

**Town of Bourne Conservation Commission
Minutes March 2nd, 2023**

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, March 2nd, 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 asked if anyone was recording at this time, other than the Conservation Department.

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

Professional staff in attendance: Stephanie Fitch, Tyler Gaudreau, Zac Basinski

Present by remote access: Rob Palumbo, Tom Ligor

Continuances

134 Wings Neck Road, Pocasset continued to 3/16/23	<u>DEP File Number:</u> SE7-2217
122 Wings Neck Road, Pocasset continued to 3/16/23	<u>DEP File Number:</u> SE7-2227
490 Scraggy Neck Road, Cataumet continued to 3/16/23	<u>DEP File Number:</u> SE7-2230

Notice of Intent

1. **DEP File No. SE7-2229, David & Jill Beisel of 132 Wings Neck Road, Pocasset c/o Environmental Landscape Solutions, LLC Proposed Project:** A proposed Phragmites management plan. The work will take place within the V flood zone and within a salt marsh. Continued from 1/05/2023

Tyler Gaudreau of Environmental Landscape Solutions, LLC represented the project on behalf of the Beisel Family. This project is approximately 3,200 sq. ft. of invasive Phragmites removal within a salt marsh and flood zone. On October 11th 2022 a site visit was made with the Conservation Agent, Ms. Fitch. The project proposed 3 options including herbicide treatment with a backpack sprayer using a state approved herbicide, a cut stem treatment using a state approved herbicide, and hand removal without the use of herbicide.

Agent Comment: The DEP reviewer cited 310 CMR 10.32(5) which states "a project which will restore or rehabilitate a salt marsh, or create a salt marsh, may be permitted in accordance with 310 CMR10.24(8) and/or 10.53(4)- ecological restoration limited projects." Ms. Fitch recommended option 3 - the hand removal without the use of herbicide in a salt marsh. She also urged the homeowner to work with the other neighbors to combat this more holistically, instead of piecemeal.

Member Comment: Mr. Berman asked if the area of Phragmites removal would ever be mowed. Mr. Gaudreau explained that the area base level is cord grass, so the mechanical removal would only be by hand pruners or trimmers. Phragmites are rhizomes which grow

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from a dense underground mat. They will cut the seed heads to remove the seed pods to only limit the spread by seed and maybe a small suppression by cutting. He believes it can be managed within two to three years especially with the combination of getting the other neighbors on board. The Commission agreed on the removal without the use of herbicide in the salt marsh, which is option 3. Mr. Gaudreau said that it would be done once this spring and then in the fall once a year after. They will use the track-in-track out method which will use the same path to limit disturbing the salt marsh. The clippings will be incinerated off site. On each *Phragmites* stalk they will leave 1-2 ft. on the ground in order to see which ones have not produced a new seed head. The Commission said there is a 6 inch minimum. Mr. Gaudreau asked if the Notice of Intent could be renewed. Chm. Gray said that they may file an extension for the Order of Conditions prior to the expiration date which may be approved in three year increments.

No public comment.

Motion made to close the public hearing by Ms. Weston and seconded by Mr. Holmes.
Roll call: Ms. Weston- Yes, Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Ligor-yes, Mr. Palumbo-yes and Chm. Gray- yes.

The draft order read: *SPECIAL CONDITIONS Pursuant to M.G.L. C. 131, s. 40: 1,2,7,9,10,12,22,27,28 and SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7: 4 & 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) This approval is for Option 3 as outlined in the Project Options Analysis section of the NOI application dated December 21, 2022. Any deviations from the plan will require coordination with the Agent and possible additional permitting prior to start of work.

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

ASC-5) Only *Phragmites australis* is permitted to be cut under this OOC, to a height no less than six inches.

Motion made to move the draft to the final by Ms. Weston and seconded by Mr. Holmes.
Roll call: Ms. Weston- Yes, Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Ligor-yes, Mr. Palumbo-yes and Chm. Gray- yes. **Motion carried. 7-0-0.**

Chm. Gray recused himself from the next hearing and Mr. Holmes stepped in as chair.

