

**Town of Bourne
Conservation Commission
Meeting Minutes
July 21, 2022**

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TOWN CLERK BOURNE

I. Call to Order

Chm. Robert Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday July 21, 2022, 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 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/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.

Mr. Gray asked if anyone was recording at this time, other than the Conservation Department.

Members present: Robert Gray, Thomas Ligor, Rob Palumbo, Paul Szwed, and Susan Weston

Members excused: Greg Berman and Peter Holmes

Others in attendance: Stephanie Fitch, Ralph MacDougall, Mike Borselli, Stephen Withers, Peter McEntee, Paul Gately, Rene Gagnon, Brian Wallace, Mike Ball, Joe Povoas, Chip Coen

Continued Hearings:

Request for Determination

1. **File Number:** CC22-23

Applicant: Susan Haigh

Representative: Thomas Roux

Project Address: 10 Stackpole Circle, Bourne

Proposed Project: Proposed existing cesspool to be abandoned and install new tight tank. This project is in an AE flood zone and within 100 ft. of a wetland resource area.

Continued to August 4th by the applicant.

Notice of Intent

2. **DEP File Number: SE7-2208**

Applicant: The Long Point Trust

Representative: Brian T. Madden, LEC Environmental

Project Address: 176 Scraggy Neck Road, Cataumet

Proposed Project: Proposed demo of existing dwelling and construction a new dwelling with associated appurtenances, including a new driveway, attached garage, decks, upgraded septic system, utilities, regrading, storm water management, lawn/landscaping, and restoration/mitigation plantings. This project is located in an AE flood zone and within 100 ft. of a wetland resource area. **Continued to August 4th by the applicant.**

Certificate of Compliance

3. **DEP File Number: SE7-0312**

Applicant: Robert Nakashian, Trustee

Representative: N/A

Project Address: 23 Mariners Lane, Pocasset

Project: Certificate of compliance requested for order of conditions issued on 01/09/1985. The work included to reconstruct licensed pier, piles, float & construction of a new pier & float. Installation of piles along an existing seawall & the construction of a timber deck inland of the Mean High Water Line extending shoreward from the existing house. Located within AE flood zone and Land under ocean. NOI filed November 26, 1984.

Continued to August 4th by the applicant.

Request for Determination:

1. **File Number: CC22-21**

Applicant: John & Barbara O'Donnell

Representative: JC Engineering, Inc.

Project Address: 137 Jefferson Road, Bourne

Proposed Project: Proposed project involves construction of multiple additions to an existing single-family home. The additions include a mudroom, bay window, covered porch and deck within an AE flood zone.

Chm. Gray recused himself from this review and Mr. Palumbo took over the review.

The representative Brian Wallace from JC Engineering, Inc. explained the proposed project and identified the resource areas, seeking approval for work in the flood zone only.

Agent comment- Ms. Fitch states that she wants to ensure new RDA permits that are in the flood zone meet the construction requirements for FEMA guidelines and building codes.

No public comment.

Motion made by Mr. Ligor and seconded by Mr. Szwed to approve under a Negative Two Determination.

Motion to approve under a Negative Two Determination- Chm. Gray abstained. **Motion carried.**
4-0-1

2. File Number: **CC22-22**

Applicant: Ralph & Kathleen MacDougall

Representative: Ralph MacDougall

Project Address: 38 Bourne Neck, Buzzards Bay

Proposed Project: Proposed 24 x 32 addition in an AE flood zone.

Owner Ralph MacDougall explained the proposed project as a two car garage with an apartment above unattached from the house.

Agent comment- Ms. Fitch reported that this project is also just in the AE flood zone and she has been working with Mr. MacDougall a little bit since he had already applied for a building permit. Mr. MacDougall is working with the engineering department to get a certified plot plan, again to make sure all FEMA building codes are followed. Ms. Fitch went with the RDA because this is only in the AE flood zone and not near any other resource areas where she identified on the FIRM map for the Commission. Mr. MacDougall explained that there were three pieces of property that all joined together, so the project will be on its own portion to the right looking from the street. The apartment above will be a one bedroom kitchen dining room combination with the garage underneath. Ms. Fitch asked if there will be any gutters and downspouts. Mr. MacDougall commented yes.

No Public comment.

Motion made by Mr. Palumbo and seconded by Mr. Szwed to approve under a Negative Two Determination.

