

**Town of Bourne
Conservation Commission
Public Meeting Minutes
2.15.2024**

TOWN CLERK BOURNE

2024 MAR -8 PM 2:4

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Commission Members Present: Chair Robert Gray, Paul Szwed, Peter Holmes (remote), and Sarah Butler.

Excused Members: Vice chair Palumbo, Susan Weston, Joesph Soares, Greg Berman and Jacob Gadbois.

Professional Staff in Attendance: Stephanie Fitch, Conservation Agent

Chair Robert Gray called to order the meeting of the Conservation Commission at 6:30 PM, conducted in person on Thursday, February 15, 2024, and held in the Bourne Veterans Community Building, 239 Main Street, Buzzards Bay, MA 02532, and held virtually by Zoom. Chair Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetland Protection Act, M.G.L. Chapter 131, Section 40, and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. Chair Gray said that they follow a 5-5-5 rule, and he explained the rule. Chair Gray said that if a member of the public wishes to comment they will first clearly state their full name for the record. Chair Gray asked if anyone was recording at this time other than the Conservation Department.

Notice of Intent

1. Applicant: Gary Vincent

DEP File Number: **SE7-2279**

Representative: Wayne Tavares, Wet Tech Land Design Inc.

Project Address: 14 Lewis Point Rd, Buzzards Bay

Proposed Project: Title 5 septic system upgrade, installation of a shed that anchors 2 proposed retaining walls, sitting area on grade, and proposed mitigation planting located within 100 ft. of a wetland resource area and in an AE flood zone. **Continued from 2/1/2024.**

Wayne Tavares, the project representative, stated that he became involved in this project after the delineations had already been finalized. Tavares conveyed that he had spoken with Ms. Fitch previously, highlighting unresolved matters, thus indicating they will be requesting a continuation. One key issue is the pending approval of the septic system. Additionally, the objective is to create a backyard space for the applicant. It was noted that the applicant's backyard currently slopes and then levels off, on a coastal bank where the retaining walls are proposed.

Ms. Fitch gave her report on the installation of the poured concrete pad and retaining walls on a coastal bank which raises concerns. This activity has the potential to modify the flow of surface water and groundwater, leading to saturated soils, erosion, and the formation of gullies. Moreover, it may pose a risk of destabilizing the top and face of the bank.

According to the Town bylaw, there is a mandatory 10-foot setback requirement landward of the coastal bank for banks deemed significant in storm damage prevention or flood control. This

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setback requirement exists because these banks serve as crucial vertical buffers against storm waters.

However, it's worth noting that the bylaw allows for the Conservation Commission to waive the setback requirement entirely if it's demonstrated that a Vertical-Buffer Bank does not significantly contribute to storm damage prevention or flood control.

Ms. Fitch noted the septic plans provided were from November 2021 and do not reflect the latest design revisions as of April 2023, and the Board of Health (BOH) is still awaiting those revisions. Additionally, the existing plan does not accurately depict the location of the cesspool. Therefore, this Notice of Intent (NOI) cannot encompass the septic system as advertised.

Chair Gray proposed that the surveyor assess the discrepancy at the top of the coastal bank.

Homeowner, Gary Vincent discussed the project, mentioning that the concurrent filing with the Conservation Commission and Board of Health would encompass the landscape design with the septic system. He emphasized that the final determination of the top of the bank would dictate the progress of the septic plan, which was currently delayed. He expressed his intention to consult with the septic engineering team regarding the Commission's comments here tonight.

Tony Yacino, an abutter, expressed his concerns about the project, particularly regarding the plateau of the yard and potential water runoff issues. He also questioned the decision to construct a shed overlooking Buttermilk Bay.

In response, Mr. Vincent explained that the abutter's property is at a higher elevation. Vincent has a long sloped yard. He expressed the need for a shed to store gardening tools, as his garage is located on the opposite side near the street, making it more convenient for him to access. Additionally, Mr. Vincent clarified that the shed would be situated on the second lower plateau, with only the roof visible from certain vantage points. Furthermore, Mr. Vincent mentioned that one of his motivations for the project was to mitigate runoff reaching the salt marsh. He expressed a desire to plant fruit trees and believed that the implementation of the project would contribute to improving the runoff situation.

Mr. Tavares also mentioned another aspect of the project, which involves offering 2,558 square feet of native plantings as mitigation on the sloped erosion side where traditional mowing is challenging.

The applicant requested a continuance until March 21st, 2024.

2. Applicant: Richard & Corinne Whittington DEP File Number: **SE7-2287**
Representative: Land Planning, Inc.
Project Address: 160 Clark Road, Sagamore Beach
Proposed Project: The razing of an existing single-family home and construction of a new home in its place. The work will take place within 100 ft. of wetland resource area.

