling. Ms. Fitch said in the Notice of Intent it said 2,464 linear feet of coastal bank. Mr. Basinski said that was meant to be 2,464 SF. Mr. Palumbo said he does not have any concerns due to the facts that the bank was built because of fill, they approved the project next door, and there are houses between the proposed project and Red Brook Harbor. Mr. Berman pointed out that the use of primary, secondary or tertiary banks is not defined in the bylaw or the wetlands protection act. They are all just banks and either significant or not. He believes a lot of these banks on this road occurred from road construction years ago and human alteration to the area. He highlighted the fact that this is not a seaward bank and there are houses in between the project and where the water would flood into this area. He felt they are non-significant fragmented banks. Mr. Basinski added that the bank stays underneath the fill and the work is built on top of it. The physical bank underneath isn't going to be

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

disturbed. He believed it still meets the performance standards. The slope will be loamed and seeded, with planting on the sides around the slope and stabilized with a lawn in front which will help with wind or rain erosion.

Motion made by Ms. Weston and seconded by Mr. Palumbo to close the public hearing.
Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray- abstained.

Draft order of conditions read by Ms. Fitch is to include: *All general conditions as well as special conditions pursuant to MGL Chapter 131 section 40: 1,2,3,4,5,7,9,10,12,14,15,16,18,19,21,27 and 29. Special conditions pursuant to the Bourne Bylaw Article 3.7: 5, 6, 7 and 9*

Motion made by Mr. Szwed and seconded by Mr. Ligor to move the draft into the final.
Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-abstained. **Motion carried. 5-0-1**

Chm. Gray returned to chair

2. **124 Wings Neck Road, Pocasset Christopher and Donna Kent c/o Wet Tech Land Design, Wayne Tavares DEP File No. SE7-2228 Proposed Project:** A proposed Phragmites management plan to be reviewed as an Ecological Restoration Limited Project. The work will take place within the V flood zone and within a salt marsh. **Continued from 1/19/2023.**

Wayne Tavares represented the project on behalf of the applicants. Mr. Tavares submitted the revised plans with the mitigation planting removed. The revised plans show that this project is *only* a Phragmites removal project.

Agent comment: Ms. Fitch said she received the updated site plan without the mitigation planting and also received the letter from Division of Marine Fisheries. DMF supports the project but they did make a point to mention that the proponents should investigate the condition which allowed Phragmites to establish throughout the property. These conditions could be nutrient inputs, water retention, addition of fill etc. Addressing these conditions could increase the success rate of restoring native species and lower the risk of Phragmites re-colonizing. Ms. Fitch recommend that Mr. Tavares try to work with the other neighbors, who all have connecting marshes in their backyards. She encouraged the neighbors to all work together on this. She said this type of invasive control done in a piecemeal fashion will be harder since you will have Phragmites growing two feet from the left and right of the removal areas.

Member comment: The Commission members agree it would be great to have the neighbors on board.

Agent comment: Ms. Fitch confirmed how much of the salt marsh will be restored, which is 5,930 SF and Mr. Tavares confirmed no work will take place on the coastal bank.

No public comment.

Motion made by Ms. Weston and seconded by Mr. Szwed to close the public hearing.

Roll call: Ms. Weston-yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes, Mr. Ligor-yes and Chm. Gray-yes.

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

Draft order of conditions read by Ms. Fitch is to include: *All general conditions as well as special conditions pursuant to MGL Chapter 131 section 40: 1, 2, 7, 9, 10, 22, 27 and 28 Special conditions pursuant to the Bourne Bylaw Article 3.7: 4 and 7.*

Additional special conditions pursuant to the Bourne Wetland Protection By-Law Article 3.7:

ASC-1) The boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Wetland boundary markers must remain in place until a Certificate of Compliance has been issued by the issuing authority.

ASC-2) An annual report with photographs is required to be submitted to the Agent for every year the work is occurring.

ASC-3) CMS Landscaping (or any other contractors) must notify the Agent prior to the use of the plastic cover.

ASC-4) No tree pruning or removal is permitted under this OOC.

ASC-5) All recommendations included in the Division of Marine Fisheries letter dated January 18, 2023 for the NOI by Christopher and Donna Kent are to be included in this OOC.

