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TOWN OF HARWICH

732 Main Street  
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HARWICH CONSERVATION COMMISSION - MINUTES

PHONE (508)-430-7538 FAX (508)430-7531

THURSDAY - FEBRUARY 22<sup>ND</sup> - 2024

**TOWN HALL - GRIFFIN ROOM – HYBRID PARTICIPATION**

**Commissioners and Staff Present:** Chairman John Ketchum, Mark Coleman, Wayne Coulson, Sophia Pilling, James Atkinson, Bradford Chase, and Conservation Administrator Amy Usowski

**Commissioners Absent:**

**Audience and Representatives Present:** Lynn Hamlyn, Alan Campbell, Sean Riley, Steve Rhode, Taylor Donovan, Lincoln Hooper, Tom Courier, Bruce Young, Barbara Nickerson, Sarah Tomich, Bob Perry, Don Bracken, Michael Payne, Diane Pereria Mark Burgess, Alfred Novak, Glenn Wood

**Call to Order**

Chairman John Ketchum called the meeting to order at 6:30PM and the Pledge of Allegiance was recited.

**The following applicants have filed a Request for Determination of Applicability**

**Jeanne McKenzie, 11 Pilgrim Rd, Map 7, Parcel C3.** Site improvements including relocation of rinsing station and addition construction.

Lynn Hamlyn of Hamlyn Consulting was present as a representative and described relevant portions of the application, noting that the addition will be adding 10 square feet of coverage and that a rinsing station would be removed from inside the 50-foot buffer zone.

Ms. Usowski recommended approval with a Negative 2 and 3 Determination with the condition that the location of the mitigation plantings be confirmed in the field.

Alan Campbell, abutter, asked how much work would be done within the 50-foot buffer zone. Ms. Hamlyn answered that the only work would be the removal of the rinse station. Mr. Campbell asked if there would be additional site coverage and Ms. Hamlyn said there would be about 10 square feet of new coverage. Mr. Campbell said that he is worried about the condition of the nearby wetland.

Mr. Atkinson moved to approve the application. Seconded by Mr. Coulson.

No further discussion from the Commission.

Vote: 6:0 Motion carried, Request for Determination of Applicability approved with a Negative 2 and 3 Determination.

**The following applicants have filed an Abbreviated Notice of Resource Area Delineation**

**Wychmere Harbor Real Estate, LLC., 23 Snow Inn Rd, Map 8, Parcel P2.** Confirmation of Resource Area boundaries and associated buffer zones.

Sean Riley of Tighe and Bond was present as a representative and described relevant portions of the application, noting that the plan would be revised to include a coastal bank that had not been indicated.

Ms. Usowski said that she will agree with the delineations once the buffer zones for the unindicated coastal bank are added. She acknowledged that some coastal banks on the site are artificial and do not perform the same functions as a natural coastal bank and therefore would not be considered a resource area of significance. She recommended approval with the suggested changes.

Mr. Atkinson moved to approve the application with the suggested changes. Seconded by Mr. Coulson.

No further discussion from the Commission.

Vote: 6:0 Motion carried; application approved.

**The following applicants have filed a Notice of Intent**

**Town of Harwich, Route 28 Road Layout between Bank St. and Saquatucket Harbor Sidewalk construction by Mass DOT on south side of Route 28.**

Mr. Ketchum reminded the meeting attendants that comments and questions should be limited to the scope of the Conservation Commission's jurisdiction.

Lincoln Hooper, Director of the Town of Harwich Department of Public Works, Tom Courier of the Massachusetts Department of Transportation, and Steve Rhodes and Taylor Donovan of VHB Consulting were present as representatives. Mr. Rhodes summarized the project, noting that the proposed sidewalk will be installed over a culvert for Cold Brook that runs underneath Route 28. Ms. Donovan described the color coding of the sidewalk plans, explaining that each color corresponded to a type of disturbance, impact, or resource area. She noted that the applicants are seeking relief from the 3:1 mitigation requirement and a variance from the 0-to-50-foot no disturb zone.

