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HARWICH CONSERVATION COMMISSION - MINUTES

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

WEDNESDAY – MARCH 6TH – 2024

TOWN HALL – GRIFFIN ROOM – HYBRID PARTICIPATION

Commissioners and Staff Present: Chairman John Ketchum, Wayne Coulson, Sophia Pilling, James Atkinson, and Conservation Administrator Amy Usowski

Commissioners Absent: Bradford Chase and Mark Coleman.

Audience and Representatives Present: Nick Nelson, Tom Evans, Mike Lach, Sam Park, Elaine Park, Ed Daugherty, Atty. John Cartwright, Lee Scarborough, Sheffield van Buren, Mark Burgess.

Call to Order

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

Presentation

Update on the Cold Brook Ecological Restoration Project

Nick Nelson of Interfluve and Tom Evans, President of the Board of the Harwich Conservation Trust, were present in person as representatives, and Mike Lach, Director of the Harwich Conservation Trust was present virtually as a representative.

Mr. Nelson informed the Commissioners that much of the site has been converted to the restoration design. He stated that the goals of the project are nitrogen attenuation, ecosystem restoration/recovery, and recreational opportunities. Mr. Nelson displayed photos and maps of the site and indicated the areas of progress such as the installation of large wood for fish cover and the removal of all culverts. He said that the next steps will be installing a board walk, foot bridges, and starting work on the final bog. He reminded everyone that the site is closed until late summer.

Ms. Usowski said that she liked that wood that was discovered buried in the bogs is being reused. Mr. Atkinson said that he was glad to see the progress. Ms. Pilling asked if the Commissioners would be welcome at the site meetings and Mr. Nelson said yes. Ms. Pilling asked what the plan for weeding would be during the vegetation regrowth phase. Mr. Nelson said that the contractor is responsible for maintaining a weed-free environment for three years after construction ends. He said that they have been removing invasive plants during the work. He said that phragmites and invasive willow would be the most problematic, noting that there is a large patch of phragmites nearby which will be treated soon. Mr. Ketchum said that the progress was great and asked where exactly the phragmites is. Mr. Nelson said that it is in an area where they cannot dig it out. Mr. Lach thanked the partners in the project and noted that Cold Brook is free flowing for the first time in over a century.

No further discussion from the Commission or public comment.

The following applicants have filed a Notice of Intent:

KBD Patel LLC, 435 Route 28, Map: 13, Parcel: S1-B2, SE 32-2554. Relocation of unpermitted structure. *(Continuance to 3/20/24 requested by applicant as engineer not able to be present.)*

Ms. Usowski informed the Commission that the applicants have requested a continuance to 3/20/24 since the project engineer could not be present for the meeting of 3/6/24.

Mr. Atkinson moved to continue the public hearing to the meeting of 3/20/24. Seconded by Mr. Coulson. No further discussion from the Commission or public comment.

Vote: 4:0 Motion carried; hearing continued.

The following applicants have requested a Change of Plan:

10 Braddock Lane LLC, 10 Braddock Street, Map: 7, Parcel: F20, SE32-2512. Addition, septic, hardscaping, landscaping.

Sam Park, owner, was present as a representative and discussed relevant portions of the request, explaining that he wants to reduce the size of the house so that his neighbor can see the ocean from his porch. He demonstrated the areas to be reduced on the proposed building plans, noting that there will be less structure closest to the dune near the property.

Ms. Usowski said that it was very kind to offer to reduce the size of the house to let a neighbor have a view. She recommended approval of the Change in Plan.

Mr. Atkinson moved to approve the request. Seconded by Mr. Coulson. No further discussion.

Vote: 4:0 Motion carried; Change in Plan approved.

The following applicants have requested an Extension Permit for an Order of Conditions:

Wyndemere Beach Trust, Wyndemere Beach, Map: 6, Parcel: T1, SE32-2069. Beach nourishment.

Ed Daugherty was present as a representative and discussed relevant portions of the application, explaining that the extension would allow the beach nourishment to be sourced from dredge materials or from upland sources.

Ms. Usowski explained that the applicants are seeking a three-year extension and recommended approval.

Mr. Atkinson moved to approve the request. Seconded by Mr. Coulson. No further discussion.

Vote: 4:0 Motion carried; extension approved.

