



TOWN OF

HARWICH

*732 Main Street*

*Harwich, MA 02645*

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

**HARWICH CONSERVATION COMMISSION - AGENDA**

**WEDNESDAY JULY 1, 2020 - 6:30 P.M.**

**REMOTE PARTICIPATION**

**Commissioners and Staff Present Remotely:** Chairman Brad Chase, Ernie Crabtree, Stan Pastuszak, John Ketchum, Jim Donovan, and Conservation Administrator Amy Usowski

**Applicants and Audience Present Remotely:** Stacy Kanaga, Dave Crispin, Matt Creighton, Jeff Handler, Jeff Lang, David Lyttle, Skipper Lee, Don Munroe, Pam Neubert, David Riquinha, Rocky Clark

**CALL TO ORDER**

By Chairman Brad Chase

**HEARINGS**

**Request for Determination of Applicability**

**Thomas and Caroline Lucey, 32 Dunes Rd, Map 5 Parcel W1-52.**

Stacy Kanaga of Coastal Engineering presents the project. The proposed project area within the 100' foot buffer is roughly 49,000 square feet, and is an area that has already been extensively developed, including the home, hardscape, and landscaping. After reviewing the regulations that this project is bound by, including flood-zones and buffer-zone, Stacy explains that the majority of the proposed work is on the other side of the house from the wetland, so the existing dwelling would essentially act as a buffer to the wetland. The only work that would take place outside of this area is the replacement of a brick pathway with different material in the existing footprint of the walkway. The proposed property improvements include some interior renovations, as well as an exterior addition in the East yard. The site improvements include the previously mentioned changes to the walkway, driveway, and landscaping. There will be a net reduction in hardscape coverage area of 129 square feet within the buffer zone, and overall the lawn will be reduced by 150 square feet within the buffer zone.

Conservation Administrator, Amy Usowski, adds that the plan is a very accurate plan of record including previous permit activity. Amy agrees that the proposed work will not have adverse

effects on the coastal bank on the property. Because of the net reduction in hardscape, Amy does not feel that mitigation is required, and there is already a condition on the property for no chemical application within the 100' buffer from a previous permit. Amy recommends approval with a negative 3 determination, and states that the no chemical application condition can be added to this as well if the Commission would like it to be.

Chairman Brad Chase asks why there is a variance needed for this type of change. Amy explains that because it is not within the 50' buffer no variance is needed. Brad calls for questions and comments from the other Commissioners. John Ketchum has no questions, but asks that the no chemical application condition is included on this as well. Jim Donovan asks if, in her opinion, Amy thinks that fertilizers have been used on the property. Amy responds that the property does look very green, so she is planning to reach out to the homeowner and follow up with an additional reminder letter. Jim recommends that the language in this condition and letter be updated to include reseeding with a native mix.

Motion by Stan Pastuszak to approve with a negative 3 determination. Second by John Ketchum. All in favor, motion carried unanimously, 5-0.

### **Notices of Intent**

#### **Jeffery Lang, 397 Route 28, Map 13 Parcel D1.**

Dave Crispin of the BSC Group presents the project, along with Matt Creighton, Jeff Handler, and Jeff Lang. Dave shows the Commission a replanting plan based on the recommendations of Amy and the Commissioners at the last presentation. Dave summarizes the previously discussed work, including the deeper hole for burying the Phragmites. They have also regraded the plan to avoid erosion. Going back to the planting plan, Dave explains that the plan as it is would have a shrub, tree, or plant about every 70 square feet. Dave also shows a map of the sample areas on the property, which was requested by the Commission, as well as a basic outline of the phases of the construction tasks.

Amy brings up a few concerns of the Commission, including erosion control if this project will take place in the fall when it is wetter. Amy likes Dave's idea of having someone onsite monitoring the erosion controls to ensure that things are functioning properly and that changes can be made as needed. Amy recommends to the Commission that monitoring is done on a fairly consistent basis. She goes on to say that she agrees with the change of grading, but thinks that the walking path should be put on hold until development is discussed, as things may change, and this project is solely for cleanup and stabilization of the property. Amy states that one planting every 70 square feet is a bit sparse, but this planting is a good starting point for stabilization and more could be added in the future. Amy thanks Dave for providing such detailed information to the Commission, and states that she does feel they did their due diligence and that they are abiding by all regulations. Amy reads an email from Commissioner Mark Coleman who could not attend the meeting, who asks that the buried material be capped with an impervious material and substantial planting is done in place of a paved surface. Matt Creighton responds to some of Amy's comments about the path, stating that this is more of an erosion control and betterment standpoint, and would be more of a break. Any future pavers or shell or path covering would come back before the Commission. He also states that they expect some management of

Phragmites to be needed, so the seeding and lesser planting plan would allow for this, but still stabilize the area. Amy reiterates that this is a great plan for stabilization, but Amy just wants it to be known that more planting will likely be requested in the future.

