



TOWN OF

HARWICH

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HARWICH CONSERVATION COMMISSION - AGENDA

WEDNESDAY JUNE 17, 2020 - 6:30 P.M.

REMOTE PARTICIPATION

Commissioners and Staff Present Remotely: Chairman Brad Chase, Ernest Crabtree, Stan Pastuszak, John Ketchum, Carolyn O'Leary, Jim Donovan, Mark Coleman, and Conservation Administrator Amy Usowski

Applicants and Audience Present Remotely: Rick Judd, Helen McCarthy, Daniel Croteau, Rocky Clark, Dave Crispin, Matt Creighton, Jeff Lang, Jeff Handler, Don Munroe, Lynne Hamlyn

CALL TO ORDER

By Commissioner Ernest Crabtree

HEARINGS

Requests for Determination of Applicability

Moran Engineering Associates LLC, 18 Doane Way, Map 13 Parcel X1-9. Pool and patio within Land Subject to Coastal Storm Flowage.

Rick Judd from Moran Engineering represents the Applicant for this project. Rick Judd describes the project, which includes installation of in-ground pool, patio area, and pad for the pool pumps and mechanical pieces. The location is a grass lawn outside of the 100' wetlands setback, and no tree removal is proposed. All provisions will be followed to avoid erosion including a silt fence and reseeding with a conservation mix after completion of the project.

Conservation Administrator Amy Usowski explains that this area is subject to Coastal Storm water regulations as this is in an A11 flood zone. Amy explains that they are proposing that the grade for the pool be brought up from 6.5' to 10.1' so that it is brought up above or at the groundwater table level. In Amy's professional opinion this will not have an adverse impact on the environment, and thus recommends that this is approved with a Negative 2 Determination. There would be a condition of no-chemical-application within the Conservation Commission's jurisdiction with this approval.

Ernest Crabtree calls for comments from the Commissioners. Hearing none, he calls for comments from the public. Helen McCarthy, neighbor, expresses a concern with possible flooding in her basement due to the project. She states that the project engineer has said that should not be a problem, but wants to be sure that it will be handled if it does become a problem. Amy explains that the job of the Commission is to manage environmental impacts and thus does not have jurisdiction in this area, but in her opinion if flooding does occur there would be only a very small amount of groundwater displacement from this project. Amy goes on to explain that Coastal flooding refers mainly to above ground flooding, so that is what falls within their jurisdiction. Rick Judd comments that he has tested the area and does not see how this would increase groundwater in her basement, and as far as storm flowage goes, he does not see that there will be a negative impact on the abutting property. Helen states that her second concern is that the pad for the pool mechanisms would be directly up against her fence. Amy recommends that Helen speaks with the building department, as the logistics of the construction itself fall under their jurisdiction. Rick Judd confirms that if this was moved by Helen's request, it would not have to be a full rework of the application, and Amy confirms, stating it could likely be handled administratively if it were merely a shift. Rick Judd asks whether planting a buffer to the mechanic pad would need to come before Conservation since it is outside of the 100' buffer. Amy answers that because it is in a flood zone, so it does need to come before Conservation and should be native plantings.

Carolyn O'Leary makes a motion to approve the plan with a negative two determination, seconded by Stan. Motion carries unanimously, 7-0.

Notices of Intent

G. Rockwood Clark, 220 Long Pond Road, Map 102 Parcel K2. Remove walkway, steps, and retaining wall. Construct new walkway, landing, stairs, and stone wall. Plant area of erosion.

Daniel Croteau from Moran Engineering presents the project, and Rocky Clark is also on the call. Daniel explains that Rocky would be in charge of landscaping, and the stairs would be built by a general contractor. The plan is to remove the broken and failing concrete and replace it with a raised wood structure with composite decking. There is also a failing wood retaining wall that would be replaced with stone. The overall coverage would decrease from 155' to 152'. The NHESP did review the project and declared that all plantings must be native – Rocky will work with Amy on the planting plan.

Amy explains that despite the proposed staircase being 6', which is wider than the 4' allowed width per regulations, this is a decrease in the overall hardscape, and thus recommends that, if the Commission is willing to put some conditions in place regarding the planting plan and any other revisions that may be discussed, they approve the project.