Brian Higgins, 17 Bay View Road, Map: 7, Parcel: J6-2, SE32-2442. Invasive species removal and landscaping.

Ms. Usowski explained that the applicants are requesting a one-year extension for invasive plant removal and landscaping.

Mr. Atkinson moved to approve the request. Seconded by Mr. Coulson. No further discussion.

Vote: 4:0 Motion carried; extension approved.

Nancy White, 26 Old Campground Road, Map: 30, Parcel: C15, SE32-2443. Construct single family dwelling, driveway, septic system, and grading.

Ms. Usowski noted that a voting quorum is not available for this request because Mr. Coulson was the previous owner of the property and had recused himself. She recommended no action by tabling the request to the next meeting.

No action taken by the Commission.

Roland and Gray Lemay, 12 Belle Brook Lane, Map: 23, Parcel: X-A, SE32-2444. Construct single family dwelling.

Ms. Usowski explained that the permit was issued in 2021 and that the work was delayed due to complications and high costs. Ms. Usowski recommended a two-year extension.

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

No further discussion.

Vote: 4:0 Motion carried; extension approved.

The following applicants have filed for a Certificate of Compliance:

Edmund and Marcie Fuller, 22 Frances Road, Map: 56 Parcel: B3-1, SE32-376. Construct single family dwelling with septic.

Atty. John Cartwright was present as a representative and discussed relevant portions of the application, noting that several features of the property such as a deck, a shed, and improper downspouts are not in compliance. He requested the option to file an after-the-fact Notice of Intent to correct the issues.

Ms. Usowski noted that the property has substantial deviations from the approved permit on the property such as a driveway nearly double in size from the original plan and paved, a shed, and an outdoor shower that were never approved. She recommended a Notice of Intent application be filed within 90 days with a new site plan showing the existing conditions.

Mr. Coulson agreed that the deviations necessitated a Notice of Intent. Ms. Pilling asked what the difference would be between an Abbreviated Notice of Intent and a Notice of Intent and Ms. Usowski explained that abutters are not notified with an Abbreviated Notice of Intent. Mr. Ketchum said that it seemed logical to notify the abutters. Mr. Coulson said that the abutters have likely changed since the work was done and Mr. Ketchum agreed and said that they should be notified.

Mr. Atkinson moved to table the request for a Certificate of Compliance and request that the applicants file a Notice of Intent within 90 days.

No further discussion.

Vote: 4:0 Motion carried; request for Certificate of Compliance tabled; Notice of Intent filing requested within 90 days.

Orders of Conditions:

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.

Ms. Usowski recommended that the hearing be opened for public comment. Mr. Ketchum apologized for not opening the hearing for public comment at the meeting of 2/22/24 and noted that the public is still welcome to speak.

Mr. Lee Scarborough, abutter, was present and shared his agreement with comments made by Mr. Chase at the meeting of 2/22/24. He said that he would like to see the site remain natural. He expressed that he thought that the variance to place a dock within 65-feet should not have been granted.

Mr. Sheffield van Buren, abutter, was present virtually and agreed with Mr. Scarborough's comments and said that he thought that Mr. Chase raised good points at the meeting of 2/22/24. He said that he would also like to see the site remain natural.

Ms. Usowski did not recommend a re-vote since there was no new information produced and noted that a decision is required 21 days after the original vote.

Ms. Pilling thanked the abutters for speaking. Mr. Atkinson agreed that new information would need to be produced for a re-vote and said that the meeting would likely need to be readvertised if the Commission chose to re-vote. Mr. Coulson agreed that there did not seem to be a need to re-vote.

Ms. Usowski read the proposed special conditions for the project aloud, noting the dredging and barge requirements and the proposed mitigation.

Mr. Ketchum asked Ms. Usowski to ensure that the 22nd special condition specified "at low water." He asked Ms. Usowski to add the condition that any soil amendments with significant nitrogen not be allowed. Ms. Usowski said that the Commission should create a threshold for "significant nitrogen" based on factual evidence. Ms. Pilling said that a significant nitrogen threshold would require a larger discussion.

Mr. Scarborough requested a special condition that no vessel drawing more than 3 feet can be docked at the site.

Mr. Coulson said that the barge would likely draw more than 3 feet. Mr. Ketchum clarified that the request is for docked boats, not the barge. Mr. Atkinson expressed that the Waterways Committee would likely have jurisdiction for such a condition.