Chairman Brad Chase calls for comments and questions from the Commission. Stan Pastuszak asks for confirmation that the path is conceptual in nature and not being approved tonight, which he receives from Dave Crispin. Stan goes on to state that because the state guidelines are being met and it is being monitored, he feels better about the material being stored on-site, but asks how this will be monitored by the state. Dave explains that after this is passed by the Commission, the Remedial Action Plan will go to the state for approval, which will include all monitoring. John Ketchum states that a few samples have high concentrations of lead, but the rest have low concentrations. Due to this, John asks how they are confident that there are no other areas of small point sources of high-concentration contamination that are not being handled. Dave responds that there are no real point sources on the site, and no car batteries were found on the site, which leads him to believe that the higher levels are from gasoline that had leaked from the cars. John confirms that Dave has compared the levels to levels found in the marsh. Dave explains their findings further, and the extent of the samples taken. Finally, John asks if there is any concern about surface subsidence above the decaying biomass. Dave responds that any settling will be addressed once development is discussed. Ernie Crabtree asks if there are projected dates for the Phases of the plan. Dave responds that they have not come up with dates with the contractor, but the whole process will likely be about three months long. Ernie asks that a better estimate of dates be provided to the Conservation department so monitoring can be done by them as well. Ernie also asks about the “permanent solution” to be provided to the MCP under Phase V. Dave explains that this means that the site will be closed out under the MCP, and is just the defined action included in the final step of the process, meaning all the work is done. Ernie’s final comment is a request that the continued management of the Phragmites is conditioned. Jim Donovan asks how the temporary sediment basin will be managed, and if there is a reason why it would not be a permanent basin there that could store drainage water. Dave responds that since this project is split into two parts, this temporary basin will likely turn into a permanent drainage solution in the same spot in the development phase. Jim also asks how the area to the West of the property will be managed within the 50’ buffer to the wetland. He asks whether it will be left to revegetate naturally with invasive management only, or how it will be managed. Matt Creighton responds that once it is stabilized they would leave it to grow in naturally overtime. Jim would like a condition that the planting area within the buffer be allowed to naturalize with the exception of invasive management. Brad Chase asks if, under Phase II, some language could be included about managing surface flow in the event of a large rain event. Dave states that he has no objection to that. Brad asks who would make the call regarding the response to large rain events. Dave responds it may be the contractor, or the BSC Group, but a storm water management plan with that information can be shared with the Commission when it is filed. Matt Creighton also explains what is required by the Storm Water Pollution Management Plan required by the EPA, which includes specific precipitation amounts and timelines for having inspectors out to the site, so there are additional requirements beyond Wetland Protections. Brad asks that a condition on the project is supplying the Commission with these documents, and keeping Amy up to date with any times when those thresholds are met. Finally, Brad asks if the continued treatment of the Phragmites is part of this plan, or if this would be brought back to the Commission in the future. Matt explains that they would like that approved as part of this.

Motion by John Ketchum to approve the project with the mentioned conditions and adjustments. Second by Ernie Crabtree. All in favor, motion carried unanimously, 5-0.

**Katherine Seufert Green, 2261 Head of the Bay Rd, Map 119 Parcel N5.**

David Lyttle of Ryder & Wilcox presents the project. David explains the plans provided to the Commission. There is a dwelling and small cottage on the property, which lie within a variety of floodzones, as he explains, as well as a coastal bank and wetland. All work is taking place within the existing footprint, with the exception of the generator, which will be a new addition to the rear of the garage. There is an overall decrease in coverage of 138 square feet within the 50' buffer, and a decrease of 140 square feet within the 60' buffer. There is an increase of 58 square feet of coverage within the 50-100' buffer, and the closest part of the deck to the coastal bank has been pulled back three feet to attempt to minimize the impact on the coastal bank. They have not found any adverse impact on the wetland, coastal bank, or flood zones. There is an area of proposed mitigation adjacent to a naturalized area to the Southeast of the dwelling, which constitutes approximately 170 square feet.