Chairman Brad Chase calls for comments from the Commissioners. Stan Pastuszak asks if a new site plan was submitted showing the change – and Ernie Crabtree seconds this question. Daniel

Croteau explains that the landscape plan has changed, but the site plan has not. Amy sends the plan from the previous June 3, 2020 meeting to the Commissioners for their reference. Ernie Crabtree states that this is a visible lot, and he does not see how they can approve anything more than a 4 foot staircase as is allowed by the regulations. Carolyn O'Leary, John Ketchum, and Jim Donovan agree that the walkway should be 4'. Mark Coleman disagrees, stating that the encouragement of the native plant community outweighs the importance of the 6' width, and thus supports this plan. Chairman Brad Chase asks Daniel Croteau how he would like to proceed hearing the majority agreement with the 4' requirement, and Daniel Croteau responds that he does not see this as setting a precedent, and removing the concrete structure and raising it off the ground is a huge improvement to what is there currently. Rocky Clark states that he talked with Skip and they do not want any more delays, so they are fine with reducing it to 4' if that is what the Commission wants them to do. Daniel Croteau asks if the Commission can approve it if they will submit a revised plan to Amy early next week. Chairman Brad Chase states that he thinks they can approve it. Hearing no comments from the public and no further comments from Commissioners, he asks for a motion.

Ernie Crabtree makes a motion to approve the Notice of Intent with the conditions that a revised plan showing the walkway with a decreased width of 4' will be submitted to Amy, the planting plan is approved by Amy, and no chemical application is allowed. Stan Pastuszek seconds. The motion carries unanimously, 7-0.

Jeffery Lang, 397 Route 28, Map 13 Parcel D1. Waste site clean-up of MCP site to reduce levels to "No Significant Risk." Activities include stripping of upper strata of soils in certain areas, accumulating them in one area of site and covering them with three feet of clean soil to render the soils as 'potentially isolated' under the MCP and restoring/revegetating disturbed areas.

Dave Crispin with the BSC Group presents the project, along with Matt Creighton, and owners Jeff Lang and Jeff Handler. Dave explains in detail the series of assessments that they have done on the property, as well as the grading and excavation plan they have put together for risk management. The area within the wetland that was found to be contaminated would be excavated out to a depth of 6 inches including the Phragmites that are in that area and replaced with clean sand, and replanting with native vegetation. The coastal bank would also be entirely rebuilt. Dave Crispin explains their decisions about materials and vegetation, which was worked on with Amy.

Amy Usowski explains that this work to restore the property is very beneficial. She explains that the soil contamination is shallow, but her main concern is that the fabric barrier will not be enough to keep an isolated grouping of Phragmites from trying to return. Dave Crispin responds that the soil with the Phragmites fragments could be buried as deep as 8-10' with the contaminated marsh soil, which is generally enough to keep the Phragmites from growing in that spot. Amy's second question clarifies that the proposed spot for burying the contaminated soil is within the 100-ft buffer zone, but outside the 50-ft. Dave responds that it is, but that that was the worst area when they tested, so it would make sense to try to disturb that area as little as

possible. To this Amy asks for Dave to explain why it cannot be outside of the 100-ft buffer or off-site. Dave responds that every time they touch a piece of contaminated material, it increases the risk of spreading that contamination, so the less they can disturb the contaminated areas of the site, the better. For that reason, instead of removing the contaminated soil, it is better to confine the area of contamination and cap it. David Crispin states that he will send Amy and the Commission the sub-surface investigation plan so that they may see how they reached the conclusion that this was the worst spot and where the remediation should take place. Amy states that the DMF would like to see a saltmarsh monitoring plan, which would include 3 years of monitoring, and to ensure that the marsh replanting is done at the proper elevation to keep Phragmites from reestablishing. Amy asks if the other grading listed on the site plan will take place during this phase. Dave responds that there would be some additional grading taking place in the northeast corner of the property, which Amy states is mostly out of Conservation jurisdiction.

