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732 Main Street

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HARWICH CONSERVATION COMMISSION - MINUTES

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

WEDNESDAY – FEBRUARY 15TH – 2023

TOWN HALL - GRIFFIN ROOM – HYBRID PARTICIPATION

Commissioners and Staff Present: Chairman John Ketchum, Mark Coleman, Wayne Coulson, James Atkinson, Alan Hall, Stanley Pastuszak, alternate Sophia Pilling, and Conservation Administrator Amy Usowski

Commissioners Absent: Bradford Chase

Audience and Representatives Present: Jonathan Schuster, Narcisa Dervishevikj, Jen Crawford, Stephanie Sequin, Kevin Donovan, Dan Kelly, John O'Reilly, John Bologna, David Hawk, Albert and Brooke Core, Steve LeBranch, Ian Peach, Tabitha Cagle, Marion Rose, Elton Chun, Peter Donovan, Robert Doane, Mark Cooperman, Attorney Singer, Tabitha Eldridge, Christian DeVasse, Chris and Alissa Palazzi

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

Narcisa Dervishevikj, 1232 Orleans Rd, Map 73 Parcel X172. Proposed Access Path and Rebuild of Stairs.

Narcisa Dervishevikj, homeowner, was present as a representative and explained that she would like to level out the stepping stones in the existing path, rebuild stairs which need repair, maintain an existing path around the deck, and create an access path to the beach.

Ms. Usowski explained that the stepping stones are already existing and that a few sapling oak trees would be removed to maintain the path around the deck and that it would be less than 4 feet wide. She described the access path, noting that it would not require any major tree clearing, simply a mulcher and gravel. She recommended approval of the project with a Negative 2 and 3 determination since the work will occur on an inland bank and in the buffer zone but will not cause an adverse impact.

Mr. Atkinson moved to approve the application with a Negative 2 and 3 Determination. Seconded by Mr. Pastuszak.

No further discussion from the Commission.

Vote: 6:0 Motion carried; application approved.

The following applicants have requested an Amended Order of Conditions

Wychmere Harbor Real Estate LLC, 23 Snow Inn Rd, Map 8 Parcel P2. SE32-2387. NHESP File #11-29126. Reconfiguration of beach grass mitigation area, and incorporation of HCP filed with NHESP.

Jonathan Schuster of SWCA was present as a representative and discussed relevant portions of the application, explaining that the applicants would like to change the shape of their planting plan to be able to use more of the beach at the property. Mr. Schuster said that the National Heritage and Endangered Species Program had determined that work on the beach would result in a take of habitat and described the Habitat Conservation Plan that was filed to compensate. He noted that piping plover populations are doing well, so the applicants are hoping to use some deterrent methods to encourage piping plovers and terns to settle elsewhere.

Ms. Usowski explained that one section of plantings will not be changed in any way but that the applicants would like to relocate about 5,400 square feet of plantings. She said that the proposed relocation area would likely be more enticing to terns and help keep sand from blowing away from the area. Ms. Usowski informed the Commission that she has been in contact with a representative from the Coastal Waterbird Program and that the organization recommends increased oversight for areas where deterrent methods are used. Ms. Usowski asked Mr. Schuster to clarify how much area will be involved in the proposal. He explained that the plan is minimal, only encompassing about 1/5 of the replanted area, and expected to have very little impact on where piping plovers decide to nest. Ms. Usowski recommended approval contingent upon the plan being allowed by the State and Federal government.

Mr. Ketchum noted that piping plover productivity is decreasing and asked Mr. Schuster to address this. Mr. Schuster said that the applicants are providing required mitigation to be allowed to pursue deterrent methods, and that the State can stop permitting deterrent methods if they result in a further loss of productivity. Mr. Ketchum read a piece of the HCP submitted by SWCA which estimated a worst-case possibility of a 50 percent reduction in productivity. Mr. Schuster said that productivity could be affected by many different factors, noting that the numbers in the plan are calculated according to a state formula, and that a 50 percent reduction in productivity is not anticipated. He explained that the applicants are mitigating by providing a monetary contribution to go towards an area that need restoration. Mr. Ketchum asked if the State or the Federal government has a threshold for downgrading the conservation status of an endangered species. Mr. Schuster said that he does not know the exact threshold but that some animals such as the spotted turtle have been downgraded. Mr. Ketchum thanked Mr. Schuster and said that he agreed with Ms. Usowski's recommendation.