Motion to approve under a Negative Two Determination- All in Favor.

Motion carried. 5-0-0

3. File Number: **CC22-24**

Applicant: John Devroude

Representative: Peter McEntee P.E. Engineering Works

Project Address: 30 Lamont Road, Bourne

Proposed Project: Proposed upgrade to a Title 5 compliant septic system, in an AE flood zone.

The representative Peter McEntee P.E. with Engineering Works explained the project which is a septic system upgrade to be in compliance with Title 5 and there are no variances being requested.

Agent comment- Ms. Fitch commented on the photo to the left of the back of the house, and Mr. McEntee explained there is a mound up in the back, where they want to blend the mound into an existing mound which answered Ms. Fitch's question. They will be cutting into that because it is higher than what they were proposing for elevations. They will prevent breakout with a poly liner and border the system with a boulder retaining wall, and the applicants are hoping to put some vegetation back. There will also be some deciduous tree removals and a rhododendron removal where the system is going.

Member comment: Mr. Szwed asked the reason for going with the retaining wall over returning the mound? The applicants would like to have lawn at the grade that it is at, Mr. McEntee went through the scenario of blending out the mound but they would like to go with something more aesthetically pleasing. The proposed retaining wall will be at existing grade with 3 ft. boulders and shrubbery in front.

No public comment.

Motion made by Mr. Palumbo and seconded by Mr. Szwed to approve under a Negative Two Determination.

Motion to approve under a Negative Two Determination- All in Favor.

Motion carried. 5-0-0

4. File Number: CC22-25

Applicant: Edward and Cheryl Palo

Representative: Marsh Matters Environmental

Project Address: 196 Clipper Road, Bourne

Proposed Project: Proposed structural additions to existing single family. 9' X 7' addition footprint, 15' X 4' second story-deck addition. This project is located in the V flood zone.

The representative for Edward & Cheryl Palo, Mike Ball with Marsh Matters Environmental explained the project within the existing structure and identified the resource areas.

Agent comment- Ms. Fitch explained there will be no structural creep of the addition, the majority of the work is on the second story adding on a balcony and extending a bedroom. No issues with project as proposed.

No public comment.

Motion made by Mr. Ligor and seconded by Mr. Palumbo to approve under a Negative Two Determination.

Motion to approve under a Negative Two Determination- All in Favor.

Motion carried. 5-0-0

Notice of Intent:

1. DEP File Number: SE7-2211

Applicant: John Sweeney

Representative: Falmouth Engineering, Inc.

Project Address: 198 North Road, Pocasset

Proposed Project: Complete repair of existing stone groin, restore dune area used for construction access. This Project is within an AE flood zone, V flood zone and within 100ft. of a wetland resource area. This NOI is in response to a violation issued on 04/21/22.

The representative Mike Borselli from Falmouth Engineering, Inc. explained the ongoing work on the property and gave an explanation of the other open permits for the retaining wall and landscaping that have been ongoing for several months. The new filing is in response to coastal beach and dune activity that was initiated without proper permitting. Mr. Borselli seeks permission to complete the project that started in violation and received a cease and desist order. The project is to restore the stones within the existing stone groin that is located on the center of the property. As he mentioned there are ongoing construction activities under a previous Order of Conditions and there were decisions made without consulting Falmouth Engineering. Assumptions were made that work could be done without permits to an existing structure. Work began on repairing the stone groin without having filed the proper paperwork. The Conservation Department was made aware of the work by an abutter and the agent issued a cease and desist order. Falmouth Engineering became aware of it after the fact and stepped in by immediately