Chairman Brad Chase asks for comments from the Commissioners. Stan Pastuszak asks whether the whole area was tested, and whether the area of sand in the upper corner of the lot that will be distributed was found to be clean. Dave Crispin states that the entire area was tested, and that the upper corner did have some lead and zinc, but is below the S1 standard levels. Stan asks for clarification about the area deemed 'worst' and what that means. Dave responds that the tests were found to be above the S1 standard, some above the S2 standard and visual staining of the soil. Stan asks whether the area that will be capped will be a no-use area. Dave responds that it will be a limited-use area, meaning the things that the land can be used for will be restricted. Stan's final comment is regarding his concern for leeching and groundwater especially once everything is consolidated in one area. Dave assures him that all samples they took met the necessary DEP standards, and that the mean would be the same despite it being compiled. Stan states that he is concerned because there is no way of saying it has not or will not leech into the marsh in the future. Dave and Matt explain that the findings in the marsh point to the washout or wash over as the source of the contamination, not leeching through the soil, so at this point, leaving the topsoil contaminated is doing worse to the marsh than any leeching which has not been found at this point. Dave also points out that they did tests at 3-feet as well as 6 inches and those tests supported this. Carolyn O'Leary is surprised that the site numbers were as good as they were. Since it was such a bad site, Carolyn thinks that while they do have the responsibility to clean it up properly, but some cleanup is better than none and they should acknowledge that this may be the best way to approach the situation. Carolyn asks if there is any way to encapsulate the contaminated soil entirely at the bottom as well. Dave responds that because of the test findings this would be unnecessary. Carolyn clarifies that this project is being done in multiple phases and this is just the clean-up phase. They will have to come back before the Commission for the other phases. Matt responds that the main reason that they need to do this project in phases is because the list of things that need to be improved according to riverfront regulations is extensive and must be completed before the lot is built or used for anything else. They are being careful to follow each of these regulations closely. By cleaning the property first, they are actually making it more difficult for themselves, but the owners feel that the property needs to be cleaned and stabilized most importantly at the moment. John Ketchum agrees with

Carolyn that cleaning the site is extremely important, but has a few questions about the contamination of the salt marsh. He asks for clarification about the risks to the wildlife and saltmarsh from contamination, and does not feel that the standards properly address these risks, as they seem more focused on preventing direct human contact with the contamination. John's other question is regarding vegetation, and whether they could possibly replant with species that are known to help take up heavy metals in the soil as a way to partly address this issue. Dave responds that the standards are conservative, and the standards are meant to protect the wildlife and wetlands, so the current tests do meet the standard, but if this changes in future tests it will be addressed as part of this process. As for plant uptake, even if there were plants that could take it up, once those plants die the chemicals would be brought to the surface again. Mark Coleman asks why there wouldn't be a liner in the hole to contain it entirely. Dave states again that the less they move the contamination around the better, and that these meet the standards which is why this is unnecessary. Ernie Crabtree asks what the cost of removing that material and shipping it elsewhere would be. Dave responds that the cost would be very substantial, about \$150 per ton, and again if they don't need to move the material, the standards say they should not. Ernie is concerned about future use and this being disturbed potentially in the future by increased water flow from a septic system or other use. Dave and Matt reiterate that the buried soil will be above the water table, and any septic would be put below that level, in addition to not being under the buried contaminated soil. Dave continues to explain that there could be benefits to putting a parachute over the area to further avoid water running through the area. Ernie reiterates that this is something that will need to be remembered when future use is discussed. Amy explains that from her perspective, if the standards are met and continue to be monitored, she would prefer not to pave over the area. Amy asks if maybe they can have a list of construction protocol in this case and an abbreviated list of what that monitoring might look like. Dave responds that he can summarize the Remedial Action Plan so that the Commission can reference it. Ernie agrees that that would be helpful. Matt adds that there is a whole state process for monitoring and meeting standards that goes along with this project – Carolyn stated earlier that anything is better than nothing, but their goal in this is really to meet every standard, make the area safe for humans and the environment, and continue to monitor the area in the future. Jim Donovan states that he is in favor of the approval, and does agree with the choice to keep it on site. Jim asks if there was a contractor selected yet for the wetland replanting. Matt explains that the plan will be designed and monitored by BSC Group and the plan will be worked on with Amy, but a landscaper has not been selected to physically do the work. Chairman Brad Chase asks what time of year the construction would be done, and Jeff Lang responds that they would like to get the movement of the soil done so that they can plant in the fall. Brad Chase asks what erosion control will be used, which is answered by Dave. Brad asks that they add the language for a contingency plan in case there is significant rain during this phase of the process the next time they come before the Commission. Carolyn asks how much this pile will be raised from the current landscape. Dave responds that it will be about 7 feet of additional grade.

Hearing no additional comments, Chairman Brad Chase moves that this be continued to the July 1, 2020 meeting. Seconded by John Ketchum. The motion carries unanimously, 7-0.

Amended Order of Conditions

Vincent Helfrich, 33 Snow Inn Road, Map 8 Parcel P3-0. Proposed dead man tie back system and access improvements. Continued from the May 21, 2020 meeting.

Don Munroe presents the project, stating that the depth and topographical information requested by the Commission has been added to the plan. Amy gives her summary comments, stating that they found a 4.5' depth at mean low water where the boat is docked. Given this depth, the Harbor Master has no issue with the boat being tied up there. Now that the Commission knows the depth, Amy recommends approval of the Amended Order of Conditions.

