**TOWN OF  HARWICH**

***732 Main Street***

***Harwich, MA 02645***

**HARWICH CONSERVATION COMMISSION - MINUTES**

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

**WEDNESDAY MARCH 2, 2022 – 6:30PM**

**TOWN HALL - GRIFFIN ROOM – HYBRID PARTICIPATION**

**Commissioners and Staff Present:** Chairman Ernest Crabtree, Jim Atkinson, Brad Chase, Alan Hall, Mark Coleman, Associate Member Wayne Coulson, and Conservation Administrator Amy Usowski.

**Audience and Representatives Present:** Mark Burgess, Brian Wall, Mary and Andrew Pye, Lindsay Strode, Arlene Wilson, James Quirk, Kathleen Lockyer, Jennifer Chase, Paul and Helen Gigley, Peter DiBiasie, Carol Kucha Stone, Mike Abdow, Daryl Routhier, Suzanne Hoey, Dean Knight, Steve Churchill, Annie Haven, Steve Noyes, Kevin Clayton, Patrick Tuneli, Glenn Hawthorne, John Ebel, Michael MacAskill, Robert Brothers, Donna Tavano, Mike London, Bill Holland, Lisa Godding, Michael Hill, Bill Budell, Timothy Byrne, James Speakman, Roan Bray, Kevin Bray, Judith Ford, Richard Harris, Kristine Donovan, Peter Donovan, Steven Setian, Marc Ladue, Les Shaw, Jeanne Rudzinski, and Adam Godding.

**Audience and Representatives Present Remotely:** Matt Creighton, Nate Jones, David and Kaitlin Nutter, Sebastian Mudry, and Bob Lascola.

**Call to Order**

Chairman Ernest Crabtree called the meeting to order at 6:30PM.

**The following applicants have filed a Notice of Intent**

**Mary & Andrew Pye, 41 Nons Rd, Map 5 Parcel W1-19. Pier, Ramp, Float, and Dredging.**

Mark Burgess of Shorefront Consulting was representative for the project. Mr. Burgess presented the proposed dredging amount and locations, and proposed pier, ramp and float, explaining that the mooring in front of the property would be removed once the dock and pier were installed. Mr. Burgess requested a variance to the bylaw as it pertains to shellfish. Matt Creighton, of BSC Group, presented the shellfish survey which was done for the property, explaining that they would recommend relocating the shellfish in the dredge area prior to the dredging taking place. Lindsay Strode, Cape Organics, presented the planting restoration plan, which would allow existing vegetation to grow more, as well as adding in additional planting areas where lawn is currently. Attorney Brian Wall explained that the project had been approved by the Waterways Commission, and gave more detail on the history of the property and variance request. Attorney Wall stated that they had proposed $6000 toward shellfish seeding, in addition to planting mitigation. Finally, Attorney Wall stated that they would like to hear Commissioner comments, but that they would be requesting a Continuance as had been asked for by the Oyster Creek Preservation Association. Ms. Usowski asked how long the coastal bank had been mown. Andrew Pye, owner, explained that they had a lot of bittersweet in that area, and that they had been trying to manage it for a little over a year. Ms. Usowski stated that the removal of it probably would have been permitted if requested, but because it was altered without a permit, the replanting of that area may not count as mitigation. Ms. Usowski stated that there was no marsh within close proximity to the proposed project area, and that the dock either met or exceeded most performance standards. Finally, Ms. Usowski reviewed the shellfish survey, and explained that she would not make a recommendation since no vote was being taken, and because aspects of the project may change during discussions with the Association.

Arlene Wilson, AM Wilson Associates, was present as representative for the Association. Ms. Wilson stated that there seemed to be some discrepancy on where Mean High Water is located on the plans. Ms. Wilson went on to outline the concerns that she had detailed in the letter which she had submitted to the Commission, which included a recommendation that the mitigation for the project be done by installing salt marsh. Mr. Chase commented that he had concerns about the variances that would need to be granted for this project. Mr. Crabtree asked if the concerns that had been expressed would be addressed before the next meeting. Mr. Burgess stated that they would respond in writing to the concerns of the Commission as well as those of the Association.

