

**Town of Bourne
Conservation Commission
Hybrid Meeting Minutes
September 01, 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 6:30 P.M. conducted in person and via remote access on Thursday September 01, 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 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.

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

Members Present: Bob Gray, Greg Berman, Thomas Ligor, Susan Weston, Rob Palumbo, Paul Szwed and Peter Holmes

Others in attendance: Stephanie Fitch, Don Bracken, Brian Madden, Maryfrances Galligan, Natalie Galligan, Michael Pimentel

Withdrawn without prejudice

- 1) **Applicant:** Christopher Codeanne **File Number:** CC22-26
Representative: Same
Project Address: 0 Circuit Ave, Bourne
Proposed Project: Vista pruning of vegetation in upper border of salt marsh. This project is in the V flood zone and within 100 ft. of a wetland resource area. **Continued from 08/04/2022.**

Continued

- 1) **Applicant:** Liam Coyne **DEP File Number:** SE7-2216
Representative: Jeffrey Johnson, Holmes & McGrath
Project Address: 3 Sunny Lane, Bourne
Proposed Project: The proposed project includes the demolition, reconstruction and maintenance of the existing single family house, with attached garage, gravel driveway, Title 5 sewage disposal system and all associated demolition, excavation, grading and landscaping. Work will take place within an AE flood zone, within 100 ft. of wetland resource area and 200 ft. of a river front. **Continued to 10/06/2022.**

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Chm. Gray recused himself from the next two reviews, and Mr. Palumbo took over the reviews.

Request for Determination

2) **Applicant:** Lewis E. Anderson

File Number: **CC22-29**

Representative: JC Engineering, Inc

Project Address: 55 Bournedale Road, Bourne

Proposed Project: The proposed project involves the upgrade of an existing failed septic system for an existing single-family home located within the 100-ft buffer zone of a Bordering Vegetative Wetland along Foundry Pond. No grade changes are proposed under this project.

Michael Pimentel of JC Engineering, Inc. participated by Zoom platform. He explained the proposed upgrade of a failed septic system comprised of two existing cesspools. The cesspools are located in the back of an existing single family home, approximately 38 feet away from a Bordering Vegetative Wetland identified as Foundry Pond. They proposed the abandonment of the cesspools and put in a new septic tank in the back of the house. The new septic tank will house a micro-fast unit inside to treat the sewage. The sewage will run out of the tank through a 4 inch PVC pipe that will run along the south side and into a new leaching system located way over to the western part of the property. The site area was chosen due to its location from the Foundry Pond. The closest point of the leaching system to the BVW is about 106 feet away, which he felt is a tremendous improvement over the current two cesspools that are only 38 feet away from the wetland. There are no proposed grade changes.

Agent comment: Ms. Fitch reported that this was concurrently filed with the Health Department and had no concerns with the project as proposed, it is a basic upgrade and was happy to see the cesspools abandoned with a new I/A system greater than 100 feet away from the BVW.

No public comment.

Motion made by Mr. Holmes for a negative two determination seconded by Mr. Ligor.
Roll call vote as follows: Mr. Berman- Yes, Mr. Szwed- Yes, Mr. Ligor- Yes, Mr. Holmes-Yes, Mr. Palumbo- Yes, Chm. Gray- abstained. **Motion carried 5-0-1.**

Notice of Intent

2) **Applicant:** The Long Point Trust

DEP File Number: **SE7-2208**

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 from 08/18/2022.**

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Before they opened the hearing, Brian Madden of LEC Environmental wanted to confirm the members who were not present at the last meeting and if they had been updated on the project. Members Mr. Ligor, Mr. Szwed and Mrs. Weston were not present at the June 16th 2022 meeting, Ms. Fitch asked if they had a chance to read the material provided last Friday. Mr. Madden gave a brief overview of the last meeting before the revisions and before they met with the Board of Health. They will not be heard at the Board of Health until they conclude with the Conservation Commission. There was an onsite meeting with Mr. Madden, Mr. Bracken and the Health Agent back on July 19th 2022, and since have submitted revised plans and additional information. The proposed house itself has been reduced in size by 254 sq. ft., they have modified from a five bedroom to a four bedroom, and updated the septic information on the plans. They have increased setbacks to the coastal banks, and have modified the grading to have more of a buffer retention; they have also updated the planting plan. Ms. Fitch shared the plan on the screen for everyone. Mr. Madden identified the proposed revisions on the plan. In totality there are 33 trees proposed to be disturb, the proposed fill associated with the project is 326 cubic yards, and in comparison to the existing conditions they have increased the separation to the resource area. The house itself under existing conditions is 27 linear feet from the saltmarsh, whereas the proposed condition at the closest point is 72 feet. The existing house is at the top of coastal bank with 6 feet of deck over hanging the top of coastal bank. They proposed to increase that separation and reduce the foot print within the 50ft. buffer, including 986 sq. ft. of the existing dwelling right up against the top of coastal bank and proposing to revegetate that location. The new septic system is located greater than 50ft. from the seaward coastal bank and greater than 100ft. from the saltmarsh. The summary report provided more detail analyses of how the project avoids adverse impacts of the resource areas, to the saltmarsh, coastal bank and flood zone, primarily related to flood control and storm damage prevention. They feel that the proposed project results in a significant improvement over existing conditions. The restored buffer will help prevent flood waters and provide some absorption while increasing wildlife habitat. They will be abandoning the septic system at the top of coastal bank immediately approximate to the saltmarsh, basically pulling everything landward away from the sensitive resource areas. Mr. Madden said in support of the revisions on August 19, 2022 letter from Stan Humphries, Coastal Geologist at Environmental Consulting & Restoration, LLC also accompanied the submission. Mr. Madden shared and explained the planting plan.