applying for a NOI permit. Mr. Borselli explained that had they filed for the proper permit it would have been approvable. There is now restorative damage that was initiated by an excavator that tracked over the narrower section on the dune as shown on the plan; this is noted as an area to restore dune. When repairing a groin there is a tendency to dislodge stones that settle and the plan was to reorganize within the same foot print that exists. The sole reason for doing the work on the groin was for the cap stone or the surface to be flatter/safer to walk out on. After they tracked over the dune, the excavator climbed up on top of the groin and started to remove the top stones. The purpose of that was to subtract them to reorganize and so they could be reset, in a more flat way within the foot print. There was no expansion in length or width, in fact the toe stones are still in place. The perimeter of the groin is not changing and thankfully Mr. Borselli had surveyed this groin so they have a record of where it is, and the toe stones are seen at low tide. This groin does not have the benefit of a Chapter 91 license, it is in the compliance and they have initiated an application. There are no other plans other than to reset the stones that were dislodged to be in a more organized way and for the top to be easier and safer to walk on. Then they will work their way back in the same area of the dune and restore the dune back to its previous condition. There is a fairly comprehensive restoration plan by Barbara Connelly that specifies the plant materials to restore the dune. Mr. Borselli read email comments from Department of Marine Fishers. DMF does not have any recommendations since the existing structure does not serve any purpose for trapping sediment. All access will be from the land. No equipment will be used in Land Under the Ocean, all work will be done from the end of the groin and worked back out and then to restore the dune.

Agent comment- Ms. Fitch read letters submitted by abutters concerning the dune restoration plan and planting plan to restore back to its original form, and ensure long term viability of the plantings and stability of the restoration.

Member comment: Mr. Ligor asked the purpose of the stone groin, why is it there? Mr. Gray said they have looked back at some historical aerial photos and that it predates the present family that owns the property now. The exact date and why it was constructed is still a mystery. Also that this has gone unlicensed by Chapter 91 all these years is still an unknown. Mr. Ligor asked why does the groin extend up into the dune itself and doesn't that prevent the movement of sand from one coastal beach to another. Essentially that one coastal beach cannot get nourishment from the other because of this groin. A portion of it extends 56 ft. and it's unclear how much of it extends into the dune itself, which does not seem to be a type of structure that would be beneficial. Mr. Borselli provided an answer that groins are installed all along the coast line of Buzzards Bay and other areas. The sole purpose was to try to contain sand on one side so that the beach could be built up. Over time it was learned that you may supplement sand on one side but starve sand on the beach from the other side. It is ironic that even the Commonwealth of Massachusetts has installed groins on the coast lines and that would have been the purpose, to build up the beach. There are hundreds of groins that have been installed which are not allowed anymore. This groin predates those regulations and now that it's there, they would like to renew it again.

Ms. Fitch adds that she has looked back at previous plot plans and can confirm that the groin measurements are the same and it has not been added to, at least in the last 20 plus years.

Mr. Borselli also commented that thankfully the toe stones have not been disturbed, which are the ones that cause the most disruptions. The outer perimeter is still in place and now it's just placing the stones back on top of that.

Agent comment- Ms. Fitch shared a recent photo of the groin, and Mr. Borselli explained the photo and how they are going to correct it. He also explained that all the stones are from the property, none were brought in. He further explained the ongoing work permitted under the other order of conditions is being done in compliance with that order and the only violation was the

work done to the groin. Barbara Connolly will submit an annual monitoring plan, with a three year management timeline. Chm. Gray said typically there are two monitoring reports per growing season, one in spring to assess winter damage in the middle of the month of May, that will still allow time to plant before the heat of the summer. The second report late September will provide information from summer stress. After the second report you might only ask for an annual report because the vegetation will have recovered from the two growing seasons. It is important to have photo documentation along with the written report which will show you the condition at the time of the assessment. Any vegetation that dies will have to be replanted within the three years before a certificate of compliance is issued.

Member Comment: Mr. Szwed followed up on the comment from the additional boulders that were supposedly added from the site and should make a condition to the order. That all boulders used for reconstruction must be from the original groin. To maintain the same shape and size. He wanted to require a survey stamped engineered as built plan.

No public comment.

Motion made by Mr. Palumbo and seconded by Mr. Ligor to close the public hearing.

All in favor, motion carries.

Ms. Fitch reads the draft order of conditions is to include:

All general conditions and special conditions pursuant to 131 40 include: 1, 2, 3, 4, 7, 8, 9, 10, 12, 18, 19, 20, 26, 27, 28, 29

Special conditions pursuant to Bourne bylaw article 3.7 include: 5,6,7

ASC-1) Dune restoration shall start no later than September 2022.

ASC-2) Two monitoring reports are required annually for three years, one in late spring and one in fall. Reports must include a written description of existing conditions and photographs. Any vegetation that does not survive must be replaced.

ASC-3) All boulders used in the reconstruction must be from the original groin.