2. **DEP File No. SE7-2226, Andrew Laurence of 83 Elgin Road, Pocasset c/o Bracken Engineering, Inc. Proposed Project:** Proposed pre-cast concrete in-ground, plunge pool with utilities and appurtenances. Located within the V flood zone and within 100 ft. of a wetland resource area. **Continued from 2/16/2023.**

Zac Basinski from Bracken Engineering, Inc. represented on behalf of the applicant Andrew Laurence. The proposed project is to excavate the area between the house and the retaining

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wall that was installed back in 2017 and was approved under the previous agent. They will install the pool by excavating down and pouring a concrete slab supported over helical piles. The pool itself is a precast fiberglass pool that will be carried in around the side. Mr. Basinski believes the stability of the bank which is the manmade retaining wall, will stay in place in the event of any possible flood event in the future and would not compromise the pool. Mr. Basinski described the benefit of the updated plan which is to remove some invasive species and regrade the site. The intention is to capture any run off and mitigate a low lying depression before it makes its way down to Red Brook Harbor. All disturbed areas will be replanted with natural vegetation and any regrowth will have an invasive species management plan. In closing, he believes they met all performance standards.

Agent comment: Ms. Fitch was pleased with the mitigation and improvement of the runoff on site. The timber wall dates back to a plan from 1979 and the newer stone wall was permitted in 2017. Ms. Fitch shared photos of the site with the Commission. Mr. Basinski stated they worked with Brad Holmes from ECR for the invasive removal plan of some bittersweet and Rosa rugosa. Ms. Fitch said an annual report will need to be done by a licensed professional. No public comment.

Motion made to close the public hearing by Mr. Palumbo and seconded by Mr. Ligor.
Roll call: Ms. Weston- Yes, Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Ligor-yes, Mr. Palumbo-yes

The draft order read: *SPECIAL CONDITIONS Pursuant to M.G.L. C. 131, s. 40: 1,2,3,4,7,9,10,12,14,15,17,18,19,22,27,28 and SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7: 5,6 & 7*

ASC-1) Invasive species management and native plantings must be done by a competent professional with experience in invasive management and be a MA licensed herbicide applicator. Prior to start of work, the contractor must provide contact information and final planting plan to the Agent.

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

ASC-3) Pool water cannot be drained directly into any resource area. Pool drainage must be directed into a drywell.

Special Condition Numbers **15 & 17** and Bylaw Conditions Number **ASC-3** shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion made to move the draft to the final by Mr. Palumbo and seconded by Ms. Weston.
Roll call: Ms. Weston- Yes, Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Ligor-yes, Mr. Palumbo-yes and Chm. Gray- abstained. **Motion carried. 6-0-1.**

Chm. Gray returned to chair

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Request to Extend Order of Conditions

1. **DEP File No. SE7-2043, Scott Zeien, Trustee, Kingman Yacht Center Realty Tr. of 1 Shipyard Lane, Pocasset c/o BSS Design, Inc. Proposed Project:** Request to Extend Order of Conditions issued on 12/27/2018. To replace ninety – 12” diameter wood pilings within a V Flood zone, within a 100 feet of a wetland resource area and within 200 ft. of a river front.

Agent comment: Ms. Fitch spoke with Chris Gagne, the GM for Kingman Yacht Center. He said 68 pilings have been replaced so far and another 45-50 need to be done. This puts them about 25 over the 90 they were permitted for. He said the timing with the barge and the boats in the marina makes replacement difficult and requests another three years. No one was able to speak tonight but if the BCC has questions, he can attend on 3/16.

The Commission members require more information and would like clarification on the exact number of permitted pilings. They requested to have a representative available at the next hearing. Ms. Fitch will notify the applicant.

Certificate of Compliance

1. **DEP File No. SE7-2095, Padraig Duncan c/o John S. Chuckran of 9 Wallace Point Road, Buzzards Bay Proposed Project:** Certificate of compliance requested for Order of Conditions issued on 1/02/2020. To install an upgraded septic system within an AE Flood Zone and within a 100 ft. of a wetland resource area.

Ms. Fitch made a site visit on 3/01/2023 and she clarified that this COC is for the septic system permit only. The previous agent had gone out to do an inspection and then noticed the additional riprap added to the failing seawall. They are still not ready to do a COC for the seawall, but Ms. Fitch has allowed them to go forward with the septic COC. A COC and O&M plan has already been approved by the Board of Health, so Ms. Fitch felt comfortable with recommending an issuance to the BCC.