Mr. Atkinson moved to continue the hearing to April 6, 2022. Seconded by Mr. Coleman. Motion carried, 5-0.

**Kathleen & William Lockyer, 280 Bank St, Map 32 Parcel A2-5. Pool and Walkway.**

*Mr. Chase abstained.*

Kathleen Lockyer, owner, presented the project, which would include an addition to the house to accommodate a therapy pool as recommended by her husbands doctor, and a handicapped walkway. Jennifer Chase submitted a plant list for the proposed mitigation plan. Ms. Chase explained that they had proposed to plant the area shown on the plan with native shrubs and discourage invasive growth in that area. Ms. Usowski stated that the new generator pad and handicap walkway within the buffer zone were never permitted, so they did need to be incorporated into the plan. Ms. Usowski explained that she had granted administrative approval to cut the invasives in the past, and that the mitigation plan looked to be sufficient. Ms. Usowski asked if the generator could potentially be moved outside of the 50ft buffer, and Ms. Lockyer stated that they would prefer to keep it there, and Ms. Usowski explained that there would need to be mitigation included for the additional square footage.

Mr. Crabtree commented that he would not be in favor of having the walkway through the mitigation planting area since it would be within the 50ft buffer. Mr. Coleman asked that a drawdown pit be included in the design for the pool in case it needs to be drained. Hearing no other comments, Mr. Crabtree asked if a continuance was needed. Ms. Usowski stated that they would need a written request for a variance request for the generator pad if it were to remain there, and that she would like a revised planting plan, so a continuance was likely required.

Abutter, Paul Gigley, asked whether there would be a building around the spa-pool, and Ms. Lockyer stated that there would be. Peter DiBiasie, contractor for the project, explained that it would be a 16x30 addition on the side of the house that would comply with setbacks, and all pumps and such for the pool would be contained within the addition. Ms. Usowski stated that, for any pool project, they usually conditioned that water be pumped and disposed of off-site if it needed to be drained.

Mr. Atkinson moved to continue the hearing to March 16, 2022. Seconded by Mr. Coleman. Motion carried, 4-0-1, Mr. Chase abstained.

**Joseph and Linda O’Neill, 1 Salt Meadow Lane, Map 11 Parcel C1.** Construction of a sloped revetment and replacement of existing dock.

Ms. Usowski stated that the applicant has asked for an indefinite continuance. Mr. Atkinson moved to indefinitely continue the hearing for 1 Salt Meadow Lane. Seconded by Mr. Coleman. Motion carried, 5-0.

**The following applicants have requested a Change in Plan**

**Brian Higgins, 49 Snow Inn Rd, Map 15 Parcel N2.** SE32-2479 for reconstruction of existing pier, ramp and float and dredging.

Nate Jones of Coastal Engineering Co presented the proposed change, which was to add a set of lateral access stairs in an area where marsh was present. Ms. Usowski stated that Chapter 91 required either lateral access stairs or that the pier was high enough to walk beneath, so she asked whether the structure could be raised or if the stairs could be moved further out so that they are not on top of marsh. Mr. Jones explained that the structure would need to be much higher than the existing stone wall if it were to be raised, but that they would be able to move the stairs about 10ft further out which would keep them about 5ft off of saltmarsh.

Mr. Chase stated that he understood that the stairs were required, but that he would like them to work with Ms. Usowski to minimize salt marsh impacts. Mr. Atkinson agreed that the stairway location that is further from salt marsh would be more favorable for him. Mr. Crabtree asked if that distance would be sufficient to accommodate the salt marsh planting area that had been previously approved, and Ms. Usowski stated that there should not be additional impact with the stairs moved out 10ft.

Mr. Atkinson moved to approve the Change in Plan with the new plan showing the location of the stairs 10ft further out. Seconded by Mr. Chase. Motion carried, 5-0.

**Orders of Conditions**

**William and Nancy Doherty, 20 Chase St, Map 4 Parcel N2-2.** Replacement of dock and float.

Mr. Crabtree asked if the spacing was supposed to be ¾ inch rather than ½ inch, and Ms. Usowski stated that it was and that she would make that change. Mr. Chase asked if Special Condition #6 was correct as it referred to materials that would be used, and Ms. Usowski confirmed that it was.