ASC-4) The as-built must include a PE and PLS stamp and be superimposed on existing plans of record, to scale.

Motion made by Mr. Szwed and Seconded by Mr. Ligor to move the draft order the final.

All in Favor. **Motions carried. 5-0-0.**

2. DEP File Number: SE7-2210

Applicant: John Erickson

Representative: Zenith Consulting Engineering, LLC

Project Address: 17 Robin Lane, Pocasset

Proposed Project: Proposed detached garage and addition to single family home. This project is located in an AE flood zone & 200ft. of a river front.

Chm. Gray recused himself from this review and Mr. Palumbo took over the review.

Rene Gagnon representative with Zenith Consulting introduced himself. Mr. Gagnon explained the project which is a proposed 24 x 28 detached garage with a paved driveway. As well as a 13.5

x 14 addition to the house and a rebuild of the existing porch that's on the rear of the building. He identifies the resource areas.

Agent comment- Ms. Fitch gave her report and shared some photos. She also mentioned the site was not staked out which she ok'd this time but in the future may cause a continuance. She stated it's a flat vegetative area in the AE flood zone only and as you can see on the plans the proposed work is out of the 200 ft. river front. She was a little disappointed to see the conversion of the gravel driveway into pavement, which will increase the impervious surface by 1,275 sq. ft., about 7.1 %. She asked Mr. Gagnon if there are any proposed roof runoff gutters & spouts for the garage. Mr. Gagnon says none are proposed at this time. Ms. Fitch recommends if there are any additional ways to control runoff and increase the surface and ground water uptake, which Mr. Gagnon said he will take that back to the client to see.

Member comment: Mrs. Weston asked if they would reconsider the asphalt driveway, which Mr. Gagnon will bring back to the client to see if they would be willing to do that. Mr. Szwed reviewed the slopes which the river is to the North of the property and that any runoff would appear to slope away from the river.

Public comment: Janice Burns abutter was wondering if the garage will have an apartment above. Mr. Gagnon replied that it will not have an apartment above.

Motion by Mr. Ligor and seconded by Mrs. Weston to close the public hearing. All in favor.
Motion Carried.

Ms. Fitch reads the draft order of conditions is to include:

All general conditions and special conditions pursuant to 131 40 include: 1, 2, 3, 4, 7, 10, 12, 14, 18, 19, 27, 28

Special conditions pursuant to Bourne bylaw article 3.7 include: 5, 6, 7

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

All in favor. **Motion carried.** Chm. Gray abstained. **4-0-1.**

Request for Certificate of Compliance:

1. **DEP File Number: SE7-2100**

Applicant: Matthew P. and Sharon J. Mielbye

Representative: Kathryn L. Bean

Project Address: 132 Wings Neck, Pocasset

Project: Certificate of compliance requested for order of conditions issued on 05/15/2020. The work included to remove and replace existing foundation and to raise elevation of dwelling within a V flood Zone and within 100 ft. of a wetland resource area.

Agent comment-Ms. Fitch reported that she made a site visit and in this case no work was performed except for putting a shed in a velocity zone, which was permitted under the order of conditions. No other work was conducted. The shed was permitted through the Town of Bourne building department. This will be closing out the Order.

Motion made by Mr. Palumbo and seconded by Mrs. Weston to grant the certificate of compliance. All in favor. **Motion carried. 5-0-0.**

2. DEP File Number: SE7-2060

Applicant: Matthew/Jennifer Krowchun & Christine Dunphy

Representative: N/A

Project Address: 38 Massasoit Avenue, Pocasset

Project: Certificate of compliance requested for order of conditions issued on 04/19/2019. The work included the installation of tight tanks to replace an existing cesspool. This project is within an AE flood zone, V flood zone and 100 ft. of a wetland resource area.

Agent comment-Ms. Fitch stated on her site visit the erosion controls were still up but later that day she received a photo from the owner showing that the erosions controls were removed. She recommended issuance of the certificate of compliance.

Motion made by Mrs. Weston and seconded by Mr. Ligor to grant the certificate of compliance. All in favor. **Motion carried. 5-0-0.**

3. DEP File Number: SE7-2000

Applicant: Wings Neck Trust

Representative: Falmouth Engineering, Inc.