Mark Burgess of Shorefront Consulting was present as a representative and mentioned that the Waterways Committee suggested a limit on boats docked at the site to 10 feet of beam length. He said that the Harbormaster would have some discretion to enforce this condition.

Mr. Ketchum asked if the 10-foot-beam limit was voted on by the Waterways Committee. Mr. Burgess read the minutes aloud and clarified that the Waterways Committee voted to add the condition.

Mr. Scarborough said that the 10-foot-beam limit did not seem to be enough to ensure that any boats docked at the site would not draw more than 3 feet.

Ms. Pilling asked if the maintenance of the planting of the slope would be specified. Ms. Usowski said that she would make the Order of Conditions clear that the plantings are not to be removed. Mr. Atkinson clarified that the Commission could not add a condition limiting the draft of boats docked at the site. Ms. Usowski said that the Commission could add a condition that no vessel docked at the site could go aground.

Mr. Atkinson moved to close the public hearing and issue the Order of Conditions for the project.

Seconded by Mr. Coulson.

Mr. Atkinson requested to amend the motion to include the revisions to special condition 22 and the addition of a 24th special condition that no vessel docked at the site could go aground.

Amendment accepted by Mr. Atkinson and seconded by Mr. Coulson.

No further discussion.

Vote: 4:0 Motion carried; Order of Conditions approved.

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.

The following hearing was opened and discussed jointly.

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.

Mr. Atkinson moved to close the public hearings and issue the Orders of Conditions. Seconded by Mr. Coulson.

No further discussion.

Vote: 4:0 Motion carried; Orders of Conditions 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. Atkinson moved to close the public hearing and issue the Order of Conditions. Seconded by Mr. Ketchum.

No further discussion.

Vote: 4:0 Motion carried; Order of Conditions 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.

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

No further discussion.

Vote: 4:0 Motion carried; Order of Conditions approved.

Minutes

1.19.23

The Commission clarified that the minutes are from 1.19.23.

Mr. Ketchum moved to approve the minutes of 1.19.23. Seconded by Mr. Atkinson.

No further discussion.

Vote: 4:0 Motion carried; minutes approved.

2.15.23

Ms. Pilling asked for the spelling of a representative's name to be corrected.

Mr. Ketchum asked Ms. Usowski to update the Commission on the enforcement orders for 117 and 123 Riverside Drive, which were mentioned in the minutes. Ms. Usowski informed the Commission that the required planting was completed.

Mr. Ketchum moved to approve the minutes of 2.15.23. Seconded by Mr. Atkinson.
No further discussion.
Vote: 4:0 Motion carried; minutes approved with the suggested changes.

2.7.24

Minutes tabled for comments from Mr. Chase.

2.22.24

Mr. Ketchum asked Ms. Usowski if she had corresponded with Kathy Greene about an application and Ms. Usowski said that she would speak with her.

Mr. Ketchum moved to approve the minutes. Seconded by Mr. Atkinson.
No further discussion.
Vote: 4:0 Motion carried; minutes approved.

Discussion and Possible Vote

Discussion regarding Water Dependent Structures Bylaw 304-8(K) - requirement of 3' of depth at mean low water.

Ms. Usowski asked the Commission for their thoughts on the bylaw as it is. She noted that it has been left open-ended in its language because it does not specify how 3-feet at mean low water must be achieved.

Mr. Ketchum said that a public hearing would be required if the bylaw were to be changed. Mr. Atkinson said that Mr. Chase should be present for the discussion since he requested it as an agenda item. Mr. Ketchum agreed and added that all members should be present. He asked what the agenda for the next meeting would be like. Ms. Usowski said that there were 6 hearings and some real estate transfers. She offered to put the discussion about dredging and 3-feet-MLW on the agenda for the next meeting.

Other comments

Ms. Usowski informed the Commission that funding is being sought from the Massachusetts Department of Environmental Protection for the testing of Hinkley Pond. She said that Hinkley Pond seems to be an excellent candidate for the 604B grant program.

Adjournment

Mr. Coulson moved to adjourn the meeting at 8:15pm. Seconded by Mr. Atkinson.
No further discussion.
Vote: 4:0 Motion carried; meeting adjourned.

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