

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
C.A. NO. 2572CV00027

CAPE CLUB BUILDING, INC., and
MEGANSETT BY THE BAY, LLC,

Plaintiffs,

v.

TOWN OF BOURNE CONSERVATION
COMMISSION,

Defendant.

**DEFENDANT’S ANSWER TO PETITION FOR CERTIORARI
REVIEW AND DECLARATORY JUDGMENT**

Defendant, the Town of Bourne Conservation Commission (“Commission”), answers the allegations in the Plaintiffs’ Petition for Certiorari Pursuant to M.G.L. c. 249, §4; and for Declaratory Judgment, Pursuant to M.G.L. c. 231A, § 1 (“Petition”) as follows.

Certiorari Allegations and Claims

This Answer is limited to Plaintiffs’ claims and supporting allegations for relief under the declaratory judgment statute, G.L. c. 231A, § 1. Insofar as the Plaintiffs also advance a claim and supporting allegations for relief under the *certiorari* statute, G.L. c. 249, § 4, Defendant shall answer the same by filing a certified copy of the Commission’s record, as specified by Superior Court Standing Order No. 1-96.

Introductory Statement

1. Admit, except that Defendant denies that Plaintiffs are entitled to any relief.
2. Admit, except that Defendant denies that Plaintiffs are entitled to any relief.
3. Admit.
4. Defendant admits that the Commission issued an Order of Conditions (“OOC”), which is attached to the Petition, and denies Plaintiffs’ characterizations of the same.
5. Denied.
6. These allegations are relevant only to the Commission’s hearing procedures, which is solely relevant to Plaintiffs’ G.L. c. 249, § 4 claim. Accordingly, no answer is required. To the extent such an answer is required, the hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If any further answer is required, this paragraph is denied.
7. These allegations are relevant only to the Commission’s hearing procedures, which is solely relevant to Plaintiffs’ G.L. c. 249, § 4 claim. Accordingly, no answer is required. To the extent such an answer is required, the hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If any further answer is required, this paragraph is denied.
8. These allegations are relevant only to the Commission’s hearing procedures, which is solely relevant to Plaintiffs’ G.L. c. 249, § 4 claim. Accordingly, no answer is required. To the extent such an answer is required, the hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If any further answer is required, this paragraph is denied.

9. These allegations are relevant only to the Commission's hearing procedures, which is solely relevant to Plaintiffs' G.L. c. 249, § 4 claim. Accordingly, no answer is required. To the extent such an answer is required, the hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If any further answer is required, this paragraph is denied.
10. Denied.
11. Defendant admits that the Bylaw protects the interests identified, but denies Plaintiffs' characterization of the same by using the word "purported."
12. Denied.
13. Admit.
14. Denied.
15. The Commission's reasons for its decision are in its Order of Conditions ("OOC"), which is attached to the Petition. The Commission denies this allegation to the extent it is inconsistent with the same.
16. Denied.
17. Denied.
18. Admit, except that Defendant denies that Plaintiffs are entitled to any relief.
19. Admit, except that Defendant denies that Plaintiffs are entitled to any relief.

Parties

20. Admit.
21. Admit.
22. Admit.

Jurisdiction

- 23. Admit, except that Defendant denies that Plaintiffs are entitled to any relief.
- 24. Admit, except that Defendant denies that Plaintiffs are entitled to any relief.
- 25. Denied.
- 26. Admit that certiorari is the proper vehicle for review; denied that the decision has resulted in substantial injury and manifest injustice to the Plaintiffs.

Factual Allegations

- 27. Admit.
- 28. Admit.
- 29. Admit.
- 30. Admit.
- 31. Admit.
- 32. Admit that Plaintiffs asserted this proposition; denied that it is correct.
 - a. Admit.
 - b. Admit.
 - c. Admit that Plaintiffs asserted this proposition; denied that it is correct.
 - d. Admit.
 - e. Denied.
 - f. Admit that the Plaintiffs are properly quoting text from the Bourne Wetlands Regulations (“BWR”). Deny that the legal conclusions drawn from the same are correct.
 - g. Admit that the Plaintiffs are properly quoting text from the Bourne Wetlands Regulations (“BWR”). Deny that the legal conclusions drawn from the same are correct.

- h. Admit that the Plaintiffs are properly quoting text from the Bourne Wetlands Regulations (“BWR”). Deny that the legal conclusions drawn from the same are correct.
 - i. Admit that the Plaintiffs are properly quoting text from the Bourne Wetlands Regulations (“BWR”). Deny that the legal conclusions drawn from the same are correct.
 - j. Admit that the Plaintiffs are properly quoting text from the Bourne Wetlands Regulations (“BWR”). Deny that the legal conclusions drawn from the same are correct.
 - k. Admit that the Plaintiffs are properly quoting text from the Bourne Wetlands Regulations (“BWR”). Deny that the legal conclusions drawn from the same are correct.
- 33. Denied.
- 34. Denied.
- 35. Admit.
 - a. Admit.
 - b. Admit.
 - c. Admit.
 - d. Admit.
- 36. Admit.
- 37. Admit.
- 38. The Commission is without knowledge as to the Plaintiffs’ engineer’s motivations and therefore denies this paragraph.
- 39. Admit.