Mr. Atkinson moved to approve the amendment under the conditions that reconfiguration of the planted area be done before May 1st or after September first and that the Habitat Conservation Plan also be subject to the Order of Conditions should it be approved by the National Heritage and Endangered Species Program. Seconded by Mr. Hall.

No further discussion from the Commission.

Vote: 6:0 Motion carried; amendment approved.

The following applicants have filed a Notice of Intent

William Beekman, 194 John Joseph Rd, Map 72 Parcel G1-2. Construction of Retaining Walls, Reconstruction of Patio and Deck, and Site Improvements.

The applicants have requested a continuance to the meeting of March 1st, 2023.

Mr. Atkinson moved to continue the hearing to the meeting of March 1st, 2023. Seconded by Mr. Pastuszek.
No further discussion from the Commission.

Vote: 6:0 Motion carried; hearing continued.

John Leong and Charis Cladouhos, 25 Trout Brook & 27 Sound View Rd, Map 26 Parcels C1-6 & L1-9. Construct Reinforcing Retaining Wall.

Jen Crawford of Crawford Land Management was present in person as a representative. Stephanie Sequin of Ryder and Wilcox, Kevin Donovan of Costal Engineering, and contractor Dan Kelly were present virtually as representatives.

Ms. Crawford gave an overview of the application, noting that the existing retaining wall cannot be repaired in kind due to structural issues. She reviewed the mitigation plan and construction protocols for the project.

Ms. Usowski explained that the wall had failed about a year ago and that the property owners were granted an emergency permit to temporarily repair it. She explained that the access to the wall is very limited, and that about 10 trees will need to be removed so that the machines can reach the wall since the slope is very steep. She noted that the applicants have applied for a variance for work within the 0-to-50-foot buffer zone and that she supported a variance since there is a structural hazard. She recommended approval.

Ms. Pilling said that the trees on the property are very nice, and Ms. Crawford said that they will be planting five more of the same type to replace ones that are taken down. Mr. Coleman asked how long the retaining wall is expected to last once it is repaired. Mr. Donovan said that it would last between 30 to 50 years. Mr. Coleman asked if riprap was an option for this location. Mr. Donovan said that riprap would not be a good fit for this location due to the steep slope, and that a helical anchor is proposed instead. Mr. Atkinson asked if the access to the wall would have to be over the neighboring property. Ms. Crawford explained that the neighboring property is partially owned by the applicant and that the applicant has the support of the other property owner to use the neighboring property for access. Mr. Hall asked if the lumber being used would be pressure treated. Mr. Donovan said yes, all lumber would be pressure treated. Mr. Ketchum asked if there are any repairs planned for the gazebo on the property since it seemed to have some damage. Mr. Kelly said that the repairs will be done while the retaining wall is being worked on. Ms. Usowski said that she would incorporate that in the Order of Conditions.

Mr. Atkinson moved to approve the application with a variance to perform work in the 0-to-50-foot buffer zone. Seconded by Mr. Coleman.

No further discussion.

Vote: 6:0 Motion carried; application approved.

Pleasant Bay Community Boating, 2285 & 2287 Rte 28 – Head of the Bay Rd, Map 119 Parcels N7-3 & N8-0. Changes to parking areas, retaining walls, walkways, stairs, and deck.

John O'Reilly was present in person as a representative and reviewed relevant portions of the application, noting that handicapped accessibility will be improved at the location and reviewed the planting plan for the project. He noted that the property is partially within the jurisdiction of the Brewster Conservation Commission and that they have approved the project.

Ms. Usowski said that the planting plan is thorough and exceeds the required mitigation ratio. She said that the project would result in a net benefit and recommended approval.

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

No further discussion.

Vote: 6:0 Motion carried; application approved.