Project Address: 99 South Road, Bourne (parcel 75)

Project: Certificate of compliance requested for order of conditions issued on 05/01/2018. The work consisted of proposed pier improvements in Land Under Ocean, and Land Subject to Coastal Storm Flowage.

Agent comment- Ms. Fitch made a site visit and recommended issuance.

Motion made by Mrs. Weston and seconded by Mr. Ligor to grant the certificate of compliance. All in favor. **Motion carried. 5-0-0.**

4. DEP File Number: CC NOI-14-01

Applicant: Paralell Products Solar Energy, LLC

Representative: Falmouth Engineering, Inc.

Project Address: 53 MacArthur Blvd, Bourne

Project: Certificate of compliance requested for order of conditions issued on 11/06/2014. The work consisted of a proposed 10 ft. wide gravel access drive & storm water appurtenances for a Solar Panel System within 100 ft. of a wetland resource area.

Agent comment-Ms. Fitch was given the access code for the gate but could not enter the property. They did provide an as built plan dated 6/29/2022. Ms. Fitch said you can see from google earth the start of construction, which nothing has changed since 2016 and she will work with someone to get a site visit. The request letter states that the project complies with the design plan and conforms to the regulations and order of conditions dated May 12th 2014. Only a portion of the

proposed Solar array field was installed at that time and the intent of this request is to close out the now expired order of conditions, in order to submit a new notice of intent for the remaining construction of the Solar array that was not previously installed. Ms. Fitch said where the work was done it is not near the two isolated wetlands, she recommended certificate of compliance.

Motion made by Mr. Palumbo and seconded by Mr. Ligor to grant the certificate of compliance. All in favor. **Motion carries 5-0-0.**

Mr. Palumbo took over the review of the last two certificates of compliance.

5. DEP File Number: SE7-0868

Applicant: 681 HOTB, LLC

Representative: Stephen K. Withers, Jr.

Project Address: 681 Head of the Bay Road, Bourne

Project: Certificate of compliance requested to close out order of conditions filed on 01/08/1992.

The work consisted of repair to existing concrete seawall within a V flood zone and within 100 ft. of a wetland resource area.

Agent comment- Ms. Fitch made a site visit, she explained the repair of the wall that took place in the 90's that was never closed out. They came back in 2003 for a new order of conditions, for another seawall repair. They amended the order and now they have a stone revetment around the property. There is a site plan of existing conditions on the 2003 plan that can be used to close out the 1992 order. An as built plan is not required to receive certificate of compliance for the 2003 order of conditions.

Motion made by Chm. Gray and seconded by Mr. Szwed to grant the certificate of compliance. All in favor. **Motion carries 5-0-0.**

6. DEP File Number: SE7-1429

Applicant: 681 HOTB, LLC

Representative: Stephen K. Withers, Jr.

Project Address: 681 Head of the Bay Road, Bourne

Project: Certificate of compliance requested to close out order of conditions filed on 06/17/2003.

The work consisted to amend order to replace seawall with stone revetment within a V flood zone and within 100 ft. of a wetland resource area.

Ms. Fitch recommends issuance as previously discussed.

Motion made by Chm. Gray and seconded by Mrs. Weston to grant the certificate of compliance. All in favor. **Motion carries 5-0-0.**

Chm. Gray returned to chair.

Request for Extension Permit:

1. DEP File Number: SE7-2067

Applicant: Paul Bushueff

Representative: Same

Project Address: 15 Agawam Point Road, Bourne

Proposed Project: To install a high marsh pillow system. This project is in a V flood zone and within a 100 ft. of a wetland resource area.

Agent comment- Ms. Fitch explained her recommendation. This is a 180 linear ft. reinforced high marsh, there has been some work done on the order of conditions to remove a concrete platform. She received a report done in June 2022 by Wilkinson Ecological Design. Ms. Fitch spoke to the project manager and shared photos. Ms. Fitch recommends to extend the order of conditions, with a continued annual report from Wilkinson Ecological Design. This will be beneficial so that the owner can keep the restoration in this area going.

Motion made by Mr. Ligor and seconded by Mr. Szwed to grant a three year extension.

All in favor. **Motions Carries 5-0-0**

Vote on the proposed amendments to the BWR 1.16 Docks and Piers:

BWR. 1.09 Fees

(2) ~~Velocity Zone related Fees~~ Docks, Piers, and Walkways Related Fees

There is no Velocity Zone impact mitigation fund, Ms. Fitch spoke with Charlie Noyes the Emergency Management department head. That fund does not exist at this time.

