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HARWICH

732 Main Street

Harwich, MA 02645

HARWICH CONSERVATION COMMISSION - MINUTES

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

WEDNESDAY – DECEMBER 6, 2023 – 6:00 PM

TOWN HALL - GRIFFIN ROOM – HYBRID PARTICIPATION

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

Commissioners Absent: Wayne Coulson and Alan Hall

Audience and Representatives Present: Arlene Wilson, Lindsay Strode, Paul Mancuso, Attorney Michelle Hunton, Don Monroe, Cole Bateman, Shayne Watson, Selectboard Member MacAskill

The Commission entered into Executive Session at 6:00pm for the following with a representative from Town Counsel:

- Discussion and possible vote on Intermunicipal Agreement with Cape Cod Technical High School for 374 Main Street.
- Approval of minutes for execution session on November, 15th 2023.

Call to Order

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

Executive Session Voting Record

Mr. Ketchum announced The Commission voted 4:0:1 to support the memorandum of understanding between the Town of Harwich and the Cape Cod Regional Technical School for 374 Main Street.

The following applicants have filed a Notice of Intent:

Allens Harbor Beach Associates, Off Dunes Rd, Map 5, Parcel Y1. SE32-2545. Reconstruction of pedestrian pathway for beach access, including boardwalk and seasonal mobi mats. *(Continued from 11/1/23)*

Arlene Wilson, of AM Wilson Associates, was present as a representative and discussed relevant portions of the application, noting that they have received and reviewed a response on the project from the National Heritage and Endangered Species Program and that the width of the proposed walkway has been reduced to 4 feet wide. Ms. Wilson shared that she is hesitant to mitigate in the area since ensuring plant survival would require a lot of maintenance and inquired about in-lieu fees.

Ms. Usowski reviewed the conditions that are required by the NHESP, such as forbidding mat installation between April 1st and August 31st and hiring a shorebird monitor. She noted that the updated 4-foot path width is more compliant with town regulations but did not support the 5-foot by 10-foot landing pad for

approval. Ms. Usowski explained that in-lieu fees should only be assessed if all other possibilities for mitigation have been exhausted, noting that the property extends beyond what is immediately adjacent to the proposed project. She recommended approval with the conditions that the applicants work with her to create a mitigation plan and that the 5-foot by 10-foot landing pad is not included.

The Commissioners discussed seeing a mitigation plan before voting. Ms. Wilson said that she hoped the Commission would consider a post-approval mitigation plan created with Ms. Usowski, and the Commissioners continued to discuss.

Mr. Coleman moved to approve the application with the condition that the applicant coordinate with the Conservation Administrator to create a planting plan and that the conditions proposed by the NHESP will be met. Seconded by Ms. Pilling.

No further discussion from the Commission.

Vote: 4:1. Jim Atkinson opposed. Motion carried; Notice of Intent approved.

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. *(Continued from 11/1/23)*

Lindsay Strode (in person), of Cape Organics, Paul Mancuso (virtual), of BSC Group, Attorney Michelle Hunton (virtual), Don Monroe (virtual), of Coastal Engineering, and Cole Bateman (virtual) of Coastal Engineering were present as representatives. Mr. Strode reviewed the initial planting plan, noting that invasive plants will be removed and that a variety of native shrubs and trees will be added to the land to create a maritime thicket.

Mr. Bateman commented that the proposed mitigation ratio is 10:1. He reviewed the letter from the Division of Marine Fisheries and overviewed responses to their concerns and questions from the Commissioners from the 11.15.23 meeting. The DMF letter stated concern about piles displacing shellfish and the materials to be used to build the dock. Mr. Bateman said that the mud at the location is anoxic and unsuitable to shellfish and that the materials of the dock will be compatible with the area. The DMF also recommended that float stops be used but Mr. Bateman said that was not possible and that dredging must be used to meet the regulations of the Harwich Bylaws. He emphasized the distance of the float from the salt marsh, the design of the proposed dock and that two families would be sharing it. Mr. Bateman reviewed the concerns of the Commissioners from the 11.15.23 meeting and said that the proposed dock should not have any impacts to the functionality of the coastal bank at the site or the salt marsh.

Ms. Usowski reviewed the planting plan and commented that it was lacking in precision. She reviewed precedent from previous cases and said that she does not support approval at this point.

Ms. Pilling commented that she would like to learn more about the project. Mr. Chase commented that he does not support the project and that the variances were too demanding. Mr. Ketchum asked if there was a request made for a waiver for building a structure in mapped shellfish habitat, and Ms. Usowski confirmed that a request was made and that it was in the original file.

Attorney Hunton said that dredging does not require a variance and mentioned that other dock projects have received waivers for structures in mapped shellfish habitat. Mr. Monroe claimed that the dredging would have a positive impact on the shellfish in the area because anoxic material would be removed, and the shellfish could be relocated after completion. He also stated that the piles of the dock may add suitable habitat for oysters and mussels to attach. Mr. Chase asked to see proof that dredging would help shellfish in the area thrive.

Mr. Monroe asked to have time to create a new, more thorough planting plan. Mr. Bateman offered to attempt to decrease a variance by reducing the proposed length of the dock. Mr. Ketchum asked for clarification and Mr. Bateman explained that he was suggesting dredging within 25 feet of the salt marsh while maintaining a dredge footprint of less than 100 cubic feet. Mr. Monroe asked again for more time to alter their proposal and reviewed some of Ms. Usowski's past comments about the regulations pertaining to the project. Ms. Usowski corrected Mr. Monroe and clarified that the revised planting plan should indicate delineations for coastal bank, salt marsh, etc.