- a. The hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If a further answer is required, this paragraph is denied.
 - b. The hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If a further answer is required, this paragraph is denied.
40. Admit that the Applicant revised the Project and submitted revisions on the listed dates. The remaining text of the paragraph is denied. Said revisions will be part of the certified record filed in answer to the Plaintiffs' *certiorari* claim and said revisions speak for themselves. The Commission denies the allegations of paragraphs 40(a)-(f) to the extent the same are inconsistent with those revisions.
41. Admit that the Commission held the second hearing on November 7, 2024. In response to the allegations in paragraph 41(a)-(e), The hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If a further answer is required, those sub-paragraphs are denied.
42. These allegations are relevant only to the Commission's hearing procedures, which is solely relevant to Plaintiffs' G.L. c. 249, § 4 claim. Accordingly, no answer is required. To the extent such an answer is required, the hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If any further answer is required, this paragraph is denied.

43. Admit that the Applicant revised the Project and submitted revisions on the listed dates. The remaining text of the paragraph is denied. Said revisions will be part of the certified record filed in answer to the Plaintiffs' *certiorari* claim and said revisions speak for themselves. The Commission denies the allegations of paragraphs 43(a)-(d) to the extent the same are inconsistent with those revisions.
44. Denied. Said revisions will be part of the certified record filed in answer to the Plaintiffs' *certiorari* claim and said revisions speak for themselves. The Commission denies the allegations of paragraphs 43(a)-(d) to the extent the same are inconsistent with those revisions.
45. Response to paragraph 45 and all sub-paragraphs: Admit that the Commission deliberated at the November 21, 2024 hearing. The hearing was recorded. To the extent Plaintiffs purport to recite events from the hearing, the Commission denies those allegations to the extent they are inconsistent with the recording. If a further answer is required, those sub-paragraphs are denied.
46. Admit.
47. Response to paragraph 47 and all sub-paragraphs: The OOC is attached to the Petition. Said OOC speaks for itself. The Commission denies this paragraph to the extent that it is inconsistent with the OOC's text. If any further answer is required, this paragraph is denied.
48. Response to paragraph 48 and all sub-paragraphs: The OOC is attached to the Petition. Said OOC speaks for itself. The Commission denies this paragraph to the extent that it is inconsistent with the OOC's text. If any further answer is required, this paragraph is denied.

49. The OOC is attached to the Petition. Said OOC speaks for itself. The Commission denies this paragraph to the extent that it is inconsistent with the OOC's text. If any further answer is required, this paragraph is denied.
50. Response to paragraph 50 and all sub-paragraphs: The OOC is attached to the Petition. Said OOC speaks for itself. The Commission denies this paragraph to the extent that it is inconsistent with the OOC's text. If any further answer is required, this paragraph is denied.
51. Denied.
52. Denied.
53. The Commission denies that Plaintiffs are entitled to any relief.
54. The Commission denies that Plaintiffs are entitled to any relief.
55. Admit.

Count 1 (Certiorari, M.G.L. c. 249, § 4)

56. To be answered by the filing of the certified record under Standing Order No. 1-96.
57. To be answered by the filing of the certified record under Standing Order No. 1-96.
58. Response to paragraph 58 and all sub-paragraphs: To be answered by the filing of the certified record under Standing Order No. 1-96.
59. To be answered by the filing of the certified record under Standing Order No. 1-96.
60. To be answered by the filing of the certified record under Standing Order No. 1-96.
61. To be answered by the filing of the certified record under Standing Order No. 1-96.
62. Response to paragraph 62 and all sub-paragraphs: To be answered by the filing of the certified record under Standing Order No. 1-96.
63. To be answered by the filing of the certified record under Standing Order No. 1-96.
64. To be answered by the filing of the certified record under Standing Order No. 1-96.

- 65. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 66. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 67. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 68. Response to paragraph 68 and all sub-paragraphs: To be answered by the filing of the certified record under Standing Order No. 1-96.
- 69. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 70. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 71. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 72. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 73. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 74. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 75. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 76. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 77. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 78. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 79. To be answered by the filing of the certified record under Standing Order No. 1-96.
- 80. To be answered by the filing of the certified record under Standing Order No. 1-96.

Count II (Declaratory Judgment, M.G.L. c. 231A, § 1)

- 81. The Commission realleges and incorporates its responses to paragraphs 1 to and including 80.
- 82. The Commission denies that Plaintiffs are entitled to any relief.
- 83. Denied.
- 84. Denied.
- 85. Denied.

86. Denied.

Prayer for Relief

The Commission denies that Plaintiffs are entitled to any of the relief that they request.

Respectfully submitted,

The BOURNE CONSERVATION COMMISSION,

By its Town counsel,

/s/ Bryan Bertram

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Date: May 30, 2025

Certificate of Service

I, Bryan Bertram, hereby certify that I served a true and correct copy of the foregoing Answer by emailing the same to all counsel of record on May 30, 2025.

/s/ Bryan Bertram

Date: May 30, 2025