



TOWN OF

HARWICH

732 Main Street
Harwich, MA 02645

CONSERVATION COMMISSION

(508) 430-750-7538 FAX: (508) 430-7531

HARWICH CONSERVATION COMMISSION

WEDNESDAY NOVEMBER 16, 2016

SMALL HEARING ROOM AT 6:30 PM

7:05 PM - MOVED TO

DONN B. GRIFFIN ROOM
HARWICH TOWN HALL

MINUTES

PRESENT: Walter Diggs; Brad Chase; Ernie Crabtree; Carolyn O'Leary; John Rossetti; Rob Mador and, Conservation Administrator, Amy Usowski.

CALL TO ORDER

6:35 PM by Chairman, Walter Diggs

HEARINGS

REQUEST FOR DETERMINATION OF APPLICABILITY

6:35 **Holly A. Tarleton, 130 Forest Street, Map 31, Parcel A12** - Build raised walkway/deck within 50-100' area. Remove existing carport/deck and shed. Rebuild in its existing footprint.

Presenter: Holly Tarleton, owner.

Ms. Tarleton said the project had been approved by the Board of Appeals. She also stated that the asphalt is to be removed.

Amy Usowski said that there would be no expansion of the footprint and that there would be drip trenches or dry wells. Also, she recommended silt fence be used during construction. Ms. Usowski recommended approval with a Negative Determination #3 and #6.

Motion made by Brad Chase to approve the project for 130 Forest Street with a Negative Determination #3 and #6. Seconded by Rob Mador. Vote: 6-0-0.

6:40 **Shoreline Pools for Beth Ann Legare, 15 Mirasol Lane, Map 5, Parcel K1-67** - In ground pool and mechanicals with pool decking/patio & deck fencing (continued from 11-2-16).

Presenter: Robin Wilcox, and Chris Detrich - Sweetser Engineering

Mr. Wilcox said that the fill needed was 120 ft. for a net of 28 yards.

Amy Usowski stated that the area is in a flood zone and can't be used for wildlife protection. She recommended native plantings from the approve list. She also recommended approval of the project.

Motion made by Ernie Crabtree to approve the project at 15 Mirasol Lane. Seconded by Carolyn O'Leary. Vote: 6-0-0.

NOTICES OF INTENT

6:45 Michael Weinberg, 18 Sound View Road, Map 25, Parcel L1-6 - Construct pool with retaining wall, pool decking, fencing drainage, landscaping, mitigation and appurtenances (Continued from 11-2-2016).

Presenter: Robin Wilcox - Sweetser Engineering

Mr. Wilcox reviewed the previous request. He said that when the house was built, the dimension of 8" instead of 10" were in the Certificate of Compliance. He explained the proximity of the house to the pool which required digging within 3' of the house with no footings. He said that the new plan shows drywells and an increase in plantings. He said that rather than move the pool and jeopardize the house they would like to give more mitigation.

Amy Usowski said that she understands the issues relative to the footings of the house. She feels plantings could be fine-tuned (spacing and number of plantings accurate for the area). She would like a slight reduction of the patio on the north side. She said that with a Cape Cod lawn and the removal of three trees, it would be an improvement.

Brad Chase said he did not make a site visit and inquired regarding the topography and the proximity to the wetland. He would like to see a buffer strip in the 50'-100'. Mr. Wilcox said the fence is close to the pool and works to keep out access to the wetland buffer.

John Rossetti said he wants the patio pulled back. Mr. Wilcox said that it is doable to pull back the patio. He wants to leave the fence in place so no one can walk around it.

Discussion regarding set back from property line. Building Inspector said it needs to be 10' from the property line. Applicants are offering more plantings to preserve the buffer zone.

Carolyn O'Leary asked what the distance was from the pool edge to the patio on the west side. Answer: Fence outside at about 3'. Fence is chain-link.

Rob Mador asked if the buffer could be inside the fence. Answer: No.

Amy Usowski said that eliminating some hardscape is a better benefit.

Discussion of reducing the patio on the north and south side to create more of a buffer strip (less than 10%, but a step in the right direction. Net hardscape 1400 sq. ft. with 2 to 1 mitigation. Buffer between 50' and 56'. Mr. Wilcox said he thinks the fence is really going to protect disturbance to the wetland.

Brad Chase said that the HCC does not encourage use right up to the 50' buffer.

Amy Usowski wants to see a plan with the final revisions. She recommends continuing to December 7, 2016 and not closing the hearing. She will in the meantime draft an Order of Conditions.

Motion made by Ernie Crabtree to continue 18 Sound View Road to December 7, 2016 for a revised plan. Seconded by Brad Chase. Vote: 6-0-0.