Ms. Usowski noted that the project qualifies as a limited project to improve an existing roadway, but that more than 5,000 square feet of disturbance is proposed and that the Town and the State need to be held to the mitigation standard for projects, including producing a planting plan. She asked the representatives to describe how the project would improve stormwater management, as this could be considered mitigation. Mr. Rhodes explained that drains will be adjusted to the new curb and a new leeching facility would be installed at the low point of the road. Ms. Usowski noted that this site may meet the criteria of a mitigation constrained site and be subject to in-lieu fees instead of planting.

Mr. Chase asked the representatives to describe how the sidewalk would interact with the bank of Cold Brook since there is not enough room on the bank to support a 6-foot-wide sidewalk. Mr. Rhodes displayed a plan and explained that a slope will be constructed to follow the existing grade and support a new retaining wall. Mr. Chase asked if any riprap or stabilization would be used and Mr. Rhodes said no, the area would be grassed. Mr. Chase asked if there has been any consideration given to replacing the culvert as mitigation and Mr. Rhodes said that idea had not been discussed. Mr. Courier said that the culvert was evaluated and considered "okay" and outside of the scope of the sidewalk project. Mr. Hooper said that the culvert is considered undersized, and funding is being sought to replace it. Mr. Chase asked how the status of the culvert was evaluated and Mr. Hooper said that the Town has not evaluated it beyond its size.

Mr. Chase encouraged the applicants to consider more stormwater improvements for the project to possibly satisfy mitigation requirements. Ms. Pilling asked if sidewalks are required to be salted by the

Town. Mr. Courier answered that MassDOT would likely not salt this sidewalk. Mr. Courier noted that replacing the culvert would likely stall the sidewalk timeline, and a replacement is not completely necessary since the culvert does not seem to be nearing failure.

Mr. Ketchum asked if any area between Hoyt Road and Route 28 could benefit from mitigation. Mr. Rhodes answered that the area had not been considered, and Ms. Usowski noted that most of the land is likely private.

Bruce Young, abutter, asked if any planting would be happening along the bank of the river. Mr. Rhodes said that no planting is currently proposed along the bank because MassDOT can only work within the state layout of roads unless an easement is acquired.

Barbara Nickerson, abutter, agreed that mitigation requirements should be met for this project and said that she would like to see stormwater management addressed further. She noted that losing the visual of Cold Brook would be disappointing and hoped for vegetation replanting. She suggested asking private landowners for easements.

Susan Tomich, representative of abutters, shared support for the project.

Mr. Atkinson suggested continuing the hearing until the plan can be revised. Ms. Usowski suggested examining the outfall into Wychmere Harbor near the project location and stated that if stormwater management can be improved there then she would consider the mitigation requirements to be fulfilled. Mr. Ketchum agreed. Mr. Courier said that improvements to the outfall would delay the project until the next fiscal year. The representatives asked for a continuance to the March 20<sup>th</sup> meeting.

Mr. Chase asked if the project could be approved with the condition that the culvert be improved in the future. Ms. Usowski said that she was not sure. The representatives and the Commissioners discussed how to accomplish the mitigation goals for this project.

Mr. Atkinson moved to continue the hearing until the meeting of Wednesday, March 20<sup>th</sup>, 2024.  
Seconded by Mr. Coulson.

No further discussion.

Vote: 6:0 Motion carried, hearing continued.

**Deborah and John Sullivan, 4 Cottage Ave, Map: 6 Parcel: G1-5-2 SE32-2548.** Replace existing marine bulkhead with stone revetment. Relocation of coastal access stairs. *(Continued from 2/7/24)*

Mr. Ketchum simultaneously opened the discussion for the next application.

**Mary Ellen Costello & John J. O'Brien Trustees, 1698 Centre Street Realty Trust, 5 Cottage Ave, Map: 6 Parcel: G2-1 SE32-2549.** Replace existing marine bulkhead with stone revetment. Relocation of coastal access stairs. *(Continued from 2/7/24)*

Bob Perry of Cape Cod Engineering was present as a representative and reviewed the updated mitigation plan, noting that there will be 518 square feet of planting at 4 Cottage Ave and 511 square feet of planting at 5 Cottage Ave.