Don Bracken of Bracken Engineering, Inc. addressed a few things related to the septic system. The area just south of the driveway is graded out to less than a 10:1 slope so they don't actually create a coastal bank and there is no coastal bank in that area right now. He further explained they don't want to create a coastal bank and then put the septic system in conflict with the 50ft. Title 5 setback from a coastal bank. Mr. Bracken said obviously it doesn't make any sense because they could substantially tighten the limit of clearing and reduce the number of trees to be removed if they didn't have to worry about that becoming a coastal bank due to slope. They

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are showing it that way technically to avoid the stringent standards of applying for a Title 5 variance. That is not to say when they do present in front of the Board of Health, they obviously don't want to have to clear those trees and replant it, and maybe there is a way to discuss and work something out with the Board of Health. If the reserve area has to be constructed they've demonstrated they could remove the coastal bank. They would like to do that in discussion with the Board of Health but they can't guarantee they will go along with that and so they are showing the worst case scenario. Mr. Bracken pointed out again the benefit of the septic system upgrade from the current cesspool being so close to the saltmarsh, and the nitrogen loading calculations will have much greater impact where the new septic system is located. There is much more dilution going on before any of the effluent enters the ground water before it reaches marsh. Mr. Bracken said that technically when you compare what's going on now compared to what's proposed that is it still a very large improvement.

Agent comment: Ms. Fitch was happy to see the septic system being greater than 100 ft. from the resource, so that there is no adverse effect on the saltmarsh productivity. It is great to see the house pulled back at least 50 ft. from top of bank where the current one bedroom cottage exist, but the main point of concern is the setback of the garage which is much closer only a 10 ft. setback from the finger-like projection of a coastal bank. Ms. Fitch asked the Commission whether they felt the 5 ft. of vegetation that they will be replanting, between the top of bank and corner of the garage, would be enough mitigation. She further questioned if that would protect the stability of the coastal bank enough, seeing that they are taking away mature vegetation and adding a large impervious surface 10ft. back from the top of bank. Also does that meet the past standards of no structural creep towards the resource areas, if the main house is pulled back but the garage is forward. She asked the Commission to discuss whether or not it is structural creep, if that is enough mitigation planting to meet the performance standards of a non-eroding coastal bank.

Mr. Madden spoke about the material of the tongue shaped bank in question and described the material as the same as it continues off to the south and other direction. He explained it is by definition is a coastal bank, but it's not the primary coastal bank that is providing any storm damage prevention or flood control. He said it is fully vegetated currently and the closest point of that finger of coastal bank is 10ft. to the garage and the garage itself is on a slab, so there's not a fair amount of excavation associated with that, it is at grade. The planting plan proposes to revegetate about half of it with the 5ft. buffer off of it while still allowing the 5ft. clearance for egress around the dwelling itself. This location there is a proposed drywell that will receive roof runoff, so there will not be any drainage directed towards the coastal bank, along with a few other drywells proposed on the property. There will not be any sheeting towards the bank to cause any instability.

Member comment: Mr. Berman said in regards to the garage, looking at the site it is kind of a gully that runs up into the bank itself. Mr. Berman explained that's why it has the slope on each side and continues the coastal bank inland. As a storm comes in the water is going to flow there in the 100 year or much less storm. Mr. Berman thinks it does have performance standards for

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flood control in that area but that it is something to be careful of. He does not care for the garage being within 10 ft. of the top of coastal bank, whether it's an eroding coastal bank or not. They are only going to get 5 ft. of vegetation because there also has to be space for walking around. He would prefer some other orientation so the garage doesn't have to be that close to the coastal bank. Mr. Berman also addressed the coastal bank in the middle of the property also known as the secondary coastal bank on the NOI site plans. Some of the letters correctly said that there is no secondary bank, it is just a coastal bank with reduced performance standards. It is not as important to the coastal resource area as the one right next to the saltmarsh but it still has some kind of performance standards for flood control and storm damage. Mr. Berman said moving it closer to the "secondary coastal bank" calling it that just to get a name for it, would be better than having it overhang over the coastal bank that is closer to the marsh. He is debating whether it will have impact on a secondary bank and explained that if you have been to the site it's a very odd coastal bank to begin with, whether there is excavation, fill and all sorts of things going on, and the one by the marsh is more of a classic coastal bank with more performance standards which is more reason to protect it.