Mr. Ketchum asked how it would be possible to move the float further landward and still maintain a dredge footprint of less than 100 cubic feet. Mr. Bateman answered that it could be accomplished and the only reason why it was not initially proposed was to maintain a 25-foot buffer from the salt marsh.

Mr. Coleman moved for a continuance to the December 20th meeting. Seconded by Ms. Pilling.

No further discussion from the Commission.

Vote: 5:0 Motion carried, hearing continued.

The following applicants have applied for an Extension to their Order of Conditions:

Jeff Lang, 99 Riverside Dr, Map 4, Parcel A3-A1, SE32-2355. Addition and driveway reconfiguration.

Shayne Watson, of Bedworks Design was present as a representative and discussed relevant portions of the application including that there were no management practices in the original Notice of Intent and the property requires maintenance which will need to be applied for. Ms. Usowski noted that the request is logical and that the property is in good condition.

Mr. Atkinson moved to approve the Extension to the Order of Conditions. Seconded by Mr. Chase.

No further discussion from the Commission.

Vote: 5:0 Motion carried; extension approved.

The following applicants have requested a Certificate of Compliance:

Thomas McCabe, 25 Grey Neck Lane, Map 11, Parcel X8-6, 32-2386. Addition, raze and replace, shed repair.

Ms. Usowski noted that some minor aspects of the project are not exactly built as expected, but the intent of the permit was accomplished. She recommended approval.

Mr. Coleman moved to issue a Certificate of Compliance. Seconded by Ms. Pilling.

Vote: 5:0 Motion carried; Certificate of Compliance issued.

Minutes

11.15.23

3.1.23

Mr. Atkinson moved to approve the minutes from 11.15.23 and 3.1.23. Seconded by Mr. Coleman.

Vote: 5:0 Motion carried; minutes approved.

Discussion

Updates to Community Garden Rules and Regulations

Ms. Usowski reviewed the layout of the Community Gardens and the desire of the gardeners to maintain perennial plots. She explained that most plots had been annual and tilled yearly, but a survey showed that most responses were in favor of perennial plots. With the new rules, all plots will be perennial, and gardeners will be allowed to leave fencing, furniture, etc. in their plot year-round. Ms. Usowski said that several gardeners have asked about plating fruit trees, and that in the future a grove may be created.

Mr. Ketchum asked if the raised beds would have the same rules since they had been left out of the rules. Ms. Usowski confirmed that yes, they are subject to the same rules. Ms. Pilling asked if a security deposit had been considered for an incentive to properly maintain plots. Ms. Usowski said that it has not been suggested but offered to consider the idea for the future. Mr. Chase asked if the fee had been increased. Ms. Usowski said yes, a few years ago it was \$30, and that the current fee of \$40 is average for the area. Mr. Coleman commented that he would prefer to avoid asking gardeners for a security deposit and mentioned asking the water department about the bill for the community gardens. Ms. Usowski said that the Select Board would be the ones to discuss the water bill with, and that she hoped to have a well next year. Mr. Coleman asked how close the plots are to the nearby wetland. Ms. Usowski explained that they are within 100 feet of the buffer zone, but that the plots will not be expanding. Mr. Coleman commented that he was concerned about encroaching within the 50-foot no disturb zone, and Ms. Usowski assured him that they are more than 50 feet away. Ms. Usowski noted that the biggest issue facing the community garden is gardeners leaving the water running in their plots for hours. Mr. Chase suggested making the water bill a priority, and Ms. Usowski agreed. The Commissioners and Ms. Usowski discussed the use of the plots and the fees.

Mr. Chase moved to adopt the updated regulations. Seconded by Mr. Atkinson.

Vote: 5:0 Motion carried; updated rules adopted.

Proposal(s) for stability study at 47 North Road

Ms. Usowski informed the Commission that only one proposal was received from BSC group and that it may not be exactly what is desired for this project. Ms. Usowski offered to ask BSC Group for a reduction of services.

Mr. Ketchum noted that the proposal seems to be a plan for repairs, not a risk assessment. Ms. Usowski agreed and suggested that there may have been a misunderstanding. Ms. Chase agreed that the proposal seems inaccurate but that he did not agree with the Commission paying for it. Mr. Coleman commented that he saw merit to bringing in a third party for the sake of safety but said that he worried it may be redundant if there has been progress in repairs. Mr. Ketchum stated that he agreed in principle, but that his lack of faith in the property owner was compelling.

The Commissioners and Ms. Usowski continued to discuss the cost of the assessment and the purpose. Ms. Usowski offered to consult the engineer working on the project at 47 North Road.

Ms. Pilling asked generally about Open Meeting Law and when the Commission can discuss applications. Ms. Usowski responded that no discussion can happen between Commissioners outside of a meeting.

The Commission discussed cyanobacteria and potential treatment options. The Commission requested to add review of the Monitoring Reports for Hinckley's Pond as a discussion item for next meeting.

Adjournment

Mr. Coleman moved to adjourn the meeting at 7:58pm. Seconded by Mr. Atkinson.

Vote: 5:0 Motion carried; meeting adjourned.

Respectfully submitted by Kalea Trudeau.