



TOWN OF

HARWICH

*732 Main Street
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HARWICH CONSERVATION COMMISSION - MINUTES

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

WEDNESDAY – FEBRUARY 1ST – 2023

TOWN HALL - GRIFFIN ROOM – HYBRID PARTICIPATION

Commissioners and Staff Present: Chairman John Ketchum, Mark Coleman, Wayne Coulson, James Atkinson, Stanley Pastuszak, alternate Sophia Pilling, Town Counsel Atty. Amy Kwessel, and Conservation Administrator Amy Usowski

Commissioners Absent: Bradford Chase, Alan Hall

Audience and Representatives Present: Bud Burris, Bob Rodgers, John Pizzulo, Christian Devout, Don Munroe, John O'Reilly, Peter Donovan, Attorney Singer, Mark Cooperman, Robert Doane, Peter Gorey, Sadie McClarty, Clara McClarty, Dan Warner, Judith Underwood, Penelope Wassom, Jeremy Ross.

6:00 PM EXECUTIVE SESSION

Executive Session Minutes – October 5, 2022, and January 4, 2023

Update on ongoing litigation – 47 & 52 North Rd

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 requested a Determination of Applicability

Osborne Bearse, 0 Sequattom Rd, Map 101 Parcel R4-3. Construct wooden stairs over existing concrete steps.

Bud Burris was present as a representative and he explained that he would like to construct the wooden stairs because the existing concrete stairs are in disrepair.

Ms. Usowski agreed that the existing concrete stairs are in disrepair and noted that the wooden stairs would be no more than 3 feet wide. She explained that the existing concrete stairs are holding the steep bank in place and that removal would put the surrounding plants at risk. She recommended approval with a Negative 2 and 3 Determination.

Mr. Atkinson moved to approve the request with a Negative 2 and 3 Determination.

No further discussion from the Commission.

Vote: 5:0 Motion carried; request approved.

The following applicants have requested an Amended Order of Conditions

Vincent Petroni, 31 Shore Rd, Map 2 Parcel B1-7. SE32-2430. Bank stabilization, replacement of existing deck, and removal of existing stairs and reconstruction in new location.

Bob Rodgers of GAF Engineering was present as representative and explained that further erosion to the slope has occurred, resulting in the need to re-stabilize with more coir rolls and reset the existing

revetment, remove, and relocate the coastal access stairs, and replace the existing deck. He demonstrated the proposed work on the plans.

Ms. Usowski explained that it is logical to request an Amended Order of Conditions for this work since one permit can be used and it is for the same coastal reinforcement. She noted that the bank held successfully because of the previous reinforcement, but that the revetment is starting to slump. She recommended beach grass planting and an annual monitoring report in the late Spring. She agreed with the need to relocate the coastal access stairs since the proposed location is above the tide line but recommended removing the bottom half of the stairs for the Winter season to prevent storm damage.

Mr. Pastuszak asked how long the coir logs would be expected to last. Mr. Rodgers said that he was not sure but that the coir logs were preferred to armoring the slope. Mr. Pastuszak asked if the relocation of the coastal access stairs would make a significant difference. Mr. Rodgers said that it might and that the ability to remove the bottom half of the stairs would be helpful. Mr. Ketchum asked about the erosion at the Western end of the beach and asked if any fill would be placed. Mr. Rodgers said that they may return to work in that location and that they would fill it to meet the current grade. Mr. Ketchum asked if the proposed plexiglass on the deck would be at risk of shattering during severe storms. Mr. Rodgers said that the plexiglass would be discussed with the building department.

Mr. Atkinson moved to approve the Amended Order of Conditions. Seconded by Mark Coleman.
No further discussion.

Vote: 5:0 Motion carried; Amended Order of Conditions approved.

The following applicants have filed a Notice of Intent

Harbourwatch Condominium Association, 363-371 Route 28, Map 13 Parcel A8-1. Vista Pruning.

John Pizzulo, Secretary Treasurer of the Harbourwatch Condominium Association, and Christian Devout, President of the Harbourwatch Condominium Association were present as representatives. Mr. Pizzulo explained that invasive species would be hand pruned as in the past. He noted that a previous permit for vista pruning had lapsed.

Ms. Usowski explained that the applicants have reapplied since the previous permit lapsed. She said that she would like to have a meeting with the pruning company to discuss their methods if the application is approved.