Member comment: Mr. Szwed asked for clarification on whether they had reduced the bedrooms and Mr. Madden clarified that originally they proposed five bedrooms and now they are proposing four bedrooms. Mr. Szwed had concerns about the proximity of the garage to the bank. He said even if you measure not to the finger-like projection but to the more seaward bank, that's still only about 25-30 ft. It is not as close as the original but it's still close.

Mr. Madden said that everything is staked out in the field and they certainly encourage a site visit. He clarified they referenced the coastal bank as secondary for an easy reference point.

Member comment: Mr. Palumbo asked Mr. Berman if they shifted more one way, would it create another problem that way. Mr. Berman said if they shift it more, it will be on that secondary coastal bank, which will probably have more impact to the performance standards than within the 50 ft. and most of the proposed structure is in the 50 ft. of the secondary bank.

Agent comment: Ms. Fitch asked if that is something they should address at this time, there was a concern in the abutter comment letters that came in. The letter questioned where the 50 ft. setback is to the top of bank essentially on the left side island in the middle of the property. There is some confusion, in the State regulation it reads landward from the top of coastal bank. We here have a toe of a coastal bank closest to the house and then up the bank to the top and the comment letters wanted to see a setback from that top of coastal bank. It might be a good idea for the commission to decide if there is a 50 ft. buffer from the toe of the bank.

Member comment: Mr. Berman said he thought the town bylaw mentioned wetland resource area not specifically "top of" just the bank itself. Ms. Fitch was referring to the State act and said they also have adjoining land areas. Mr. Berman said to him that means toe or top of for the town bylaw definition. Mr. Madden said that they can add that to the plan.

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Mr. Bracken said he would agree that it's a buffer zone no matter the top or bottom, and they avoided showing it here just because of all the buffer zones they already have on there.

Member comment: Mr. Berman said when they were talking performance standards for storm damage, usually if a project is below the coastal bank it's not hydraulically weighting the bank or causing damage, that's why they usually look at the top.

Mr. Bracken said they are happy to go back and see what they can work out, they were hoping 10 ft. and were confident they weren't damaging the bank. They understand the consensus here and would like the chance to come back and to take a look at that. They will add the buffer zones and hopefully will be more comfortable with it.

Member comment: Mr. Ligor said all of the coastal banks are under protection, so he feels the garage should be moved as far away as possible. Mr. Holmes said when they looked at the project before the garage was in a bad proximity and hopes the architect can do something to alleviate that issue. Mr. Berman addressed the concern for them not to create a coastal bank for the Board of Health variance and asked if the board of health was ok with the secondary bank being there.

Mr. Bracken said Title 5 specifically like the state wetlands protection act measures it landward from the top of the coastal bank, and that's all it says. Stating their position is they don't have a setback from Title 5 to the bottom of coastal bank.

Public comment: Mr. Horsley via Zoom shared his screen, retained by the abutters. He briefed his comment letter and said that it is a high constrained site and as the map shows there are four salt ponds. The concern for nitrogen loading of the coastal banks and the discussion of the loading calculations. Mr. Horsley also discussed a hydro geological study being done and the impacts of the septic system and also felt the secondary coastal bank setbacks need to be shown on the plan. He further expressed the concerns of the nitrogen loading calculations.

Mr. Bracken discussed the standards for Board of Health and loading calculations, he said they do not exceed and are far below the standard. As far as the hydro geological study he said there hasn't been one done in this town for years, and explained the reason why it's not required here or in a lot of cases is because the regulations define a water course. When the 150 ft. setback was created for the BOH that was prior to 1995 when Title 5 changed. BOH never updated their definition and from a technical stand point they don't have to provide that study. Mr. Bracken said because the system is over 100 ft. from the actual water interface with the wetland and the saltmarsh that is not required here. Coastal banks are resource areas-yes, but defined by the policy as they relate to Title 5, these coastal banks by definition most of them are unconnected to the effects of the septic system. It is underground where the effluent is going into the ground water and ends up at a ground water interface somewhere like a wetland. That's what the regulations at the BOH are geared towards. This issue will be brought to Board of Health. Mr. Bracken with his experience still views this as an improvement over what's there, even with the added bedrooms.