Ms. Usowski said that she would like to see more plantings at 4 Cottage Ave because of a previous unlawful vegetation disturbance on the property where native plants were replaced with lawn. Mr. Perry said that the

area was disturbed because the plants were not establishing well, and the owners may not have understood the regulations. He noted that the applicants will be losing land by choosing a revetment instead of a bulkhead for the property. Ms. Usowski agreed that the revetment would be better for the property and said that she did not oppose the project.

Ms. Pilling agreed that the planting plan for 4 Cottage Ave could be more substantial but that the project seemed to be an improvement. Mr. Coleman agreed that the project would be an improvement. Mr. Chase asked if a condition would be put on the Order of Conditions for this project for no fertilizers, pesticides, or herbicides. Ms. Usowski said that it would need to be discussed with the applicants. Mr. Perry suggested allowing the option for occasional organic fertilizer and asked that irrigation not be restricted. Mr. Chase and Mr. Perry discussed the pollution of Nantucket Sound.

Mr. Atkinson moved to approve the application for 4 Cottage Ave and 5 Cottage Ave with the conditions that no pesticides, herbicides, or fertilizers be used on the properties. Seconded by Mr. Coulson.

No further discussion.

Vote: 6:0 Motion carried; applications approved.

**33 Dunes Road LLC., 33 Dunes Rd, Map 5, Parcel W1-5, SE32-2550.** Site improvements including relocation of swimming pool, deck removal and patio reconstruction.

Mr. Coleman recused himself from the discussion.

Robin of Outerland Landscape Design was present virtually as a representative, and Brad Holmes, Wetland Scientist with Environmental Consulting and Restoration, was present in person as a representative and discussed relevant portions of the application, noting the resource areas and buffer zones, and described the changes to the property that would reduce the amount of hardscape on the property.

Ms. Usowski explained that the plans have been updated to include plants that are more likely to thrive in the area and noted that the reduction in hardscape was great. She recommended approval but asked about the fence on the plan. Robin explained that the fence would be meant to keep the owners dogs in the yard. Ms. Usowski said that the project would be conditioned to make sure that the fence will allow for dune movement. Mr. Ketchum agreed. Ms. Pilling asked for clarification on unlabeled plants on the planting plan and Robin confirmed the plants.

No further discussion.

Mr. Atkinson moved to approve the application with the condition that the fence be approved and not in a stockade style. Seconded by Mr. Chase.

Vote: 5:0:1 Mr. Coleman had recused himself. Motion carried; application approved.

**Douglas P. & Wendy Mills Trustees, Mills Realty Trust, 74 Depot Rd, Map 44, Parcel P2, SE32-2551.** Raze and replace single-family dwelling and install new septic system.

Don Bracken of Bracken Engineering was present as a representative and discussed relevant portions of the application, noting that the new septic system would be outside of the 100-foot buffer zone.

Ms. Usowski noted that a shed on the property is encroaching on Town property and Mr. Bracken said that it would be removed. Ms. Usowski said that the project is an improvement to the area and recommended approval.

Mr. Coulson suggested pumping the former leeching pit, removing blocks and sludge, and then filling it with clean sand. Mr. Bracken said that such a process would result in more disturbance because the leeching pit would need to be dug out by an excavator. Mr. Chase asked about the clearing of the site for lawn since there is a steep slope on the property that could encourage lawn migration towards the nearby wetland. Mr. Bracken agreed that lawn migration could happen at the site. Mr. Chase suggested a living fence. Ms. Usowski said that it may be too restrictive because of the size of the site and Mr. Chase agreed and suggested a strong condition to prevent encroachment. Mr. Ketchum asked where the dirt road was drawn on the map and Mr. Bracken indicated it.

Michael Payne, abutter, expressed support for removing the old house but shared concerns about wildlife being impacted by clearing a driveway. Mr. Payne asked if the lot would be graded to be flat and Mr. Bracken said yes. Mr. Payne asked if runoff would affect the wetland and noted that there is a beehive in the old house which should be investigated before demolition.

Ms. Usowski explained that the driveway and the grading of the property were out of the Commissions jurisdiction. Mr. Bracken said that the driveway would be widened to provide access for the appropriate machinery.