Mr. Pastuszak asked how often the pruning would be. Mr. Pizzulo said that it had been done once a year. Mr. Ketchum suggested that the seeds and berries of the plants be managed.

Mr. Atkinson moved to approve the application with the condition that a meeting be held with the Conservation Administrator prior to the start of work.
No further discussion.

Vote: 5:0 Motion carried; application approved.

Donald Annino, 14 Mill Point Rd, Map 1 Parcel J1-94. Proposed Pier, Ramp, Float, and Dredging.
Applicant had requested a continuance to the March 1, 2023 meeting.

Don Munroe of Coastal Engineering was present virtually as a representative and explained that the design of the dock and the mitigation plan have been revised and will be presented at the Waterways Committee meeting on 2/15/23.

Mr. Ketchum asked Mr. Munroe if he was confident that the application would be ready by the meeting of March 1st. Mr. Munroe said yes. Mr. Atkinson said that he felt that the hearing should be continued indefinitely until the applicants could be sure that they will be ready. Mr. Munroe disagreed. Mr. Ketchum said that he thought the issue could be revisited on March 1st.

Mr. Coleman moved to continue the hearing to the meeting of March 1st. Seconded by Mr. Coulson. No further discussion.

Vote: 4:1 Mr. Atkinson voted nay. Motion carried; hearing continued.

HFH Development, (4, 8, 11, 12, 16, 17, 20) Chloe's Path & 0 Forest St, Map 31 Parcels D4-3, D4-4, D4-5, D4-6, D4-7, D4-8, D-4-9, & D3. Re-establishment of the turtle protection plan set forth in NHESP 09-20086.

John O'Reilly of JM O'Reilly Associates, Peter Donovan, and Attorney Singer were present in person as representatives. Mark Cooperman, endangered species specialist, was present virtually as a representative. Mr. Cooperman explained that the plan was active in 2016 but has since lapsed. He gave an overview of the plan, noting that turtle nesting habitat would be provided, mostly in the 50-to-100-foot buffer zone, and that a limit of work was delineated. He said that the work would take approximately one week to complete and that it will be done before April.

Mr. Ketchum commented that the diagrams and plans that have been presented have been unclear. He asked Mr. Cooperman to share the plans and explain them. Mr. O'Reilly shared the physical plans and photos with the Commissioners due to technical issues. The Commissioners and representatives discussed the plans, noting two gardens that will be created on Mr. Doane's property.

Ms. Usowski explained that the creators of Chloe's Path were required by the NHESP to file this turtle protection plan, but that the work was not completed, and the permit has lapsed, therefore the applicants have re-applied. Ms. Usowski reviewed the types of plants to be removed. She asked if debris would be removed, and Mr. Cooperman said yes. She recommended no action because the National Heritage and Endangered Species Program has not commented on the proposed project yet.

Mr. Atkinson asked Ms. Usowski when the National Heritage and Endangered Species Program would be able to respond. She said within 60 days. Mr. Cooperman offered to reach out to the organization since they originally ordered the filing.

Robert Doane, abutter, said that one garden on his property will be replanted with beach plums. Mr. Ketchum asked if bittersweet would be managed, and Mr. Doane said yes. Mr. Cooperman said that the area will be defined by removing invasives, but that there is not a full invasive management plan. Ms. Pilling asked about the species and the quantity of trees to be removed. Mr. O'Reilly said that information was not available but could be provided later. Mr. Ketchum said it would be helpful to have that and a planting plan.

Peter Gorey, abutter, expressed frustration that the project had been delayed for years. He asked several questions, including if this hearing was a continuation of the previous enforcement hearing. Ms. Usowski said no. He also asked if the deed restrictions for the protective covenants might be amended. Amy Quessel, Town Counsel, said that the protective covenants are not relevant to this Notice of Intent.

Mr. O'Reilly asked what the Commission would like to see at the next meeting. Mr. Ketchum said that the number of trees to be removed should be enumerated and their species defined, as well as a complete planting plan. He reiterated that the existing plans are not clear and requested updated ones. Mr. Cooperman said that the plans are made to accompany the narrative and not to serve as a site plan. He

also clarified that the only replanting will be done in Mr. Doane's gardens. Mr. Gorey noted that the accompanying narrative is from 2016.