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Maryfrances Galligan an abutter addressed the Commission with concerns about the size of the proposed project on the foot print of the property and the tree removal.

Member comment: Mr. Palumbo said the area of tree removal on the top where she is concerned was discussed and they said they are going to restore that area per the request of the Commission and not to cut that area.

Ms. Galligan said she has not seen a plan marked tree by tree that is going to be cut. She saw the replanting plan but asked if there is plan that shows exactly where the trees are going to be cut. Ms. Galligan confirming that 33 trees are going to be cut.

Mr. Bracken said all the trees that are going to be taken down are shown on the plan in the limit of work. If the Commission wants them to identify them specifically they are happy to do so.

Member comment: Mr. Palumbo said that would be great if they can.

Member comment: Mr. Berman said in reference to that, the viewshed area goes along with the existing conditions and that area of the house would not need to have a tree proposed because there is not a tree currently there. That is the give and take, there is not a house there but where there is a house there is no trees and there is a certain amount of space where you necessarily don't need to have trees there because they are not being replaced. It is already going to be better with shrubs and soil stabilizing vegetation. That may not account for all the trees that are going away and it would be helpful to have those marked.

Mr. Szwed asked that the setback be resolved from the secondary bank landward. The middle bank to show a 50ft. buffer visible on the site plan.

Mr. Madden requested to continue to September 15th, 2022.

Chm. Gray back as chairman.

Approve minutes for July 21, 2022 and August 4, 2022

Motion made by Mr. Palumbo seconded by Mr. Berman to accept the July 21, 2022 minutes.

Roll call: Mr. Ligor- yes, Mrs. Weston-Abstain, Mr. Palumbo-yes, Mr. Szwed-yes, Mr. Berman-yes, Mr. Holmes- yes and Chm. Gray-yes. **Motion carried. 6-0-1.**

Motion made by Mr. Berman seconded by Mr. Ligor to accept the August 4, 2022 minutes.

Roll call: Mr. Ligor- yes, Mrs. Weston-Abstain, Mr. Palumbo-Abstain, Mr. Szwed-yes, Mr. Berman-yes, Mr. Holmes- yes and Chm. Gray-yes. **Motion carried. 5-0-2.**

Amend BWR 1.16 Regulations

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Agent comment: Ms. Fitch gave an update on how this amendment came up. There is a local resident who has an existing rail system for launching boats. The resident wants to remove and redesign a permanent pier with some sort of boat launching system. After Ms. Fitch did a site visit it was realized the regulations use the word pier and there is a couple constraints that would not work for any type of commercial business. There needs to be something in the regulations that hold commercial businesses to a different standard. They should be held to state and local bylaws as seen fit, but they should be able to operate their business as well.

Chm. Gray gave an overview of the commercial entities in the town, who are heavily regulated and proposed a draft to send out to the Department of Natural Resources & Shore and Harbor Committee for their review and input. Chm. Gray said that the language should not be an impediment to the improvements on these commercial areas, Corps of Engineers and the Maritime Academy.

Member comment: Mr. Berman said it is a very reasonable edit. The regulations were more intended for residential docks. Mr. Berman mentioned the fact that in the second paragraph it says "Shall not apply to commercial agencies". Mr. Berman wanted to know if a Trust or business LLC owns the property, will that then qualify them as non-residential at that point, and Mr. Berman wanted to clarify that to make sure there wasn't a loophole in the language. Chm. Gray said that is a good point to have input from Natural Resources and Shore and Harbor Committee. Mr. Szwed asked about the third paragraph and if that was a list of the exceptions there, which is also generally stated in the second paragraph. Chm. Gray said in the third paragraph that was an attempt to spell out some of the known Marina's in town federal, state and commercial. The members discussed the language revisions. Chm. Gray wanted to clarify here in the language that these regulations are not just applying to residential structures but also commercial, including the town. Further discussion took place on the revisions.

Motion made by Mr. Ligor to submit the draft amendment to Shore and Harbor and Natural Resources seconded by Mr. Palumbo.

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

A discussion amongst the members took place about the coastal guide manual.

Report of the Commission

Ms. Fitch asked Chm. Gray about the expired order of conditions for 13 Kendall Rae Place and if that should be on the next agenda as an item. The order of conditions has two issues, it was issued in 2017 and expired in 2020. The order in 2017 was never recorded at the

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Registry of Deeds. Essentially the work that they are doing around the building on the ground in the flood zone has no permit.

II. Adjournment

Motion made by Mr. Ligor to adjourn and seconded by Mr. Palumbo.

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

Minutes typed by: Amalia Amado, Administrative Assistant

Recorded & Edited by: Stephanie Fitch, Conservation Agent