Diane Pereria, abutter, asked how much of the site would be cleared. Mr. Ketchum explained that most of the lot is outside of the jurisdiction of the Commission.

Mr. Atkinson moved to approve the application with the condition that there be no encroachment beyond the limit of work. Seconded by Mr. Coleman.

No further discussion.

Vote: 6:0 Motion carried; application approved.

**Alfred and Carol Novak, 30 Harbor Rd, Map 15 Parcel U15-A SE32-2366** Remanded to Conservation Commission by Court – New dock in Wychmere Harbor.

Mark Burgess of Shorefront Consulting, owner Alfred Novak, and Glenn Wood were present as representatives. Mr. Burgess reviewed the history of the project and summarized the updates to the plans, noting that there will be a 4:1 ratio for planting, further mitigation such as direct shellfish seeding, and that the length of the dock has been shortened.

Ms. Usowski explained that the pruning of vegetation in the area is permitted, and that this is the original dock application with some improvements, noting that the applicants had previously re-applied with another proposal but then withdrew it. She summarized the improvements to the plan, noting that the area would be dredged to reach 3-feet of depth at mean low water and that shellfish were present in the area but that direct shellfish seeding would benefit the area. She also noted that a thin strip of salt marsh had been present at the site years ago but that it is now gone. Ms. Usowski asked the applicants to reconsider the anchors since the area accumulates ice and debris. She said that the proposed planting is well-thought out and will add stability and habitat to the area and suggested trying to regrow the salt marsh on the

property. She recommended approval of the project since it has been approved by the Massachusetts Department of Environmental Protection with a superseding order.

Mr. Novak explained that the pruning in the area is done because of the neighborhood's canon-firing tradition and the residents want to avoid starting a fire on the bank.

Mr. Chase asked if a variance request was made for the setback. Ms. Usowski said yes, a 10-foot variance is requested for one side of the dock. Mr. Chase expressed concern that the project does not meet the regulations given the abundant resources such as shellfish and viable habitat in the area. Ms. Pilling asked Ms. Usowski to suggest how the project could be conditioned. Ms. Usowski said that monitoring, shellfish surveys, and checking planting viability could be included, and that MassDEP likely would not condition the project in these ways. Ms. Pilling asked Ms. Usowski to explain if the Commission could deny the project and Ms. Usowski discussed the legal implications and steps that could follow the denial of a remand. Ms. Pilling asked if the planting plan was proposed in 2018 and Ms. Usowski said that it was not, and it was added to the application this year. Mr. Atkinson said that the current project seems to be improved, noting that it is already approved by MassDEP. Ms. Usowski agreed that it is improved.

Mr. Chase asked Ms. Usowski to explain whether the project could be denied under the Bylaw. Ms. Usowski said that the applicants could appeal a Bylaw denial and bring it to Barnstable County Superior Court. She noted that approval with both the Wetlands Protection Act and the Town of Harwich Bylaw is needed to move forward with a project.

Mr. Ketchum asked what arguments were made by MassDEP to justify their approval of the project. Ms. Usowski said that there were no arguments provided. Mr. Ketchum asked if a court would be able to hear arguments and Ms. Usowski said that she was not sure. Mr. Atkinson asked if the Commission's appeal to the superseding order would continue if the Commission chose to take no action. The Commissioners and Ms. Usowski discussed the legal ramifications of taking no action. Mr. Wood noted that the revised plan would be examined by an adjudicatory judge if the project is denied. Mr. Chase said that he understood why the applicants wanted a dock but that he could not support approving the project because of the impacts to the resource areas. The applicants and the Commissioners continued to discuss legal expectations and whether the application needed to be acted on.

Mr. Chase moved to deny the project under the Wetland Protection Act due to impacts on land containing shellfish and deny the project under the Town of Harwich Bylaws under the provision for no new structures in shellfish habitat, failing to meet the 65-foot setback, and failing to meet three feet of depth at mean low water. Seconded by Mr. Ketchum.

Mr. Chase noted that there are no impacts to salt marsh, unlike the previous plan and denial.

No further discussion.

Vote: 2:4 Motion failed.