**Round Cove Resort Owner LLC, 2173 Rt 28 – Head of the Bay Rd & 4 Cove Landing Rd, Map 115
Parcels S1-3 & R2. Raze and Replace Buildings A, B, and K, Planting, and Hardscape Improvements.**

John Bologna of Coastal Engineering and David Hawk of Hawk Landscape Designs were present in person as representatives. Albert and Brooke Core from Core Studio Architects, Steve LeBranch, Ian Peach and Tabitha Cagle of Wilkinson Ecological Design, Marion Rose of the Law Office of Singer, and Elton Chun of Wequasset Resort Management were all present virtually as representatives.

Mr. Bologna described the construction protocol, noting that erosion and sedimentation controls will be used. He noted that net reduction in coverage within the 0-to-50-foot buffer zone will be approximately 1500 square feet. Mr. Core gave an overview of the design of the new buildings, noting that they will be more handicapped accessible and pulled back from the coastal bank. Mr. Hawk reviewed the landscaping plan, noting that the plants within the 0-to-50-foot buffer zone will be all native and that some non-native non-invasive plants will be used in the 50-to-100-foot buffer zone. Mr. Peach described the restoration plan, noting the removal of invasive plants, reducing lawn, and revegetating the top of the coastal bank. He explained that the diversity of the area will be increased and that the buffer zone will be more capable of performing ecosystem services and will provide habitat. Mr. Peach noted that 10 trees will be removed but that they will be replaced 1:1.

Ms. Usowski said that the applicants have done a good job designing the project by pulling back from the coastal bank and focusing their mitigation heavily in the 0-to-50-foot buffer zone. She said that the project would result in a net benefit for the location. She noted that the representatives have been made aware that the Commission does not allow chemicals, fertilizers, herbicides, or pesticides within their jurisdictional area. She recommended approval but said that there has been some unpermitted vista pruning in the area and instructed the property owners to seek a permit or examine the potential for invasive plant removal to improve the view.

Mr. Ketchum emphasized Ms. Usowski's point regarding fertilizers and asked her to clearly indicate that the condition will apply to the entire property that is within the jurisdiction of the Commission.

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

No further discussion.

Vote: 6:0 Motion carried; application approved.

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 J.M. O'Reilly Landscaping, and Peter Donovan and Robert Doane, property owners, were present in person as representatives. Mark Cooperman, turtle expert with Ecoterro Design and Consulting and Attorney Singer were present virtually as representatives. Mr. Reilly gave an overview of the updates to the plan, noting that the narrative now better reflects the project. Mr. Cooperman described the potential nesting improvement areas and the spots that have been chosen for Mr. Doane's gardens. One garden will be beach roses and one will be a kitchen garden. Mr. Cooperman said that minimal construction disruption will be required, some brush clearing is planned, and some sandy loam would be placed to appeal to turtles.

Ms. Usowski asked if trees would be flush cut or if stumps would be ground. Mr. Cooperman said that they would likely use a small excavator to remove stumps or flush cut and work around it. Ms. Usowski recommended total removal and excavation of any poplar trees since flush cutting them spreads their seeds and they are invasive. Ms. Usowski recommended removing brush piles and general debris from nearby. Ms. Usowski reviewed correspondence from the National Heritage and Endangered Species Program and said that the work should be completed before April 14th. She suggested that the conditions from the Department of Fish and Wildlife be incorporated into the Orders of Conditions.

Ms. Pilling said that she did not see why some plantings would be fenced in since that would prevent the area from being used as habitat. Mr. Reilly assured the Commission that the fence would be split rail and would not prevent wildlife access. Mr. Ketchum asked how the determination from the NHESP would be incorporated in the decision of the Commission. Ms. Usowski said that she would use all their suggested conditions as she did with the last application. Mr. Doane asked to clarify that the shrubs in his garden area would be cleared so that he could re-plant and Mr. Donovan said yes.

Mr. Atkinson moved to approve the application with the conditions received by the Division of Forestry and Wildlife. Seconded by Mr. Pastuszak.

Mr. Pastuszak asked Mr. Atkinson to correct his motion to "Division of Fisheries and Wildlife." Accepted by Mr. Atkinson and Mr. Pastuszak.

Vote: 6:0 Motion carried; application approved.

Enforcement Orders

117 & 123 Riverside Dr – Review of proposed restoration plan

Tabitha Eldridge of Davenport Companies was present virtually as a representative. She informed the Commission that she has created a planting plan and has updated it according to Ms. Usowski's suggestions. She asked Ms. Usowski if she had seen the latest version of the plan.