Motion made by Ms. Weston and seconded by Mr. Szwed to move the draft to the final.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

3. **490 Scraggy Neck Road, Cataumet William Murphy, NW Holdings, LLC c/o Cape & Islands Engineering, Inc. DEP File Number: SE7-2230 Proposed Project:** The installation of a proposed seasonal ramp and bottom-anchored float. The work will take place within a V flood zone and wetland resource areas. **Continued form 1/19/2023.**

Mark Dibb PE from Cape & Islands Engineering, Inc. represented on behalf of the applicant. The revised plan was accompanied by a letter dated 1/26/23 which addressed comments from the Commission. The revisions identified the float storage on the plan and included a locus map where the Scraggy Neck Recreation Association stores their boats. Mr. Dibb also included an approval letter from the Scraggy Neck Recreation Association giving the applicant the right to store their float in that location. He noted that location is in a flood plain. There is an alternative upland location to the right of the driveway, if the Commission wanted the floats stored out of the flood zone. The second comment regarded the public access signage. The access is along the top of the bank and frontage of the property. In the letter they did provide the boat size. Mr. Dibb said they received a letter from the Director of Natural Resources with their definition of eelgrass beds which referenced the Army Corp of Engineers guidelines. Mr. Dibb said Brad Holmes reviewed that but did not have that specific criteria when he did the study. The sprigs of eelgrass do not meet their definition of a bed, but it would need scuba divers and significant investigation to further verify. In his professional opinion the eelgrass beds provided on the plan are in fact beds and the sprigs do not meet the eelgrass bed definition. Another comment he addressed was moving the float into 4 ft. of water without the float stops. Unfortunately, that would push the float within 100 ft. of another mooring, so they did not change the proposal to reflect that.

Agent comment: Ms. Fitch said they did a nice job of addressing the comments from the last hearing but unfortunately they are still waiting for the full report from DMF. Ms. Fitch asked how they would get the float to the upland storage area seasonally. Mr. Dibb said it would be brought up by a licensed professional most likely Matt Swift and on to shore using that location and transported by some sort of truck or flatbed. Ms. Fitch said the size of the boat in the report is fine but as time goes on they do want to discuss the size of the boat a little more due to the size of the

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

float. Chm. Gray said the DNR treats the float as if it's a mooring, so there is an annual review and if there is an evaluation of boat size it's probably better that they do that. Ms. Fitch spoke with the cove master for the area who had no concerns. Ms. Fitch also clarified the profile view at low tide.

Member comment: Mr. Berman said they have done a great job but they don't have the exact percentage of numbers for eelgrass beds and while this location may or may not meet the definition, he did not want to set a precedent. Professional opinion is nice but he would like to see the figures. The further towards summer the better the information to gather eelgrass. The Commission debated on conditionally approving until they have the eelgrass report. Chm. Gray said Brad Holmes probably needs to take another look at this and as Ms. Weston indicated, they could probably do a conditional approval and require that Brad Holmes review again in June or July. Mr. Dibb further explained at the time they did meet the requirements of the bylaws and didn't have the luxury of the definition at the time of the survey.

No public comment.

Continued at the request of the representative to the next available hearing 2/16/23 pending the DMF letter and update from Brad Homes.

Request for Certificate of Compliance:

1. 27 Robin Lane, Pocasset Jared Kent c/o J.E. Landers-Cauley, P.E. DEP File No. SE7-1832

Proposed Project: Certificate of Compliance requested for Order of Conditions issued on April 8, 2013. Proposed to replace and reconfigure the existing beach stairs, wood retaining walls, and other landscaping features. AE flood zone, within 100 ft. of a wetland resource area and 200 ft. of a riverfront.

Ms. Fitch made a site visit on February 1st and recommended issuance of the COC.

Motion made by Ms. Weston and seconded by Mr. Berman to grant the COC.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

2. 108 Salt Marsh Lane, Pocasset Uri S. & Marilyn R. ten Brink c/o Marsh Matters

Environmental DEP File No. SE7-2140 Proposed Project: Certificate of Compliance requested for Order of Conditions issued on May 3, 2021. Proposed to install septic system (tight tank) and abandon in-place existing system components. AE flood zone and within 100 ft. of a wetland resource area.

Ms. Fitch made a site visit on February 1st and recommended issuance of the COC.