7:05 J & L Realty Trust/Joseph L. Hooley Trustee, 22 Wah Wah Taysee Road, Map 6, Parcel F1-1 - Proposed excavation of an existing deck, installation of a patio, boardwalk and kayak rack and mitigation plantings/invasive species removal. Work will take place in the 50' and 100' buffer to a coastal bank and on land subject to storm flowage.

Presenters: David Lyttle, Ryder & Wilcox and Caitrin Higgins - Wilkinson Ecological Design

Mr. Lyttle explained the project and said the applicant proposed 739sq. ft. of landscape alterations to the site which includes the deck expansion, new patio, boardwalk and kayak rack. Wilkinson Ecological Design has proposed 8,200 sq. ft. of mitigation plantings to offset the proposed alterations in the buffer zone. Ryder & Wilcox will stake the location of the approved limit of work, using straw wattles securely installed along the limit of work and will keep them in place until project completion and the areas have been stabilized and revegetated. They are requesting a variance from the Town Wetlands Regulations in a no disturb buffer zone.

Caitrin discussed the planting plan and removal of invasives. She said the area is heavily covered with aggressive invasives species. She presented a detailed management plan which included erosion control; 168 shrubs proposed; 365 herbaceous plantings and countless grasses which she said would enhance wildlife habitat.

Amy Usowski stated that permitting of a coastal bank under the Act standards are met; however, under the Town By Law there is a controversy which includes:

- Sand Plain grasses and Heath Land areas proposed to be removed for a fire pit in the 50'-100' buffer.
- Raised boardwalk is a permanent structure; she recommends a footpath.
- Instead of a free standing kayak rack, she recommends attaching it to the stairway.

Discussion Regarding:

- Restoring Sand Plain and Heath Land area expense. Recommend going back to applicant for approval.
- Mr. Crabtree addressed expansion of an already large deck 50' to 70' in its entirety in the 50'-100' buffer.
- Mr. Rossetti addressed the issue of the number of cedars to be taken down.
- Ms. O'Leary addressed issues regarding walkway (dimensions and proximity to road). She also discussed the dingy tie up area.

- Mr. Chase stated that expansion of a deck has not been approved by the HCC in the 0-50' buffer. He discussed the stairs and path and his concern of expansion in the 0-50'. He feels those structures should not be supported.
- Mr. Mador discussed the kayak rack. He said he does see removal of invasives as a benefit. He would like to see the patio on the south side rather than the waterside. He thinks the pathway may be doable, but questions if it can be moved to the south side.
- Ms. Usowski said that small additions in the 0-50' which can be mitigated have been done. She said that this project is larger than what has been previously approved.
- Mr. Lyttle asked "to be clear, no patio in 0-50' and no fire pit in 0-50'?"
- Mr. Chase said that the project does not represent a hardship.
- Mr. Mador said he could support putting the fire pit and patio to the south side and not in the 0-50'.
- Mr. Lyttle requested a continuance to December 7, 2016.

Motion made by Carolyn O'Leary to continue 22 Wah Wah Taysee Road to December 7, 2016. Seconded by John Rossetti. Vote: 6-0-0.

7:39 Andrew B. & Michelle Olson, 20 Sequattom Road, Map 101 Parcel R2 - Proposed seasonal dock.

Presenter: Catherine Ricks - Coastal Engineering Co.

Ms. Ricks explained the project.

Amy Usowski said that notes from the Waterways Committee state that they do not object to the plan as submitted. She said she suggests going out a little further with the dock to achieve depth and still be within the Regulation limits. Ms. Usowski said that the project meets all standards for a dock, but aluminum piles are preferred (less disturbance). She said that the slope is severe, but she thinks matted plants may be preferable rather than hard structure on the inland bank.

Mr. Mador said that except for the slope, he does not see a disturbance.

Mr. Crabtree discussed the wall (on the resource) and thinks it would be a permanent solution.

Mr. Mador said he prefers the use of an aluminum structure with big feet.

Mr. Rossetti discussed natural vegetation on one side of the stairs, and he said he does not think a permanent wall is needed on the left side as it is good without it.

Ms. Usowski said she looks for soft structures rather than hard.

Ms. O'Leary said she questions the need for a wall.

Mr. Chase questions preexisting walk. He said that pilings can disturb salt marsh. He feels that in this instance granting an exemption is an improvement.

Ms. Ricks asked regarding one time organic fertilizer to get started. Ms. Usowski said it could be conditioned and Mr. Chase agreed. Ms. Ricks asked regarding time of year. Answer: May to October time frame.

Clem Burse from the audience (a neighbor) discussed erosion over time. He said a rock wall was there previously. Wind and waves have eroded it.

Motion made by Ernie Crabtree to approve the project for 20 Sequattom Road with Condition of aluminum dock and the elimination of walk in the Order of Conditions. Seconded by Rob Mador. Vote: 6-0-0.