~~(a) All applications for docks in Velocity Zones (only small residential docks are authorized to apply at this time) are subject to a "V zone Impact Mitigation Fee" which will be paid to the Bourne Coastal Resilience Fund to help provide for debris removal in the event of severe storms.~~

(a) Where applicable, applicants for docks in Velocity Zones docks, piers and walkways may choose to pay a "Shellfish Seeding Fee," shellfish mitigation fee in lieu of onsite mitigation. The fee can be calculated using the data provided by ~~upon the Commission's review of the surrounding shellfish habitat~~ the shellfish report required in BWR 1.16(d)7.c and the Bourne Conservation Commission Shellfish Mitigation Fee Calculation Sheet. The fee shall be collected after the applicant obtains all local, state and federal permits required for the proposed work and prior to the start of construction.

Agent comment-Ms. Fitch explained the shellfish mitigation fund that had passed at town meeting in April now needs to go to state legislature. The term closes on July 31st and they take a few weeks recess and then the Town of Bourne's application will be submitted, and several requests will be heard by the state. This can take anywhere from four months to a year. There is no shellfish mitigation fund right now. When we say where applicable, applicants for docks, piers, and walkways may choose to pay a shellfish mitigation fee in lieu of onsite mitigation. So they can still choose to do onsite relocation of the shellfish under the guidance of the shellfish constable or they can pay this fee. It may take a few months upwards of a year, one option is to keep the shellfish mitigation fee or else every application would require relocation of shellfish, which would be a lot of added work for DNR. Another option is that it goes straight into the general fund, which would be a fee that goes to the town, until the shellfish fund is set up. There

is a line added at the end: The fee shall be collected after the applicant obtains all local, state and federal permits required for the proposed work and prior to the start of construction. Often times it can take a while to get all the permitting done, so that may delay the collection time enough that hopefully we will have the shellfish mitigation fund. The other option would be to delay voting on the regulations until the fund is secured in place. Ms. Fitch explained further the meaning of "where applicable" seeing as it meaning where if it's Land Containing Shellfish. If you do a shellfish survey and your dock shows that you have no shellfish, a mitigation fee wouldn't be applicable. Chm. Gray added that during the public hearing process you would figure out using the shellfish mitigation calculation sheet, what the fee would be, but the applicant wouldn't be required to pay the fee to the town until the applicant goes through the whole permitting process, which includes obtaining the Chapter 91, as well as the Army Corps. This is because you wouldn't expect the person to pay the mitigation fee if they were denied by the state or government. Permitting from the time conservation issues an Order of Conditions, the party will then go through Chapter 91 or the Corps of Engineers permitting. That's probably going to take an additional years' time minimum. By the time the first two or three applicants go through the process, the legislature will have put our shellfish mitigation program on even keel and will be able to assess the fee and put it in the right account. Which makes the case unlikely where you'll have to assess the fee and put it in the general account.

Member comment: Mr. Palumbo asked if it is possible if it wasn't set up by the time that happens, could the applicant defer payment until they had this. Mr. Palumbo said that it could be in the Order of conditions that they have to pay it before they get a certificate of compliance. If it wasn't done yet, that way ensuring it goes into the mitigation fund and not the general fund. Explaining further if they needed that time as an alternative if the fund wasn't set up, but all permitting was done and they were going to pay the fee and there was no place to put it yet. We could defer the payment, which there is nothing to say we can't defer the payment until fund is in place. This gives more time in between the Order and COC as an alternative if needed. Mr. Szwed asked about the V-zone mitigation fee and could that go into the general fund. Chm. Gray suggested as far as what they are intending through Shore and Harbor and Natural Resources for the resiliency fund; and to leave it off the table right now and revisit it at a later date. If the town sets up that kind of account then we can revisit the regulations and put the language in. But it would be a little cumbersome to ask people to pay a resiliency fund for mitigation and it doesn't exist and it goes into the general account and there's no way to direct it to the purpose it's intending. Mr. Szwed replied that it's covered elsewhere.

Ms. Fitch reviewed submission requirements for all piers. The definition of all piers, refers to pier, dock, walkway, bulkhead, piling and float.