Motion made by Ms. Weston and seconded by Mr. Berman to grant the COC.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

Discussion/Business

1. Approve minutes: 1-05-23.

Motion made by Mr. Szwed and seconded by Ms. Weston to approve the minutes.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

2. Report of the Conservation Agent:

a. Ms. Fitch said the cost of certified mail is becoming very expensive at \$8.10 per piece. There was a request by an engineering firm for the Commission to accept Certificates of Mailing vs. Certified Mailing. Ms. Fitch checked in with DEP, which allows Certificates of Mailing for Notices of Intent. Unfortunately, under the local regulations requiring abutter notifications for RDA's, the language for Certificate of Mailing is left out. This should be added to the warrant for a bylaw change. The Commission agreed.

b. Ms. Fitch said there is a resident on the Pocasset River who would like to increase the size of her ramp and float, not the pier itself, to get to deeper water. Ms. Fitch said it would be greater than 10% and she asked the Commission what type of permit they would like to see for an application that is looking to increase the ramp and float size greater than 10%?

- Existing gangway/ramp is 2.5' x 16' and proposing 4' (to match walkway) x 18'
- Existing float is 4' x 20' - proposed would be 6' x 24'

Agent comment: Ms. Fitch believed it should be a full NOI based on the language in the Wetlands regulations and the Commission agreed with that. Mr. Berman pointed out that they would not want to grant approval for an existing ramp and float to increase in size if they don't already meet the current regulations.

c. Vote to authorize the restoration work at 134 Wings Neck under the EO issued on 11/4/2022.

Agent comment: Ms. Fitch gave an update on the EO and asked the Commission if they would like to take a vote which would allow them to go forward with work under the EO.

Motion made by Ms. Weston and seconded by Mr. Berman to allow the implementation of the restoration plan under the Enforcement Order.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

d. Underground storage tanks in AE flood zone and buffer zone to coastal resources (104 Rocky Point Road) –The Commission reviewed the flood zone policy 17-3. An underground storage tank would fall under number 3. Which would require an RDA. In this case it could be administratively approved because they have an open Order of Conditions.

3. Letter of support for Bourne Recycling Committee and Bourne Public School CPC requests.

- 1) Ms. Fitch put together a letter of support to the Community Preservation Committee stating that the Conservation Commission supports the Bourne Recycling Committee's application for the installation of (4) refillable water bottle stations

Town of Bourne Conservation Meeting Minutes February 2nd, 2023

throughout Bourne. The letter highlights the importance of limiting plastic waste throughout our community and promoting the use of reusable water bottles.

- 2) Ms. Fitch put together a letter of support to the Community Preservation Committee stating that the Conservation Commission supports the Bourne Public School request for money to rebuild a boardwalk in the fresh water wetlands off of Waterhouse Road across from the High school. This boardwalk is also known as the Broad Swamp Boardwalk, which Chm. Gray and his honors biology class built in the early 1990's.

Ms. Fitch had the Commission sign for the two requests above.

Motion made by Mr. Berman and seconded by Ms. Weston to issue the signed letters.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

4. Vote to place an article on the 2023 spring Town Meeting warrant for an amendment to Article 3.7 of the Bourne Wetland Protection Bylaw.

Agent comment: Ms. Fitch met with the Town Administrator and as of right now they do not need Town Counsel until further down the road. The TA recommended a vote to place the articles on the 2023 spring Town Meeting and if it is a positive vote Ms. Fitch will notify the TA to place the articles on the warrant and at the next meeting the Commission will discuss the separate articles.

Motion made by Ms. Weston and seconded by Mr. Ligor to put a place holder on the Town Meeting for the separate articles.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

5. Motion made by Mr. Ligor and seconded by Ms. Weston to excuse absent members.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

Motion made by Mr. Palumbo and seconded by Ms. Weston to Adjourn.

Roll call vote: Ms. Weston-yes, Mr. Szwed-yes, Mr. Ligor-yes, Mr. Palumbo-yes, Mr. Berman-yes & Chm. Gray-yes. **Motion carried. 6-0-0**

8:01 P.M. –Adjourned.

Audio recorded and minutes edited by Stephanie Fitch- Conservation Agent.
Minutes typed by Amalia Amado- Conservation Department Secretary II.
Recorded by Zoom.