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Richard Whittington, homeowner and the founder and president of Whitman Homes. With over 30 years of experience in the industry, and has overseen the construction of more than 1,100 homes, predominantly in the Pine Hills area over the last 23 years, is here on personal matters. He and his wife recently purchased a home at 160 Clark Road with the initial intention of only renovating the interior. Initially, their plan was to retain the original home and bypass the need for conservation permits. However, upon closer inspection, they discovered significant structural issues, including serious rot and deficiencies. As a result, they've decided to demo and rebuild.

Steven Wry, representing from Land Planning Inc., provided an overview of the project, which entails the reconstruction and replacement of an existing deteriorated structure with a new house. The property is located adjacent to Sagamore Beach, a coastal beach characterized by a very steep bank measuring 14 feet high with a grade of less than 4%. This bank extends right up to the road, with the top of bank delineated for the project and the bottom armored by boulders.

The existing structure currently resides partially within the 50-foot buffer zone to the eroding bank. Efforts are to maintain the required 50-foot setback from the bank by relocating the house further back. The new position will ensure a setback of 50 feet rather than the current 48 feet, and a distance of 82 feet to the beach as opposed to the current 84 feet. The orientation and positioning of the house will remain similar. These proposed changes will be presented before the Historical Commission for review.

A revised plan was submitted relabeling from coastal dune to coastal bank.

Ms. Fitch gave her report, Ken Thomson's delineation identifies five wetlands areas as coastal dunes. However, the parking lot Notice of Intent (NOI) labels it as a bank on the site plan, while referring to it as a dune in the narrative. The botanist on the plan describes the area as a coastal bank with a slope greater than 4:1, covered by dune species such as beach grass, rosa rugosa, and poison ivy. Notably, although the bank exhibits dune-like vegetation, it does not behave like a traditional dune as it does not move with the wind; instead, it is an eroding slope with riprap protection at its base.

As of now, the submission has not been filed with the Board of Health (BOH), but it is anticipated to be in a similar location and possibly outside the 100-foot buffer zone.

The primary concern arising from the site's topography and its proximity to the coastal bank is the management of stormwater and roof runoff from the proposed new home. To address this issue, improvements such as the installation of gutters, downspouts, and catch basins are recommended. However, it appears that these measures are not currently proposed with the new dwelling. Therefore, it is advisable to require runoff control measures to mitigate potential environmental impacts.

No public comments.

Mr. Szwed inquired about the absence of a landscaping plan. In response, Mr. Whittington stated that they intend to maintain the turf grass.

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Mr. Holmes made a motion to close the public hearing and seconded by Ms. Butler. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

The draft order of conditions which is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40: 1, 2, 3, 4, 7, 9, 10, 12, 14, 15, 16, 18, 27, 28 and 29. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 5, 6, and 7.

Special Condition Numbers **15 & 16** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Mr. Szwed made a motion to move the draft to the final and seconded by Ms. Butler. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

3. Applicant: First Baptist Church of Pocasset DEP File Number: **SE7-2284**
Representative: JC Engineering, Inc.
Project Address: 298 Barlows Landing Rd, Pocasset
Proposed Project: Upgrade of the existing septic system within an AE flood zone and 100 ft. of a wetland resource area.

Brian Walsh of JC Engineering Inc. represented the project on behalf of the applicant. This project involves upgrading the existing septic system, which currently comprises 2 cesspools servicing a church and a 3-bedroom cottage. The plan is to replace the cesspools with a 3000-gallon, 2-compartment MicroFAST tank, along with a 2,500-gallon pump chamber that will pump towards the front of the property. Additionally, a 7,500-gallon leaching chamber with stone will be installed. It's important to note that the existing sewer lines exit out the back of the property.

The entirety of the site falls within flood zone AE15, with a wetland located at the rear and a couple of delineated coastal banks present. Every effort is being made to minimize impact on these designated resource areas.

The slopes on the site exceed 10 to 1 and are situated within a flood zone, thus adhering to DEP Policy 92-1. Additionally, the coastal banks are located more than 800 feet away from the shoreline.

Ms. Fitch asked Mr. Walsh to clarify the position of the coastal bank relative to the septic system. In response, Mr. Walsh indicated that the actual top of the coastal bank runs behind the building, extends across the driveway, and intersects with the side of the church. He further elaborated on the setbacks, showing the 50 to 100 feet. Mr. Walsh emphasized that the coastal bank does not play a significant role in storm damage prevention or as a source of sediment.

In conclusion, due to the interception of groundwater by the tanks, it is necessary to install a dewatering trap situated behind the property. Additionally, erosion control measures have been implemented in that specific area.