Mr. Crabtree moved to approve the Order of Conditions with the one change. Seconded by Mr. Atkinson. Motion carried, 5-0.

**Anita and Kristopher Jong, 2 Millers Toll Rd, Map 111 Parcel K3-3.** Raze and replace SF dwelling, with new addition.

Hearing no comments, Mr. Crabtree moved to approve the Order of Conditions. Seconded by Mr. Atkinson. Motion carried, 5-0.

**The following applicants have requested an Extension**

**Jamie Kline, 61 Bells Neck Rd, Map 18 Parcel K6.** SE32-2177 for a new dwelling and appurtenances. David Nutter, owner, has requested a 3 year extension.

David Nutter, owner, explained that they purchased the lot in December of 2020, and were requesting a 3 year extension. Ms. Usowski gave some history on the lot and the approved project, explaining that nothing had happened on the lot yet. Mr. Nutter explained that they were not sure when they would be able to start the work as he had a lot of trouble even getting bids from contractors. Ms. Usowski added that no regulations have changed since the project was approved, so she recommended a one-time extension of 3 years.

Mr. Chase expressed that this project was very challenging to permit in general, so he would like to see the project come back as a new filing since the ownership had changed. Mr. Atkinson stated that he felt 3 years was too long, and that he would be more comfortable with a 2 year extension as the owner could ask for further extensions if necessary. Mr. Coleman stated that he would be in favor of granting the 3 year extension. Mr. Crabtree asked if the Commission could require in-lieu-fees as mitigation if it was refiled, and Ms. Usowski stated that they could, but that the Conservation Restriction on the lot outside the limit of work was included as a form of mitigation when this was approved.

Mr. Atkinson moved to grant a 2 year extension for the project. Seconded by Mr. Crabtree. Motion carried, 4-1, Mr. Chase opposed.

**Minutes**

March 3, 2021

March 31, 2021

January 5, 2022

January 19, 2022

Mr. Crabtree postponed discussion of the minutes to the next meeting.

**Discussion and Possible Vote**

**1. Citizen petition to ban hunting in Bells Neck Conservation Area**

Mr. Crabtree stated that this was the first public hearing being held on this matter, and that he did not foresee the Commission taking a vote on this item at this meeting, as he would expect to have more public hearings on this prior to voting. Mr. Crabtree stated that the Commission had requested a legal opinion on the petition, and still had questioned that needed to be answered by Town Counsel before a vote could occur for the Commission. Mr. Crabtree asked that everyone limit their comments to under 2 minutes so that everyone has time to speak, and that people may voice their agreement, but asked that they refrain from repeating the same comments. Ms. Usowski mentioned that people may also submit written comments to her via email.

Carol Kucha Stone, petitioner, explained that her husband was an avid walker in Bells Neck who assisted with the care and maintenance of Bells Neck, and was adamantly opposed to hunting as he had personally come across skinned deer and litter from hunting practices. Ms. Kucha Stone stated that they had tried to prohibit hunting in Bells Neck in 2015, and after her husband’s passing in 2021 she had decided to try again, stating that the area should be used for other forms of passive recreation, like dog-walking, painting, yoga, and bird-watching. Ms. Kucha Stone referenced the recent prohibition of hunting in Brewster’s Punkhorn area, stating that she if they were able to outlaw hunting on 800 acres, they should be able to protect less than 300. She stated that she had also submitted a record request to the state for documentation about any illegal hunting activity in the Bells Neck. Ms. Kucha Stone submitted 42 letters of support to Ms. Usowski.