Amy Usowski does not see any negative impact to the resource areas, and can put the no chemical application condition on the project if they would like, but does not think that chemical application takes place anyway. She recommends approval.

Ernie Crabtree asks for clarification on the coverage calculations based on the provided plans. David responds that the coverage on the plan did not include all hardscape, whereas the number he provided in his presentation include all walls, walks, patios, drives, and decks. David asks for time to go over the numbers and ensure they're correct, which he would be happy to do. Ernie also asks whether the generator will be natural gas or propane. David states that it will be natural gas. Chairman Brad Chase asks if more native shrubs could replace some ornamental plantings, and David responds that they would be amenable to changes like that if needed. Amy states that she does not have an issue with the current plantings as long as it does not become a formal manicured planting bed. Brad asks that if the recalculations lead to a need for more mitigation, there be more native shrubs and plantings included. Amy states that she received an email from Katherine Green and the generator will be propane. David states that they will need to figure out a spot for a propane tank. Ernie states that because they will need more information on the propane tanks and on the coverage calculations, he would ask for this to be continued. David agrees that a continuance would be good so they can go over the numbers and figure out the propane tank.

Motion by Chairman Brad Chase to continue this to the July 15, 2020 meeting. Second by Stan Pastuszak. All in favor, motion carried unanimously, 5-0.

**Oliver Cox, 7 Sketcheconet Way, Map 4 Parcel C1-4.**

Motion by Chairman Brad Chase to continue to the July 15, 2020 meeting. Second by John Ketchum. All in favor, motion carried unanimously, 5-0.

**Donald Annino, 14 Mill Point Road, Map 1 Parcel J1-94.**

Motion by Chairman Brad Chase to continue to the July 15, 2020 meeting. Second by Ernie Crabtree. All in favor, motion carried unanimously, 5-0.

### **Change in Plan**

#### **Robinson Lee, 55 Snow Inn Rd, Map 15 Parcel N3.**

Skipper Lee presents the change in plan. Skipper explains that they would like to change the configuration from a 'T' shape to a rectangle 8 ½' wide by 20' long, which would reduce the overall square footage by 6 square feet. This would also improve the usage and allow for lengthening the ramp from 16' to 20' without extending the dock itself further into the water. Skipper Lee goes on to explain the dredge line configuration and minor changes to the bulkhead. Chairman Brad Chase clarifies that the bulkhead has not yet been installed, which Skipper Lee states is correct.

Amy explains that John Rendon, Harbormaster, has no issue with the change, and the bulkhead could potentially stabilize some of the marsh behind it, resulting in potentially less alteration in the future. Amy recommends approval of the change.

Ernie Crabtree asks if there is any benefit of extending the bulkhead to the North of the walkway. Skipper Lee responds that he does not believe there is since it is not dredged on that side. Ernie and Stan both comment on how well the marsh grass has grown with the new walkway being higher off the ground. Brad Chase asks when the construction and dredging is proposed. Skipper responds that he will start back up in the fall.

Motion by Stan Pastuszek to approve the change in plan. Second by Ernie Crabtree. All in favor, motion carried unanimously, 5-0.

### **Extension Request**

#### **Rocco Orsini, 56 Purmackene Ln, Map 24 Parcel H17.**

Motion by Chairman Brad Chase to continue to July 15, 2020. Second by Jim Donovan. All in favor, motion carried unanimously, 5-0.

### **Request for Amended Order of Conditions**

#### **Mary Judge, 6 and 10 Neel Rd, Map 9 Parcels A7-1 & 2.**

Don Munroe of Coastal Engineering presents the project. Don explains that they scheduled the shellfish and eel grass survey in late June, and Pam Neubert is on the line to answer any questions about the survey. They did find that there was no eel grass within 300' of mean high water. The proposal has not changed much, other than needing to do the eel grass and shellfish survey.

Amy asks Pam to quickly go over the surveys. Pam gives a brief overview of the survey process and the findings that there were no shellfish or eel grass as expected. Amy explains that no other parties had issues with the nourishment below mean high water or replacement of groins when

this was filed originally, and no further comment were warranted from the survey findings. Amy states that in this instance, which would normally not be allowed, the nourishment could help to decrease wave action and help maintain the coastal dune. Thus, with conditions, Amy would be in favor of approval.