Mr. Ketchum asked when the applicants would be able to have updated materials. Mr. O'Reilly asked to have the application on the agenda for the next meeting. Mr. Atkinson said that he believed the Commission should not act until correspondence from the NHESP is received. Ms. Usowski recommended a continuation to the meeting of February 15th, 2023, since correspondence from the NHESP could arrive before that date.

Mr. Ketchum moved to continue the hearing to the meeting of February 15th, 2023. Seconded by Mr. Coulson.

Vote: 4:1 Mr. Atkinson voted nay. Motion carried; hearing continued.

Discussion and Possible Vote

As-Built Road Plan for Chloe's Path

John O'Reilly of JM O'Reilly Associates was present as a representative and presented plans to the board, clarifying a discrepancy that was corrected. He indicated the asphalt, the cul-de-sac, and the utilities on the plan and reviewed other features such as buffer zones that had been staked out in the field.

Ms. Usowski reminded the Commission that only a small portion of the project is within its jurisdiction, and that the focus is on activity in the 100-foot-buffer zone. She recommended that the Select Board discuss having a third-party review the as-built plan. She noted that the limit of work was violated, and clearing was performed within the 50-to-100-foot buffer zone in multiple locations, and that the MESA buffer zone was also encroached upon. Ms. Usowski recommended that the Commission discuss fines and replanting.

Mr. Coulson suggested that the applicants provide a re-planting plan. Mr. Ketchum asked Mr. Donovan to explain why the clear-cutting occurred. Mr. Donovan said that it was because there was going to be a 7-lot subdivision but that the development plan changed.

Mr. Ketchum said that he would like to see the entire area replanted but that the Commission did not have jurisdiction. Mr. Gorey asked why the Commission would not be able to enforce replanting outside of the 100-foot buffer zone. Ms. Usowski said that the area is mapped habitat but that it is not within the Commission's jurisdiction. Mr. Gorey asked if that was true when the Town is named in a deed restriction and covenants. Atty. Kwessel said that would not extend the jurisdiction of the Conservation Commission.

Sandy McLardy, Town resident, said that he believed fines should be levied.

Clara McClardy, Town resident, agreed that fines should be levied.

Mr. Ketchum asked Atty. Kwessel to explain the Commission's powers to levy fines. Atty. Kwessel described the issuance and appeals process. Mr. Ketchum asked what the maximum fine is. Atty. Kwessel said that the maximum fine would be \$300 per violation per day that a violation is not corrected. Ms. Usowski asked if fines could be levied retroactively and Atty. Kwessel said no because a narrative must be submitted each time the daily fine is levied.

Dan Warner, Town resident, said that he believed fines should be levied.

Judith Underwood, abutter, disclosed that she is a part of the Affordable Housing Trust and a Wastewater Commissioner and shared that she is concerned about the quality of the fill on the property. Ms. Usowski

said that she responded to the site in the past for sand from the fill eroding past the limit of work and into the Commission's jurisdiction. She added that she is recommending third party review of the project. Mr. O'Reilly said that the fill, drainage, and clearing were inspected, and that Briggs Engineering did the soil compaction on the site.

Atty. Kwessel asked if there was a surety for the road and Mr. O'Reilly said no. She asked if there was a covenant or a bond. Mr. Donovan said that there was a covenant. Atty. Kwessel explained to the Commission that the road is under the jurisdiction of the Planning Board and that they will have the opportunity to do an inspection. Mr. Ketchum said that he interprets Mr. O'Reilly's sign-off on the as-built as assurance that road collapse is not expected. Mr. O'Reilly said that he was not at all concerned with the road shifting.

Mr. Gorey asked if the previous Order of Conditions was still valid. Ms. Kwessel said no, it is expired and that the applicants would need to file a new Notice of Intent if they would like to perform any work. Ms. Usowski asked if the re-planting plan could be performed with an enforcement order and Ms. Kwessel said yes.

Mr. Ketchum expressed that he would not like to levy fines for the violations because it would be more effective to have the replanting performed. Mr. Pastuszak agreed. Ms. Pilling said that there have been several "red flags" with the project, and that there is a lot of effort needed to perform the work correctly.

Mr. Atkinson moved to require the applicants to present a re-planting plan for the areas that were cleared without authorization at the meeting of March 1st, 2023. Seconded by Mr. Coulson.