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Ms. Fitch inquired about the possibility of relocating the dewatering trap further east, beyond the 50-foot limit, and Mr. Walsh agreed with her suggestion.

Additionally, Chair Gray asked about the septic system serving the other building on the property, 294 Shore Road. Mr. Walsh informed the committee that the septic system for the building at 294 Shore Road was upgraded in 2003 and is compliant with Title 5 regulations.

Chair Gray asked Mr. Walsh if he clarified that the leaching field for 300 Shore Road is situated beyond the 100-foot to the 20 ft. drainage easement for the intermittent stream, which drains out of the golf course. Mr. Walsh confirmed this information.

No public comment.

Ms. Butler made a motion to close the public hearing and seconded by Mr. Szwed. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

The draft order of conditions which is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40: 1, 2, 3, 5, 7, 12, 14, 18, 27 and 28. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 6 and 7.

Motion made by Ms. Butler to move the draft to the final and seconded by Mr. Szwed. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

4. Applicant: Town of Bourne c/o Timothy Lydon DEP File Number: **SE7-2269**
Representative: Daniel Cannata of VHB Inc.
Project Address: 0 Old Monument Neck Rd, Bourne (Mass Coastal Railway Layout)
Proposed Project: Bourne Rail Trail Phase 1. Work consists of constructing a 10-foot wide shared use path (SUP) along the west side of the existing Mass Coastal Railway Corridor between the existing parking areas at the Tidal Flats Recreation Area on Monument Neck Road near its intersection with President's Road. **Continued to March 7, 2024.**

5. Applicant: Alexander C. Caradimos DEP File Number: **SE7-2285**
Representative: Bracken Engineering, Inc.
Project Address: 16 County Road, Bourne
Proposed Project: The construction of a garage/guest house unit, installation of a new Title 5 septic system, driveway improvements with associated grading, landscaping and utilities. The work will take place in an AE flood zone and within 100 ft. of wetland resource area. **Continued to March 7, 2024.**

6. Applicant: John J. LoMedico DEP File Number: **SE7-2286**
Representative: Bracken Engineering, Inc.
Project Address: 18 Winsor Road, Cataumet
Proposed Project: Reinforcing a portion of denuded salt marsh and various mitigation plantings adjacent to the salt marsh and all associated landscaping and grading. The work will take place in a Velocity flood zone and within a 100 ft. wetland resource area. **Continued to March 7, 2024.**

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Request to Extend Order of Conditions

1. Applicant: Michael F. Leary and Anne C. Leary DEP File Number: **SE7-2130**
Representative: Bracken Engineering, Inc.
Project Address: 67 Lewis Point, Buzzards Bay
Proposed Project: The order was issued on April 21, 2021. The proposed project consists of the construction of a 4-foot wide path and inset stone steps at grade. Removal and replacement of existing stone patio within the same area. Removal of existing timber retaining walls for basement walkout-timbers to be replaced with stones and restoration of an existing cleared area located on the coastal bank. They are requesting to extend the Permit for three years to April 21, 2027.

Ms. Fitch presented the project on behalf of the engineer. She reported that she conducted a site visit earlier today and noted that this property currently has two active orders of conditions. The one in question pertains to the construction of a patio, retaining walls for the house, and a set of steps descending the coastal bank to the beach. She explained that while the deck is being constructed under the other order, the entire site is currently undergoing construction activities. Ms. Fitch mentioned that they are not yet prepared to file for a certificate of compliance due to the site's lack of stability.

They requested a three-year extension. However, Ms. Fitch recommended a two-year extension to synchronize with the NHESP letter issued on January 25, 2021, which remains valid for a period of five years. As a result, both the NHESP letter and the order of conditions extension will expire in 2026.

Motion made by Mr. Holmes and seconded by Ms. Butler for a two year extension. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

Request to Amend Order of Conditions

1. Applicant: John Sweeney DEP File Number: **SE7-2211**
Representative: Cape & Islands Engineering, Inc.
Project Address: 198 North Road, Pocasset
Proposed Project: Request to amend the order of conditions to change the engineer of record and to return the existing groin to the previously approved amended order of conditions. Additionally, the project includes restoration of dune areas by planting American beachgrass. The work will take place within an AE flood zone, Velocity flood zone and within 100 ft. of wetland resource area.

Raul Lizardi PE from Cape and Islands Engineering, Inc., was present to request an amendment to the order of conditions in order to change the engineer of record. Mr. Lizardi explained that the homeowner is no longer working with the original engineer of record, following the homeowner's

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receipt of the order of conditions. The agreement was for Mr. Lizardi to furnish a new plan for the same project, duly stamped, and to amend the existing order accordingly.