Ms. Usowski said that she would review the latest version of the plan soon, noting that it has not been seen by the Commission yet. She recommended that the Commission continue this topic to the meeting of March 1st to allow for review of the plan.

Mr. Ketchum moved to continue the enforcement order to the meeting of March 1st.

Orders of Conditions

Harbourwatch Condominium Association, 363-371 Route 28, Map 13 Parcel A8-1. SE32-2520. Vista Pruning.

Christian DeVasse was present as a representative. Ms. Usowski said that she demonstrated proper pruning techniques to the representatives on site and would like to see the project after it is complete. Mr. DeVasse asked if an organic fertilizer plan would be allowed on the property. Ms. Usowski said that she would review the organic fertilizer plan but noted that the Commission typically does not allow organic fertilizers.

Ms. Usowski said that the work would need to commence before April 1st or after September 1st to avoid interfering with bird nesting. She noted that an ongoing condition allowing for maintenance could be included if the pruning is done in compliance for 3 years.

Mr. Ketchum suggested future work to permanently eliminate the invasive species on the property. Ms. Usowski agreed and suggested invasive removal as an amendment.

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

No further discussion from the Commission.

Vote: 6:0 Motion carried, hearing closed and Order of Conditions issued.

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

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

No further discussion from the Commission.

Vote: 6:0 Motion carried, hearing closed and Order of Conditions issued.

The following applicants have requested a Certificate of Compliance

Rocco Orsini, 56 Purmackene Ln, Map 24 Parcel H17. SE32-2293. New dwelling and appurtenances.

Chris and Alissa Palazzi of Kinlin Grover were present as representatives and reviewed relevant portions of the project, noting that a hazard tree was removed and that an air conditioning unit with propane tanks had been added.

Ms. Usowski said that there was supposed to be egress around the deck and house and Mr. Palazzi said that they did not include the egress because they thought it was too close to the limit of work. Ms. Usowski asked if the Building Department had been contacted about the propane tanks and Mr. Palazzi said no. Ms. Usowski suggested reaching out since the property is in a flood plain and the propane tanks need to be tied down properly. Ms. Usowski reviewed an unbuildable property nearby and noted that the new owners may be interested in buying it and pursuing a Conservation Restriction. She discussed organic lawn and sod with the applicants. Ms. Usowski recommended approval contingent upon no changes being required by the Building Department.

The representatives and the Commissioners discussed the inconsistencies of the property from the original application. Mr. Coleman asked if the construction was before or after the additional 60-foot buffer rule for no new structures. Ms. Usowski said that the permit has been active since the 90's. The representatives and the Commissioners discussed the necessity to take action and that the application should have been conditioned to require an as built. Mr. Atkinson asked if a Letter of Compliance would be an option for this project. Ms. Usowski said that the Certificate of Compliance from the Commission would be faster.

Mr. Ketchum moved to approve the request for a Certificate of Compliance with the condition that the applicants submit an engineers letter confirming the as-built measurements within 90 days.

Seconded by Mr. Pastuszak.

Mr. Hall asked if the original permit from the 90's was transferred through ownership. Ms. Usowski said yes, and Mr. Hall suggested adding a condition for an as built. Ms. Usowski said that no new conditions could be added since the public hearing is closed. Mr. Palazzi said that the engineer's letter would serve as confirmation. The Commissioners discussed how to ensure compliance for this project.

No further discussion from the Commission

Vote: 2:4 Mr. Coleman, Mr. Atkinson, Mr. Hall, and Mr. Coulson voted nay. Motion failed.

Mr. Atkinson asked the representatives to request the Certificate of Compliance again when they receive the engineers letter.

Discussion and Possible Vote:

Update on ongoing land management tasks:

Herring River Study

Minutes

September 21, 2022

October 5, 2022

The Commission did not act on the minutes listed above.

January 27, 2023

Mr. Ketchum moved to approve the minutes for January 27th, 2023. Seconded by Mr. Atkinson.

No further discussion from the Commission.

Vote: 6:0 Motion carried; minutes approved.

Adjournment

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

Vote 6:0 Motion carried; meeting adjourned.

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