Mr. Coleman suggested requiring a restoration plan instead of a re-planting plan.

Accepted by the motion maker and the seconder.

No further discussion.

Vote: 5:0 Motion carried, restoration plan to be presented at the meeting of March 1st, 2023.

Show Cause Hearing

38 Red Pine Drive - Unauthorized tree removal

Penelope Wassom, owner, was present as a representative and apologized for removing the trees, adding that she did not understand the regulations. She explained that her consultant led her to believe that the trees could be removed legally.

Jeremy Ross, employee of Save-A-Tree, was present as a representative and explained that he was the one who took down the trees since he wanted his crew to accomplish the job to fill a vacancy in their schedule and apologized.

Ms. Usowski explained that she met with the Save-A-Tree crew that was on site, noting that the company has worked with the Conservation Department in the past and was aware of the regulations. She said that the homeowner and Save-A-Tree were both liable for the unauthorized removal of the trees. She recommended an after-the-fact Administrative Review permit with a doubled fee and replanting of three native trees and ten native shrubs. She also recommended fining Save-A-Tree. She also noted that view pruning has occurred on the property without a permit.

The Commissioners discussed fining Save-A-Tree. Mr. Coleman asked if the fine would personally impact Mr. Ross or if it would impact Save-A-Tree. Mr. Ross said it would affect both. Mr. Coleman asked if it would endanger his position with the company. Mr. Ross said potentially. Mr. Pilling asked if Save-A-Tree had any prior violations and Ms. Usowski said no. The Commissioners discussed the appropriate amount for fining Save-A-Tree.

Mr. Coulson moved to fine Save-A-Tree \$750 and fine the homeowner \$150. Seconded by Mr. Atkinson. Mr. Pastuszek noted that Ms. Usowski did not recommend a \$150 fine for the homeowner. Ms. Usowski added that if the homeowner files an after-the-fact Administrative Review with a doubled fee it will be in addition to any fines.

No further discussion from the Commission.

Vote: 4:1 Mr. Pastuszek voted nay. Motion carried; fined levied.

Mr. Atkinson moved to require the owner of 38 Red Pine Drive to file an after-the-fact Administrative Review with a doubled fee and replant 3 native trees and 10 native shrubs. Seconded by Mr. Coulson.

Mr. Atkinson suggested amending the motion to include approval of the planting plan by the Conservation Administrator.

Amendment accepted by the motion maker and the motion seconder.

No further discussion from the Commission.

Vote: 5:0 Motion carried.

Orders of Conditions

James & Tracy Fish, 61 Shore Rd, Map 2 Parcel B1-1. SE32-2517. Raze & Replace Dwelling with Appurtenances and Beach Access.

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

No further discussion from the Commission.

Vote: 5:0 Motion carried; Order of Conditions approved.

The following applicants have requested a Certificate of Compliance

Chris Cooney, 4 Geraldine Ave, Map 16 Parcel A1-6. SE32-2462. Addition and pool.

Ms. Usowski explained that the as-built for the property displayed that an additional 125 feet of hardscape was installed on the property but noted that the applicants planted additional mitigation. She noted that the plants need a 90% survival rate, which has not been achieved, and recommended waiting for the plants to establish to issue a Certificate of Compliance.

Chris Cooney, owner, said that he was happy to wait and that he understood the requirements.

No action taken by the Commission.

Discussion and Possible Vote

Update on ongoing land management tasks:

Herring River Study

No discussion from the Commission.

Minutes

September 7, 2022

Mr. Atkinson moved to approve the minutes. Seconded by Mr. Pastuszek.

No further discussion from the Commission.

Vote: 5:0 Motion carried; minutes approved.

Miscellaneous Discussion

Ms. Usowski reminded the Commissioners to complete their ethics training.

Ms. Usowski said that the Commissions public education funding has been exhausted but invited them to a conference.

Ms. Usowski invited the Commissioners to a workday at Thompsons Field to cut saplings and burn debris.

Mr. Ketchum reminded the Commissioners that they are meeting on February 24th at 2PM to discuss the Bells Neck Land Management plan and asked for any edits to be sent to Ms. Usowski by February 17th.

Adjournment

Mr. Ketchum moved to adjourn the meeting at 9:00pm. Seconded by Mr. Atkinson.

Vote: 5:0 Motion carried; meeting adjourned.

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