Jim states that he does have some reservations of the nourishment below mean high water. Ernie asks if those conditions need to be included in the motion and whether this should be voted on or continued. Amy states that do not necessarily have to be included as she would need to draft them up and many of them would be monitoring-based. Amy states that if the Commissioners feel that this can be properly conditioned, she has no problem with approval today, and the Conditions would be approved at the next meeting. Don explains that they have done this in the past, where the Conditions are reviewed by the applicant and the conditions do not change the scope of the project, but rather only condition how the project is handled. John Ketchum states that he also sees the benefit in protecting the coastal dune. Stan Pastuszak asks which way sand moves in Nantucket Sound. Amy replies that it moves east. Stan explains that he has an issue with these projects as they are really fighting Mother Nature, and he is concerned about the potential impacts on other areas of the Cape from any of these smaller nourishment projects. Amy responds that once the groins are reconstructed this should help to minimize sand flowage. Brad Chase states that he appreciates the shellfish and eel grass survey, but he still opposes the nourishment below mean high water. Brad feels that the water quality has impacted the eel grass and shellfish in that area, and the nourishment below mean high water will cover whatever native species do inhabit that area, and the benefit will be fleeting as the sand will inevitably move over time. For that reason, he does not support this. Stan adds that there are two parts to this, the replacement of the groins and the nourishment. Don adds that based on the expert surveys done, as well as Brad's own observation that the water quality is low, the addition of the beach nourishment below mean high water will not adversely impact the water quality, the vegetation, or the shellfish, and will benefit the coastal dune. Brad responds that the nourishment above mean high water is slowly dispersed, which keeps the sand from smothering other species, which would not be the case with nourishment below mean high water. Stan adds that the movement of sand is exactly why he has an issue with this. Stan asks if the groins are replaced, if the sand above mean high water would be sufficient. Don states that it would probably, but this is more about creating the proper grade to knock down the waves and protect the coastal dune and ultimately the owner's homes. Pam adds that there have been many studies that show that the small layer of sediment will not affect the organisms brought up by Brad. David Riquinha, contractor for the homeowners, adds that the homeowners have done everything asked of them, and that they have been assured many times that if they provide certain information this can be voted on at the next meeting. The problems brought up at this meeting were the same as previous meetings, and yet they have been asked to spend thousands on surveys and other measures which all had results favoring this project. David states that the owners are only asking to repair the existing beach, nothing more, so now to ask the owners to commit more resources yet again is unfair. Brad responds that even in past meetings, it has been clear that he and a few other Commissioners have not been in favor of this practice, despite the work done by this team. With that, Brad states that he is in favor of voting on this tonight, and not continuing this further. There are two discussions – replacement of the groins and the below mean high water nourishment which can be voted on separately or together. David responds that he feels that voting on the project altogether would not be a good option at this time, and they were under the

impression at the last meeting that the surveys were a step toward approval of this project. He states that if they knew that a few members would vote in opposition to this regardless of the surveys, the owners should not have been asked to spend the money on these surveys. Don Munroe states that he feels this should be voted on based on the survey results, and reviews a few items already discussed in the project presentation, and adds some information about the original design and intended function of the groins. Don adds that they conducted the survey with the understanding that if they found eel grass or shellfish it would be a non-starter, but they did not find these things, so this should be able to be considered as a starter, and he shares the confusion with David and the homeowners as to why some Commission members cannot consider this. Brad states he cannot support it based on the adverse effects he sees on the environment and the slight nature of the public benefit of this, and apologizes if he was not clear about his disagreement with this practice at past meetings. Ernie Crabtree asks a clarifying question to Brad about whether this would really have any impact on the public resource based on the small scope of this area and Pam's findings. Brad responds that in the cases where it has had substantial impact there was a wider diversity of organisms that are wiped out and smothered with this activity, and you may see some recolonization of some species, but he does not see enough worth in this activity to impact the public resource and habitats. Ernie adds that originally these groins were intended, as Don said, to be maintained, and asks if there is any benefit to the other homeowners in the area other than the owners of this beach in particular. Don responds that the amount of sand is insignificant to the shoreline, but would be significant to the property owner, as is every project that comes before the Commission. He adds that he does not feel that the Wetland regulations were enacted in order to prohibit the homeowners from interacting with the resource area, but instead conditions the project such that the performance standards are met, and the work that the owner wants to do will not only benefit the homeowner, but the resource area itself, and will not be detrimental to the public. Ernie confirms that what they are saying is that 1) the homeowner will pay a lot to replenish the sand, that 2) it will not have a large impact on the aquatic life in this area, that 3) there won't be any impact on the other homeowners in the area, and so if the homeowner wants to put his money into something that will be gone in a few years, then so be it. Don confirms that that is, in a nutshell, the case, and the owner cannot protect his home because of the dune, so this is really his only option. Pam highlights the importance of taking coastal resiliency into account as well as water quality, and states that this is an option to help protect the coastal dune. David states that the benefits far outweigh the detriments of this project according to all studies they have done. Ernie clarifies that if the groins were still managed by the government, the sand replenishment would take place anyway. Don confirms this, and states that perhaps a continuance would be best in order to allow the design team to revisit and also would allow more Commission members to be present to make the vote as fair as possible. David asks if it would be possible to vote on the groin reconstruction and continue the vote on the nourishment. Amy states it would have to come back with an Amended Order for the nourishment. Don asks if they could withdraw the nourishment without prejudice. Brad states that would be acceptable for him. Amy confirms, and states that if that were done, the plan would need to be edited to only include the groin information, and they could come back in the future for the Amended Order for the nourishment. David asks when they could file for Ch.91. Amy shares a concern about their acceptance of fragmented projects. Don states that the nourishment would be removed and the nourishment would be different, so it would likely be an amendment to the license after the Ch.91 process.