(d) Submission Requirements for All Piers. Pursuant to BWR 1.02(2), a Notice of Intent is required for any new pier. A Notice of Intent is also required for any change or repair which alters any dimension, shape or function of an existing pier. Minor repairs involving work entirely above mean high water may be permitted through the filing of a Request for Determination of Applicability.

Member comment- Mr. Palumbo- would they file a notice of intent for an existing change of shape, you couldn't do a RDA. He agrees with size and dimension but was questioning shape. Ms. Fitch- moving forward with that in mind to look at:

(N) Notwithstanding the provisions of BWR 1.16(1)(e)1., 3., 11., 12., 16., 17., 20., and BWR 1.16(1)(g), the Commission may permit a pier provided that.

Ms. Fitch - Should we add something about the Commission being able to tweak the design? (Per Mr. Berman's comment) the purpose of this regulation if you look at line 3. The project is the repair or replacement, but not the expansion and/or enlargement, of a pier provided.

Member comment: Mr. Palumbo- do we now require a Notice of Intent to repair.

Chm. Gray noted not if it's in kind, a Notice of Intent would be filed if there was a change to the configuration, expanding the foot print or replace pilings, which would kick into an alteration. If it's repairs on hand rails or decking that may be administratively approved or through a RDA depending on how much work is required.

Back to (d) submission requirements for all piers.

6 c. Distance to all navigational channels, or to centerline of channel if no designated or customary channel exists, and boat mooring ~~areas~~ anchors within 300 feet;

Member comment: Mr. Palumbo- We had talked about it only having to be 100 ft. from the mooring. Ms. Fitch- This is just talking about the pier's effect on any anchors within 300 ft. not saying it has to be 100 ft. away, it's just supposed to look at a radius within 300 ft. to make sure there is no effect. So there is a difference. They want to know on the site plan the navigational channels, center lines of channel and boat mooring anchors within 300 ft. not saying it can't be within 300 ft. Chris Southwood DNR Director- The reason they changed it from anchors to areas, is because the way the regulations were set up previously. The whole Town of Bourne is a mooring area, so you would never be able to put a pier in. The 300 ft. will just be on the site plan and that shouldn't be a conflict. Sometimes mooring anchors move, whether or not you have to move the boat. If they want to change the size of their vessel, if they move 10 ft. in a certain way that is something the Town and engineers will have to look closely at, to where the exact distance these anchors are located at to the end of the boat's pier and to the end of the float. Mr. Southwood thinks having something that gives the overall view of the area is good to have, then when you get closer to the project you can squeeze into that 100ft. area from the closest mooring.

Ms. Fitch reviewed the next section. c. Shellfish/Fisheries Report.

(vi.) The Shellfish Constable will review the submitted shellfish survey, perform a site visit of the project area, and review additional submittal information. The Shellfish Constable will determine if the project proposes impacts to the shellfish resources and whether the proposed impacts can be mitigated. Mitigation may include transplanting all shellfish in the impacted area to an appropriate location determined by the Shellfish Constable or a mitigation fee pursuant to BWR 1.09(2)(a). Relocation of shellfish is to be performed by the applicant or their representative under the direction of the Shellfish Constable.

Ms. Fitch reviewed the next section. (e) General Performance Standards for all Piers.

Added a. Minimum required water depths for construction and use must be met without the benefit of dredging.

4. ~~The area of the terminal "L" or "T" shape in a fixed pier, or the float, or combination thereof, shall not exceed 100 square feet;~~ No float portion at the terminus of a pier, dock or float may exceed sound, stable design and size for the purpose, as certified by the engineer in BWR 1.16(e)(22).

Susan Weston excused herself from the meeting at 8:42 PM.

Motion made by Mr. Palumbo to accept the draft regulations for the dock and pier as the new regulations seconded by Mr. Ligor. Majority of the quorum. 1 Abstention. **Motion carried. 3-0-1**

Vote to excuse absent members

Motion made by Mr. Ligor to excuse absent members Seconded by Mr. Palumbo. All in favor. **Motion carried. 4-0-0**

II. Adjournment

Motion to adjourn and seconded by Mr. Palumbo. All in favor. **Motion carried. 4-0-0**

Minutes typed by: Amalia Amado, Administrative Assistant

Recorded & Edited by: Stephanie Fitch, Conservation Agent