Chairman Brad Chase asks if there were any concerns with things that were done without Conservation authorization. Amy explains that instead of the two-foot concrete cap, it is a deck, but she thinks that it is more of a Building or Planning department issue rather than a Conservation issue, and the bulkhead was built in compliance. Brad calls for comments from the Commissioners and the audience. Hearing none, Chairman Brad Chase calls for a motion.

Carolyn O'Leary makes a motion to approve the Amended Order of Conditions. Seconded by John Kethcum. The motion carries unanimously, 7-0.

Extension Request

Rocco Orsini, 56 Purmackene Ln, Map 24 Parcel H17. Dwelling.

Lynne Hamlyn of Hamlyn Consulting presents the request, explaining the review process and why the extension request is being made since most if not all of the current Commissioners were not members when this was originally approved in 2017/2018. The process has been held up by an appeal with a different Board, and thus the project has not been started nor has the issued Conservation Order of Conditions been held due to the appeal. Mr. Orsini would offer a Conservation Restriction (CR) for an adjacent parcel that is a wildlife corridor that is part of his property if that would help the Commission see the project positively and grant the extension. Amy explains that there were some changes to regulations after 2018, which was after this permit was originally granted. Amy states that she thinks that an amended plan or additional documentation is needed to approve the extension, seeing that the regulations have changed.

Chairman Brad Chase calls for comments from the Commission. Stan Pastuszak agrees with Amy that a revised building plan would be good. Carolyn O'Leary comments that this is a big administrative mess, and if they were to get the revised plans and documents such that Amy requested, she would be in favor of approving the extension, with or without the CR. John Kethcum says that he would like to see the plans since he was not on the Commission when this was originally approved. Amy responds that she will share the approved plan with the Commission. Mark Coleman supports the extension, as he does not feel the property owner should be held up any more than he has already been. Ernie Crabtree states that he would be in favor of the CR on the additional parcel, but he does think that an extension should be granted with a time-limit – as soon as Mr. Orsini is allowed to proceed, he needs to make a decision and

get the project done. Jim Donovan highlights how this is a high-value wetland as a vernal pool, and he does not see how this was ever seen as not-certifiable. For that reason, Jim states that he would never have supported this in 2018 if he was on the Commission and certainly does not now. Amy states that the Plan has been moved to their online folder for the Commissioners reference. Brad Chase states that he was originally very concerned about this and did not vote in favor of it originally, and informs the other Commissioners that this project would require a large amount of fill in the wetland. He goes on to state that the hardship of the appeal process has been emphasized, but that is not really a concern of the Commission, as it is their job to enforce the regulations and so they should absolutely see the revised plans and consider them under the current regulations. Lynne Hamlyn states that all of these concerns were brought up by the 2015-2017 Commission, and all of her findings were peer-reviewed by Matt Creighton. There was plenty of documentation that showed that it was not a vernal pool, the wetland is not significant, and there is nothing remarkable about the wetland area – it was a manmade pit that was dug close to groundwater. The owner also tried to donate the land but it was determined by all entities that the property was not of high enough value for purchase. Lynne refutes that this is not a special wetland or vernal pool, and states that there was incorrect information on this matter given by the previous Conservation Administrator that should be documented in the Conservation file for this property. Brad Chase disagrees and states that he asked for documentation on this and it was not provided. Lynne reiterates that all of these matters were assessed by the Commission and the majority of the Commission was satisfied by the original explanations. At this point, Mr. Orsini is only trying to recoup his losses from this process, and this iteration of the plan was the option that the Commission felt both met the needs of the property owner and the wishes of the Commission. Lynne explains that the CR has been offered as mitigation since the project is now within the 60' no-new-structure zone (55' from the wetland). Brad Chase asks if this was one parcel. Lynne explains that it was two parcels but they have merged since they share a property line, and they could put a CR on just the parcel in question, and this is what was originally discussed. Brad disagrees, stating that they asked them originally to look into donating the property, not the small parcel. Amy states that she reviewed the tape, and agrees with Lynne that the adjacent parcel was what was offered for donation, and Lynne states that this is listed in the Special Conditions for the project. Amy states that Mr. Orsini came before the Real Estate and Open Space Committee, and it was determined by the Board that there were higher priority properties so this was not seen as a good use of funds. Amy states that she is happy to provide more information in regards to the history of the case if that is the wish of the Commission. Rocco Orsini states that he does not want sympathy, but he has done his best to follow the rules and do this properly, and has lost a lot of money in the process. He asks the Commission to put themselves in his shoes, and states that he has not been trying to put the process on hold, but the process continues to be halted. Rocco recounts the many steps he has gone through to try to have this process approved, and his monetary losses. Lynne reminds the Commission that this is not another extension on the original plan, this is the first extension on the newer plan.