Mike Abdow stated that he was an avid hunter and fisherman, and explained that people had a right to hunt and fish on the land as much as people had a right to walk their dogs on the land, but that hunters were being forced to use less and less land over time. Mr. Abdow added that most hunters are extremely conservation minded, and he did not think that hunters were the cause of littering or other illegal activities, as most hunters he knew would not leave a deer’s body behind or drink while hunting. Daryl Routhier stated there was scientific evidence that deer overpopulation was detrimental to the herd, and that the deer were being forced into smaller and smaller areas as housing increased across Cape Cod. Mr. Routhier added that increased deer populations also resulted in increased incidents of tick-borne illness and other diseases, along with loss of native vegetation, so it was important to continue to allow hunting in areas like Bells Neck. Suzanne Hoey asked that the Commission look at this problem as a public safety issue, stating that there are only 55 days over the course of the year when hunting is not permitted. Ms. Hoey explained that the number of people who use the walking trails has increased significantly, and that it was too dangerous to have hunting permitted in such close proximity to the trails. Dean Knight stated that the hunting issue at Bells Neck comes up about every 5 years, and encouraged people to consider and appreciate the diversity in recreation in Harwich, which includes Hunting. Mr. Knight pointed out that there were many properties, including those owned by the Harwich Conservation Trust, where hunting was prohibited if people did want to avoid it. Mr. Knight added that hunters, through taxes on their ammunition, guns, and licenses, had contributed billions of dollars to Conservation efforts. Finally, Mr. Knight encouraged the Commission consider increasing education programming on hunting season dates and safety practices to decrease the risk of incidents. Steve Churchill explained that he had grown up hunting and fishing in Harwich and in Bells Neck, that the land was for everyone to use, and that people could use properties where hunting had been banned during the few months that hunting season was open. Mr. Churchill added that he picked up litter from non-hunters all the time, and that there had only been 3 hunting related injuries to non-hunters in Massachusetts over the course of 40 years. Annie Haven explained that often meat was shared among groups of hunters, and that it was one way to help families save money while getting organic food that was free of other additives. Ms. Haven went on to state that most hunters would be outraged to find that anyone had been mistreating or wasting the animals that they hunted, and that hunters are overall very responsible. Steve Noyes stated that the language in the petition was not clear and seemed to read that all properties under care and custody of the Conservation Commission would be included in this ban, not just the properties within the Bells Neck Conservation Area. Mr. Noyes stated that he was in agreement with other comments and did not think that hunting should be banned in Bells Neck.

Ms. Usowski explained that the legal opinion still left the Commission with a lot of questions, but that the major question they had asked was whether this vote at Town Meeting would be binding. According to the legal opinion they had received, it seemed that the Conservation Commission itself would have to put forward this petition in order for the vote at Town Meeting to be binding. Ms. Usowski also displayed a map of the parcels that were included in petition, explaining that the parcels were acquired in various manners, so they needed to do more research on whether or not hunting could be banned on each of the lots, so that is one question they were waiting for more information on. Ms. Usowski clarified that the petition only included the parcels under the care and custody of the Conservation Commission within the Bells Neck Conservation Area.