8:00 Commonwealth of Massachusetts c/o Massachusetts Division of Waterways, Allen's Harbor Inlet (Oyster Creek), Map 5 & 6 - Maintenance dredging of 670' +/- of the Oyster Creek Navigation Channel.

Presenter: Arlene Wilson - A. M. Wilson, Assoc.

Ms. Wilson states that the Commonwealth owns the bottom where the dredging is and that the Applicant owns and funds the project.

Oyster Creek is a manmade waterway. Ms. Wilson gave a history of the development of Allen Harbor. Most recent dredging was in 2009. It is the entrance channel to turnaround waterway. Current proposal (no dredging in the north spur). Ms. Wilson explained why sediment is left in the channel and she explained a handout of the planned sketch for dredging.

Shellfish surveying is done. Heinz Proft, Natural Resource Officer is still doing some shellfish seeding.

Pam Neubert, Marine Biologist, has done surveys:

- Water quality is better than it has been previously.
- Harvest shellfish prior to starting work.
- Monitor mitigation.
- Waterways Committee has signed off as project is considered important to navigation.
- Town will be given dredged material for beach nourishment.
- It is a fall and winter project.
- Chapter 91 License valid; 401 will need to be renewed.

Amy Usowski reviewed:

- Going to deeper depth approvals.
- Reviewed winter project restrictions.
- Shellfish to be removed for relocation.

- Concern regarding possible loss of shellfish habitat (State mapped habitat for shellfish) – concern regarding 25' off set at Mean Low Water (MLW).

Discussion of slope and gain in depth and 25' setback.

- Ernie Crabtree discussed grade and slope. He questions expanding by 3'.
- Brad Chase is concerned with expansion of 3' which encourages use by larger boats. He also addressed 401 changes in slope from 12' to 15'.
- Amy discussed box cut of the slope and meeting its own angle. Ms. Wilson said that it would be tiered.
- Rob Mador agrees with 15' expansion due to wind blowing conditions.
- Amy Usowski said there should be mitigation for: piers, dredging, \$2,000 per year for putting shellfish back into eco system, and 30 bushels of shellfish per year for 3 years.
- Brad Chase does not favor expansion (causes alteration to shellfish habitat). He feels that if HCC approves the project there should be increased mitigation of shellfish for the expansion.

Discussion of Professionals overseeing the harvesting and relocation of the shellfish.

Discussion of Division of Marine Fisheries having regulations regarding mitigation for expansion of shellfish ratio.

A member of the audience (neighbor of Allen Harbor) discussed the channel and the difficulty boats and kayaks have navigating the channel (shallow, winds, etc.). He said there are GPS issues, the boater has to know the area, land markers, and not channel markers. Boats get stuck, the channel shifts and it is a safety issue.

Carolyn O'Leary asked if approving the 15' expansion would allow for the necessity of dredging being spaced out over a longer period in the future. Answer: Storms, use, etc. have more of an effect.

Brad Chase said he does not have a problem with maintenance dredging, but he questions the expansion of the channel.

Motion made by Brad Chase to approve the project for Allen Harbor dredging with keeping the width at 12' and Conditioning 30 bushels of shellfish per year for 3 years mitigation. Seconded by Ernie Crabtree. Vote: 3-3-0 Motion Failed.

Motion made by Carolyn O'Leary to approve the dredging and expansion of the Allen Harbor project as proposed with Conditions of increased mitigation to 25% proportionately after 30 days, and "As Built" Survey first and second year after dredging is complete to record depth maintenance of the channel, marsh loss, and condition of the slopes. Seconded by John Rossetti. Vote: 5-1-0. Motion Carried.

SHOW CAUSE HEARING

9:00 Jeffrey Eldredge, 9 Cranberry Trail

Motion made by Ernie Crabtree to continue 9 Cranberry Trail to December 21, 2016. Seconded by Rob Mador. Vote: 6-0-0.

SHOW CAUSE HEARING

9:02 Resilient Family Farms/Barry Viprino, 35 Chatham Road

Presenters: Atty. Ben Zhender and Barry Viprino

Amy Usowski discussed the agricultural use of the land and the next course of action. She said that the previous owner had a permitted stable. She also discussed the wetland delineation.

Atty. Zhender discussed exempt activities and those that are not. He said that the 121A Statute states what is agricultural and he said that boarding horses constitutes agricultural use. He explained the use of Aquaponics Farm and the use of the structures. He explained the dimensions of the structure and how they can meet regulations (one structure can be divided into two to meet regulations).

Amy Usowski addressed the commercial use of the property. It is not licensed as commercial by the Board of Health. There are different permits for different purposes. She said the turnout area is in question and she would need to consult with Town Counsel as to use as well as the question of past use being for a commercial purpose.