Mr. Atkinson moved to approve the application. Seconded by Mr. Coulson.

Ms. Pilling asked to add conditions to the motion. Ms. Usowski described some conditions that would be added including but not limited to shellfish surveys, salt marsh reports, a post-dredge survey, and monitoring reports.

Mr. Atkinson accepted the conditions as an amendment to the motion. Seconded by Mr. Coulson.

Mr. Novak asked if there would be a standard of conditions to review and Ms. Usowski said that the Order of Conditions would provide a full detailed list.

No further discussion.

Vote: 4:2 Mr. Chase and Mr. Ketchum voted nay. Motion carried; application approved.

**The following applicants have filed for a Certificate of Compliance**

**Robert and Paula Bigelow Howard, 7 Nons Rd, Map 6 Parcel C1-9 SE32-2524.** Increase float size.

Ms. Usowski informed the Commission that an as built was received and the project is in compliance. She recommended approval.

Mr. Atkinson moved to approve the Certificate of Compliance. Seconded by Mr. Coulson.

No further discussion.

Vote: 6:0 Motion carried; Certificate of Compliance approved.

**Orders of Conditions**

**Daniel Corey & David Mogan, 9 & 11 Herring Run, Map 3, Parcels X3-2 & X3-3 SE32-2546.**

Construction of new shared dock with float and dredging.

Ms. Pilling asked why drip irrigation was specified and Ms. Usowski explained that it was standard for mitigation areas to ensure direct watering.

Mr. Atkinson moved to close the public hearing and approve the Order of Conditions. Seconded by Mr. Coulson.

No further discussion.

Vote: 6:0 Motion carried; Order of Conditions approved.

**Minutes**

4.5.23

Mr. Chase asked for a sentence on page 3 to be changed to better reflect his observations.

Mr. Atkinson moved to approve the minutes from 4.5.23 with the suggested change. Seconded by Mr. Coulson.

No further discussion.

Vote: 5:0 Ms. Pilling had left the room. Motion carried; minutes approved.

2.7.24

Mr. Chase asked for the minutes to be continued to the next meeting to review the tape.

1.4.23

Mr. Atkinson moved to approve the minutes from 1.4.23. Seconded by Mr. Coulson.

No further discussion.

Vote: 6:0 Motion carried; minutes approved.

### **Discussion and Possible Vote**

#### 1. Community Preservation Committee Signage at the Bells Neck Conservation Area

Ms. Usowski said that she shared the Commissioners concerns about weathering or vandalism to the sign and that Kathy Green from the CPC said that a smaller sign could be mounted on a fence. Ms. Usowski said that she would support approving a smaller, sturdier sign.

Mr. Chase and Mr. Atkinson were not in favor of the large banner. The Commissioners reached a consensus to explore options for smaller signs. Ms. Usowski offered to gather information on what sizes the CPC has available.

#### 2. MACC Conference in Worcester

Ms. Usowski told the Commissioners to contact her if they were interested in attending the conference.

#### 3. Public and Environmental Health and Wellness Day

Ms. Usowski announced a joint event between the Health Department and the Conservation Department on Saturday, April 27<sup>th</sup> at the 204 Building.

#### 4. 3-foot-depth at mean low water

Ms. Usowski reminded the Commission that they had chosen to stay silent on the interpretation of the 3-foot-depth at mean low water bylaw at a previous meeting. Mr. Ketchum suggested that the topic should be on the agenda for the 3.20.24 meeting for discussion and Ms. Usowski said that it could be added. Mr. Chase asked about the process to revise the bylaws and Ms. Usowski said that even a small revision to this section would likely have to go to Town Meeting. Mr. Chase suggested waiting until the Herring River Study is complete to revisit shellfish surveys, setbacks, and more.

#### 5. Other comments

The Commissioners and Ms. Usowski discussed culverts in the Town and how to go about securing funding to replace them in a timely and logical fashion.

### **Adjournment**

Mr. Coulson moved to adjourn the meeting at 9:35pm. Seconded by Mr. Coleman.

Vote 6-0. Motion carried; meeting adjourned.

Minutes respectfully submitted by Kalea Trudeau, Conservation Department Executive Assistant.