Kevin Clayton of the MA Environmental Police stated that he would not offer his personal opinion on this matter, but encouraged the involved parties to request documentation from the MA Environmental Police about hunting incidents, to separate out the definitions of animal cruelty and hunting in this issue, and finally to take everyone’s rights to use the land into consideration. Patrick Tunali gave Commission members an overview of required safety courses that hunters and gun owners complete, and went on to explain that bird shot did not travel far enough to hurt people across open water so between these two items hunting was not as big of a public safety concern as people might think. Glenn Hawthorne asked if any of the Board members hunted, and two members confirmed that they did. John Ebel stated that he had never been concerned about his safety in over 50 years of hunting, and that, to his knowledge, there had never been a hunting related injury in Bells Neck in recorded history. Mr. Ebel stated that only 9 injuries occurred in every 1 million hunter days, and that the vast majority of those injuries were either self-inflicted or to another person in the same hunting party, and reiterated that none had occurred in Bells Neck. Mr. Ebel stated that rights to intertidal waters, including for bird hunting, were maintained by the Commonwealth of Massachusetts. Mr. Ebel listed properties where dogs were permitted and hunting was not, so people could choose to walk there if they were concerned for their safety. Mike MacAskill clarified for those in attendance that this is a citizen petition, and that it was not an agenda item or initiative by the Conservation Commission. Mr. MacAskill stated that this item would go to Town Meeting regardless of if Commission decided to support it, and Ms. Usowski confirmed that was correct. Mr. MacAskill stated that the legal opinion that had been referred to earlier was about whether or not the petitioner could instruct the Town to ban hunting on these parcels, and Ms. Usowski stated that they were waiting to hear more from Counsel on that matter as the opinion that had been provided was not clear. Ms. Kucha Stone stated that there were many people that lived in her area that heard gunshots at 4:30 in the morning and on Sundays, and that the shots could be heard across West Harwich, which was outside of permitted hunting times. Sebastian Mudry stated that he heard gunshots before dawn regularly, and that while bird shot may not travel across the water, bullets would, and that he was very concerned about his safety on Bells Neck Rd and within the Conservation Area. Mr. Mudry stated that he had a right to feel safe in his neighborhood and to not hear gunshots at all hours of the day. Robert Brothers stated that there was no point in hunters being out in the marsh at 4:30 in the morning, because there was not enough visibility to hunt. Bob Lascola voiced his support for hunting to be allowed in the Bells Neck. Alan Hall recused himself from future votes on hunting in the Bells Neck, and commented that he and his family, as well as many historic figures on Cape Cod, were proponents of keeping Town property open for all forms of recreation, including hunting. Mr. Ebel explained that gun noise can travel over land, but that a lot of industrial noise travels a great distance, and that hunting is limited to an hour before sunrise, so gun noise before that time was not hunting, as you cannot see animals or birds at that time, and suggested that those claims were fabricated or incorrect and the sound was coming from some other source. Donna Tavano mentioned that some of the houses that abut Bells Neck often had bird shot in the siding, and that they had heard, many times, shots two hours before sunrise and on Sundays. Ms. Tavano stated that, while most of the hunters in the room probably followed regulations and never littered, some hunters did, and it was those hunters that did not follow regulations that were a problem. Ms. Tavano asked that the Commission look into how many deer are hunted at the Bells Neck each year. Mike London stated that if there were instances of gun shots happening outside of permitted times or days, then he would ask that the people who hear them call the police or the Environmental Police, as people who break the rules should be arrested. Ms. Tavano stated that people do call about the noise very regularly, but it is very difficult for the police to actually catch those hunters in action. Bill Holland reiterated that all hunters were educated on safety protocols in order to get their hunting license, and mentioned that better education about hunting seasons was needed for non-hunters who used these areas. Lisa Godding stated that there was a large amount of fear from people who walk in these areas, so she was not sure where the compromise may be, as people are afraid with how hunting currently occurs in Bells Neck. Michael Hill stated that he regularly hunted in Harwich, and that he had no problem bringing his two small children and dogs to Bells Neck, and that the only time he did not bring them was during the 2 weeks of shotgun season. Mr. Hill stated that the Town did post Caution signs during hunting season, and that the hunting seasons were posted in the trail information kiosks.

Mr. Crabtree thanked everyone for coming and sharing their input, and stated that this item would be going to Town Meeting, and the only question was whether or not the Commission would eventually endorse the article. Mr. Crabtree explained that any future discussions about the article would be advertised.

**2. Presentation to the Board of Selectmen on March 7, 2022 regarding management activities in the Robbins Pond Conservation Area, and on proposed Wetlands and Waterways Bylaw changes in preparation for May 2022 Town Meeting.**

Ms. Usowski stated that on March 7th, they would be making a presentation about management at Robbins Pond, and about the changes to the Water Dependent Structures Warrant article, and asked that members let her know if they would like to attend so she could post an agenda. Ms. Usowski stated that the budget information would be discussed at the March 10th BOS meeting. Mr. MacAskill stated that the Board of Selectmen would like a summary of the changes that had been voted on, but not an entire presentation of every change that the BOS had already heard. Mr. Crabtree and Mr. Chase reminded everyone that they also needed to discuss the proposed Herring River Study.

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

**Adjourn**

**Mr. Atkinson moved to adjourn the meeting at 9:09PM. Seconded by Mr. Hall. Motion carried 5-0.**

Respectfully Submitted,

Melyssa Millett

Approved: 5/19/2022