Ms. Usowski addressed the newly cleared land as not agriculturally exempt and would require an After the Fact filing or a Notice of Intent Filing. She said she will speak with Town Counsel regarding more uses; more animals, and more structures.

Mr. Viprino agreed that where the turkeys are was not permitted and should have been. He said he is willing to mitigate for infringement after the Stop Work Order is lifted and start with a NOI.

Discussion of importance of commercial agricultural use previously or currently (with or without a permit). There is a question of receipts to prove prior commercial use. Comments from audience (abutters and neighbors):

- Concerned regarding difference between a horse stable and a full blown farm in a residential zone.
- Another person spoke in favor by saying it is not a huge change, he is just trying to run a business, just needs to get permits right and a compromise is needed.

Ms. Usowski clarified the steps to be followed to resolve the issues. Mr. Zhender requested the lifting of the Stop Work Order. Ms. Usowski said the request would have to be made in a written letter.

The Conservation Commission agreed to lift the Stop Work Order provided that Mr. Viprino still agrees in writing that no new work will occur within the wetland or 100' buffer zone until proper permits are achieved.

Motion made by Brad Chase to continue 35 Chatham Road to December 7, 2016. Seconded by Ernie Crabtree. Vote: 6-0-0.

ORDER OF CONDITIONS

10:05 Rupert Nichols Family Limited Partnership, 335 Lower County Road, (SE 32-2278

Motion made by Brad Chase to approve the Order of Conditions for 335 County Road. Seconded by Ernie Crabtree. Vote: 6-0-0.

10:07 Gwynne Daks, 18 Harbor Way, (SE 32-2278)

Motion made by Carolyn O'Leary to approve the Order of Conditions for 18 Harbor Way. Seconded by Rob Mador. Vote: 5-0-1.

CERTIFICATE OF COMPLIANCE

10:10 Linda A. Shannon, 18 Saquatucket Point, Map 15 Parcel Z2 (SE 32-2163)

Motion made by Ernie Crabtree to approve Certificate of Compliance for 18 Saquatucket Point with provisions added. Seconded by Carolyn O'Leary. Vote 6-0-0.

MINUTES

Minutes of November 2, 2016

Motion made by Carolyn to approve the Minutes of November 2, 2016. Seconded by Rob Mador. Vote: 5-0-1.

Minutes of Confidential Executive Session October 19, 2016

Motion made by Brad Chase to approve the Confidential Executive Session Minutes of October 19, 2016. Seconded by Rob Mador. Vote: 5-0-1.

DISCUSSION

Trails Committee member, Wayne Stone discussed the management of the cranberry bogs at Bells Neck. He wants it to continue to be a working cranberry bog. Craig Williams abandoned his lease, and Mr. Stone does not understand how Mr. Williams could be allowed to abandon the bog which diminishes the bog. He discussed the flooding issues; maintenance of the bog; hill weeds and habitat for wildlife. He said there are issues regarding trash, etc. at Bells Neck.

Discussion regarding obtaining a consultant's opinion regarding uses. Brad Chase asked that this be discussed at a later time. Amy Usowski said she is waiting for a scope of work (could be mixed use). Issues of hunting, herring, and trash need to be addressed.

ADJORN

Motion made by Carolyn O'Leary to adjourn at 10:15 PM. Seconded by Rob Mador. All in favor.

Minutes transcribed by Board Secretary, Marie Hickey

SIGN IN SHEET
Small Hearing Room /Donn B. Griffin Room
November 16, 2016

Michael Picard (Sudbury Design Group)
Bill Kavalesk, 138 Forest St, Harwich
Ben Wollman (Wilkinson Ecological Design)
James Quibek, OPCI
Joyce Bearse, 19 Sequattom Rd.
Bud Bearse , 19 Sequattom Rd.
Kyle Campbell, 40 Squirrel Run, Yarmouth - Troop 76
Holly Tarleton, 130 Forest St.
Jack Keras, Troop 76, 121 Merchant Ave., Yarmouth Port
Chris Detrich
Richard Conway, Troop 76 Harwich, 9 Old Chatham Road West
Robin Wilcox
Andrew Davoch
Tristen Sever, Troop 76 Yarmouth
Audrey Greenway, 69 Lovers Lane, Harwich
Peter Casey, 54 Chatham Road, Harwich
Midge Day, 71 Beriah Brooks, Harwich
Catherine Ricks, Coastal Engineering Co.
Arlene Wilson, A.M. Wilson Assoc. for OCPI
William Liometta OCPI (Oyster Creek)
Wayne Kucha - Stone, 46 Depot Rd., West Harwich
Jim Kivieviper, 35 Chatham Road
Barry Viprino, 35 Chatham Road
Edward Hines

W.A. Dugg
1-4-17