Hearing no further comments from the audience, Amy recommends that the Commission review this more extensively so they can make a more educated vote. Chairman Brad Chase suggests

that this is continued until the next meeting. Amy states that she will put together a joint online folder so all parties can access it so everyone can review it before the next meeting. Lynne states that she hesitates because this is not a new filing or Notice of Intent, and she would hope that there is a commitment to the wishes of the past Commission, whose majority voted to approve this project. Ernie Crabtree agrees, stating that it was approved under those original rules, and feels that they are bound to honor that. However, he feels that as the rules have changed, the plans should also change. Lynne agrees to a Continuance. Chairman Brad Chase moves to continue this matter to the next meeting, July 1, 2020. Carolyn O'Leary seconds. Motion carries unanimously, 7-0.

Discussion and Possible Vote

23 Snow Inn Rd

Don Munroe presents the project. This is the extension of the bulkhead, adjacent to the earlier approved project. They are here to discuss the sketch plan and depth of water associated with and next to the steel bulkheads. Amy states that this is tied to the Helfrich property, and they want to ensure that everything is in compliance. Amy feels that this is more of a Planning or Building department discussion, and states that John Rendon was out on the site as well, and that is really a Harbormaster question. She reviews the depths, and suggests that it is left up to the Harbormaster to determine that it is navigable. Chairman Brad Chase asks for comments from the Commissioners. John Ketchum clarifies some of the depths. Amy confirms that it does meet the minimum required depths. Hearing no further comments, Amy recommends a vote to include this in the file.

Brad Chase moves that this is included in the plan of record. Mark Coleman seconds. Motion carries unanimously, 7-0.

Bells Neck Bog Management Update

Amy Usowski and Brad Chase give updates on the plan and recent updates. Jim asks if there has been any progress with DPW about mowing, and Amy states that she has not yet but will later this week. Jim makes another comment, asking if it would be helpful to have Amy and Nikki help draft the plan since the Commissioners are very busy this time of year. Brad states that this would be instrumental, and he would like the Commissioners to come up with management options, which could then be assembled into one draft document. Brad and Jim agree that drafts should be in to Amy by the first meeting in August. Amy confirms that if they would like to discuss the options at the August 5th meeting she only needs them one week prior, but if they want a full draft, they would need probably two weeks. Brad states that he thinks it should be a discussion point for August 5th, and they should aim to have a draft that can be voted on in two to three months. Amy reminds everyone to send any comments on drafts to her and she will distribute them.

Letter to Selectmen regarding Robbin's Pond Conservation Area

Amy provides an update on the Robbin's Pond Conservation Area. The Board of Selectmen supports the Commission's letter to the Police about increased enforcement there. Amy had

offered to take some of the officers out to the property to look at the problem areas so they are more familiar, and Deputy Chief Considine took her up on the offer – they are planning to go out soon, but Amy will be on vacation next week so she asks if Jim could bring them out. Jim says he could do that if needed, or he would like to go out when Amy is back with the officers, and Stan states he would like to come along as well. Amy also states that there has been a lot of vandalism and dumping at the beaches, so that is something else she has spoken with the Police about, along with the new animal control officer.

Minutes

May 6, 2020

John Ketchum makes one typo correction. Ernie Crabtree makes one typo correction. Carolyn O’Leary asks if Amy got a planting plan on Dunes Rd. Amy states that it has been staked out if anyone wants to check it out, and Carolyn asks if this was within the 45-day period listed in these minutes. Amy responds with more detail about the plan. Carolyn states that there is also a 45-day requirement for a plan for the Violation on these minutes.

Hearing no other corrections to the minutes, Carolyn O’Leary moves to accept the May 6, 2020 Minutes. Stan Pastuszek seconds. Motion carries unanimously, 7-0.

ANY OTHER BUSINESS WHICH MAY COME BEFORE THE COMMISSION

Amy gives an update on the plover monitoring, and asks if the Commissioners can be on call to assist with putting the fences back up if they are pulled out which generally happens randomly at night when people are getting rowdy on the beach, or if there is a very high tide, and gives a quick overview of what is needed to do it. Brad Chase, John Ketchum, and Carolyn O’Leary offer to help.

Hearing nothing further, Chairman Brad Chase moves that they adjourn the meeting. Seconded by Carolyn O’Leary. Motion carries unanimously, 7-0.

Meeting is adjourned at 9:42 PM.

Respectfully submitted,

Melyssa Millett