Motion made to issue the COC by Ms. Weston and seconded by Mr. Holmes.

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

Discussion/Business

1. 36 Presidents Road, Gray Gables- Enforcement Order.

Ms. Fitch said there was unpermitted clearing of vegetation in Land Subject to Coastal Storm Flowage and also in an Isolated Vegetated Wetland. The intent of the clearing is unknown, as this lot is listed on the Town Assessing records as undevelopable, in a well-developed neighborhood. The clearing was brought to the Department's attention through a complaint. The IVW is indicated on plot plans from multiple abutters. Ms. Fitch made a site visit with the owner of the property who is working with Brad Holmes from ECR on a restoration plan.

Motion made to issue Enforcement Order.

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

Mr. Ligor excused himself from the meeting at 7:31PM.

2. Discussion and possible vote on the language for an amendment to the Town of Bourne Wetland Protection Bylaw Article 3.7, Wetland and Natural Resources Protection, Section 3.7.4: Definitions; Regulations.
3. Public comment: Mary Frances Galligan asked why the coastal bank definition is segmented differently in the bylaw and shouldn't it be uniform with the Wetlands Protection Act? Chm. Gray explained if they mirrored what the Wetlands Protection Act says, there would be no set back, because there is none and under the WPA if you wanted to build a house in a coastal bank there are no restrictions. He further explained that the 100' buffer does not mean you can't build within 100', it means any work would need to be permitted through an Order of Conditions. The 200' comes in at the riverfront section of the regulations. These resource areas come with certain do's and don'ts for allowance to build within the buffer zones. A second public comment came from an unidentified person who asked if this proposed language takes away the 10% allowance given to lots before the Rivers Act to penetrate the 200'. Chm. Gray said that this proposed language does not have any bearing on the section of the wetlands regulations that were promulgated under the Rivers Act.

Motion made and seconded to amend the language in the Town of Bourne Wetland Protection Bylaw Article 3.7, Wetland and Natural Resources Protection, Section 3.7.4: Definitions; Regulations.

Roll call: Ms. Weston- Yes, Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Palumbo-yes and Chm. Gray- yes. **Motion carried. 6-0-0.**

At approximately 7:51 pm a fire alarm disrupted the meeting.

The meeting resumed at 8:16pm.

Ms. Weston excused herself from the remainder of the meeting.

4. Discussion and possible vote on the language for an additional section to the Town of Bourne Wetland Protection Bylaw Article 3.7, Wetland and Natural Resources Protection, Section 3.7.13: Waiver.
No public comment.
Motion made and seconded to approve the waiver language with the edits discussed.
Roll call: Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Palumbo-yes and Chm. Gray- yes. **Motion carried. 5-0-0.**
5. Approve minutes 2.02.23.
Motion made and seconded to approve the 2.02.23 minutes as written.
Roll call: Mr. Holmes-yes, Mr. Berman-yes, Mr. Swzed-yes, Mr. Palumbo-yes and Chm. Gray- yes. **Motion carried. 5-0-0.**
6. Report of the Conservation Agent.

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Ms. Fitch updated the Commission on a couple violations- one at the Herring Run Motel and another at 4 Windmill Rd. She also explained the long term plan for reaching out to all dock owners and reminding them about the storage requirements in the regulations and under most Order of Conditions.

- 4 Windmill Rd. Starting next season they must cease and desist storage of the floats and ramp on the coastal beach or any other wetland resource area aside from flood zone. Ms. Fitch spoke with the owner and they will store their ramp and float upland. This is in violation of Special Condition #30 of the Order Of Conditions (OOC) SE7-1041 issued for the construction and use of a seasonal dock and two 10'x 20' floats, as well as Bourne Wetland Regulations BWR 1.16. A copy of the OOC is available upon request.
- Herring Pond Hotel has been building a gazebo on the bank of Foundry Pond. Ms. Fitch explained that they will need to move the gazebo or file for an RDA.

Adjourned.

Audio recorded & minutes edited by Stephanie Fitch- Conservation Agent
Minutes typed by Amalia Amado- Conservation Secretary II
Recorded by Zoom platform