Brad asks if they have a Ch.91 currently. Don states that they do. Brad states that it is his understanding that if they are permitted, the owner has the right to rebuild them. Brad calls for questions from the Commissioners. Jim states that it is his opinion that the groins should not be rebuilt across Nantucket Sound. David asks for a brief recess, and Brad responds that would be fine, but he would like to vote on the groins tonight.

After a brief recess, David states that they would like a vote on the groin reconstruction, and withdraw without prejudice the nourishment below mean high water.

For future discussions, Brad adds that mitigation could be done for the nourishment perhaps by not reconstructing one of the groins. Ernie adds that perhaps the nourishment could be done in phases.

Motion by Ernie Crabtree to approve the Amended Order to reconstruct the two groins. Second by John Ketchum. Motion carried, 4-1. Jim Donovan opposed.

### **Orders of Conditions**

#### **G. Rockwood Clark, 220 Long Pond Road, Map 102 Parcel K2.**

Amy states that they minimized the walkway to 4', reduced the disturbance on each side to 8', and are using native plantings as requested by the Commission.

Jim confirmed that the no chemical application condition was included.

Motion by Brad Chase to accept the Order of Conditions. Second by Ernie Crabtree. All in favor, motion carried unanimously, 5-0.

#### **Vincent Helfrich, 33 Snow Inn Road, Map 8 Parcel P3-0.**

Amy asks for comments. Ernie asked if the project was already complete. Amy states that it is, and that this is an Amendment so there are only a few changes to the ongoing conditions.

Motion by Brad Chase to accept the Order of Conditions. Second by John Ketchum. All in favor, motion carried unanimously, 5-0.

### **Certificates of Compliance**

#### **Scott & Derek Woelfel, 432 Route 28, Map 13 Parcel E4.**

Amy explains that this is two Certificates for the same property, and these are reissuances, as the original Certificates were lost. She states that the buildings are in compliance with the plans and everything is still in the same condition as it was.

Motion by Brad Chase to approve the two Certificates of Compliance. Second by Ernie Crabtree. All in favor, motion carried unanimously, 5-0.

### **Minutes**

May 21, 2020



Brad makes a small typo correction. Seeing as everyone needs more time to review the Bells Neck discussion, the approval of these minutes will be continued to July 15, 2020.

**ANY OTHER BUSINESS WHICH MAY COME BEFORE THE COMMISSION**

Ernie Crabtree asks for an update on Robbins Pond from Amy. Amy states that she is working to schedule a time for a site visit with DPW, some Fire and Police personnel, and Jim.

Stan Pastuszak asks for an update on the letters that were sent out about float storage from Amy. Amy gives a brief update and states that the people she has heard back from have been happy to comply and have asked her to come out to discuss a better spot. She hopes they continue to see improvement.

Amy updates the Commission members on the expected continuance of remote meetings, but explains that Town Hall is opening by appointment only in the next week.

**ADJOURNMENT**

Hearing no other comments, Chairman Brad Chase moves to adjourn at 9:15 PM. Second by Stan Pastuszak. All in favor, motion carried unanimously, 5-0.

Respectfully submitted,

Melyssa Millett