Mr. Lizardi informed the commission that they conducted their own survey, revealing that the groin required rebuilding due to storm damage. One condition of the existing order was to repurpose the stones already on site, which were typically smaller than those typically used for groins. However, the initial storm following the implementation of the order caused a section of the groin to be damaged, resulting in the need for the first amended order. Now, they are seeking further amendment to change the engineer of record. Additionally, they have engaged a contractor who will reconstruct the groin to precisely match its original footprint.

Ms. Fitch conveyed that the DMF (Division of Marine Fisheries) had no further comments to add, except to underscore the importance of ensuring that the reconstruction of the groin remains within the footprint of the licensed structure.

Ms. Fitch inquired about the status of the chapter 91 license. Mr. Lizardi responded that the application is currently being compiled and a copy will be submitted to the Conservation department. He mentioned that no prior chapter 91 license could be located. Ms. Fitch emphasized the importance of maintaining all additional special conditions. Mr. Lizardi informed that they are collaborating with the contractor, Beacon Marine, whom Ms. Fitch had previously discussed with. The necessity of restoring any disturbance to the dune was discussed.

During a public comment, a representative from Wings Neck Trust Mr. Northrop raised concerns regarding the historic record and the original size. Mr. Lizardi said they don't have information on the exact construction date of the groin, relying on aerial desktop reviews and plans from 2022. He elaborated that they will maintain the existing footprint and that due to natural erosion and replenishment cycles caused by storms, resulting in varying appearances over time.

The Chapter 91 license, which is the oldest licensing program in existence. It is unusual that there are no records associated with this particular license. Mr. Northrop will explore the history of the groin to determine if he can uncover any additional information.

Motion made by Mr. Holmes and seconded by Ms. Butler to accept the new engineer of record and amend the order. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

➤ Report of the Conservation agent:

19 Tahanto Road-Ms. Fitch provided an update on a violation letter issued to 19 Tahanto Rd. regarding a seasonal dock remaining in the Pocasset River. According to the order of conditions and the Chapter 91 license, the float must be removed from October 15th to April 1st. A caretaker representing the homeowner cited their hardship due to the homeowner's Alzheimer's disease. They explained that the float has never been removed from the water, emphasizing the confusion and hardship it would cause. Chair Gray conveyed that the Commission will investigate the matter, along with other docks in the area, possibly conducting site visits. Given the extended period since removal, they expressed willingness to collaborate and find a solution.

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Request for Certificate of Compliance

1. Applicant: Massachusetts State College Building Authority DEP File Number: **SE7-2098**
Representative: Green Seal Environmental, LLC
Project Address: 11 Buttermilk Way, Buzzards Bay
Proposed Project: Certificate of Compliance requested for order of conditions issued on 12.14.2020. To remove existing building and construct a 72 bed cadet housing dormitory with associated parking, utilities, stormwater improvements, and landscaping within a Velocity flood zone. **Continued from October 19th, 2023.**

Ms. Fitch reported that following a site visit, she does not recommend the issuance of the Certificate of Compliance (CoC) at this time. She noted that attempts to apply for a CoC in the Fall were unsuccessful, as the interim agent also did not recommend issuance due to a lack of stormwater labeling on the as-built. Additionally, Ms. Fitch expressed concerns regarding coastal bank stabilization which is not complete and needs nourishment. The rain gardens are not working as proposed. There is still hay bales in place for stabilization of the landscaping. Furthermore, she highlighted that the order expired in December, raising questions about how the Commission should proceed without an active order. The Commission deliberated and discussed the possibility of issuing a friendly Enforcement Order to allow work to continue under the DEP File number.

- Report of the Conservation agent:
134 Wings Neck Road- Ms. Fitch provided an update on the restoration project at 134 Wings Neck Road, stating that the restoration was successfully completed in November 2023. Marsh Matters Environmental relayed that 1,000 2" cord grass plugs were planted by hand, and to demarcate the path, permanent granite markers were installed.
- Approve minutes 12/07/23, 1/18/24 and 2/01/2024.
A motion was made to approve the minutes for December 7th, 2023, January 18th, 2024, and February 1st, 2024. Roll call: Ms. Butler-yes, Mr. Szwed-yes, Mr. Holmes-yes and Chair Gray-yes. **Motion carried 4-0-0.**

Meeting adjourned 8:09pm

Minutes typed by Amalia Amado, Conservation Secretary II.
Audio recorded by the Conservation department.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can and include a way we can contact you if we need more information. Please allow advance notice. Send an email to kthut@townofbourne.com or call the Town Administrator's Office at 508-759-0600 x1503.