



TOWN OF

HARWICH

732 Main Street
Harwich, MA 02645

CONSERVATION COMMISSION

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

HARWICH CONSERVATION COMMISSION

WEDNESDAY FEBRUARY 15, 2017

DONN B. GRIFFIN ROOM
HARWICH TOWN HALL

6:30 PM

MINUTES

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

CALL TO ORDER

6:30 PM by Chairman Walter Diggs

HEARINGS

6:30 **Harbourwatch Condominium Association, 371 Route 28, Map 13, Parcel A8** - Selective trimming and pruning 20-25' off the top of the bank for vista improvement. Also selective trimming to maintain the view corridor. No removal of roots and no lower than 3-4'.

Amy Usowski said she recommends maintaining the view that they currently have (shown in yellow on the plan) and only remove dead/dying trees and limbs (shown in red on the plan) along with removal of invasives. Applicant may apply for planting plan in the future if necessary.

Motion made by Carolyn O'Leary to approve the trimming and pruning per Amy Usowski's recommendation for the Harbourwatch Condominium Association, 371 Route 28. Seconded by John Rossetti. Vote: 6-0-0.

6:36 **Conrad J. Bletzer Jr., 19 Ships Haven Road, Map 12, Parcel Y3-9** - New bluestone patio off of the back porch. (Continued from 2-1-2015) (SE 32-2286).

Motion made by Ernie Crabtree to continue 19 Ships Haven Road to March 1, 2017. Seconded by Rob Mador. Vote: 5-0-1.

REQUEST FOR DETERMINATION OF APPLICABILITY

6:37 **Brendan O'Brien c/o Gavin Meeks O'Brien, 0 Doane Road, Map 21, Parcel W5-3** - No work proposed. Boundary delineation determination only. (Continued from 2-1-17)

Presenter: John G. Schnaible, Coastal Engineering representing Galvin Meeks O'Brien

Mr. Schnaible explained that no work is to be done, and that they are only requesting boundary delineation.

Amy Usowski said that she recommends approval of the Request for Determination of Applicability for 0 Doane Road with Positive Determination 2a: "the boundary delineations of the following resource area(s) described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid."

Brad Chase asked if there was any flow out of the pipe. Answer: No. He also asked if there was any scouring. Answer: Very little. The pipe was for flooding the bog previously.

Carolyn O'Leary addressed issue of damage to the pipe during construction.

Motion made by Ernie Crabtree to approve the request for 0 Doane Road with a Positive 2A Condition of Boundary Determination Only. Seconded by Carolyn O'Leary. Vote: 6-0-0.

6:45 Linda Adams and Jon Greenblatt, 21 Eastgate Road, Map 78, Parcel C2 - Re-built with new footings and strengthened framing existing screen in porch. Remove existing porch stairs. Add new open porch section measuring 10x20' (open porch will be to the East of existing porch). Remove exiting RR ties below porch and replace with construction grad cedar. Cut down a few trees to enhance view of the pond.

No representatives present.

Motion made by Ernie Crabtree to continue 21 Eastgate Road to March 1, 2017. Seconded by Rob Mador. Vote: 6-0-0.

6:46 Wequasset Realty Trust, 0 Wequasset Road, Map 5, Parcel K1-92 - Replace existing 2" diameter galvanized pipes at float ends with 8" diameter timber piles. Add 2-8" diameter tie off piles and float stops. The use of piles will limit turbidity from frequent maintenance associated with jetting the pipes into place; provide more stability for the existing boats utilizing the pier and allow for float stops to prevent the floats from grounding at low tides.

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

Ms. Wilson stated that new piles were no longer part of the request. They are only asking to replace landward and seaward piles for floats currently existing for shared docks for recreational fishermen.

Amy Usowski said that the docks have been there for a very long time, "Top of slope" rather than "Top of bank" distinction. Ms. Wilson to provide corrected plan RDA is adequate; NOI if new piles to be constructed at a later time.

Brad Chase said he is concerned with no documentation in Conservation files. Discussion of how Chapter 91 has been avoided all these years. Discussion of depth at low tide; supports of floats at low tide and moon tides trapping floats.

Motion made by Ernie Crabtree to approve the Wequasset Realty Trust, 0 Wequasset Road project with a Negative Determination #3 and #6 removing tie off pilings in the plan shown and changing "Top of slope" from "Top of Bank". Seconded by John Rossetti. Vote 6-0-0.

7:10 Barry Dino Viprino, 35 Chatham Road, Map 42, Parcel C1 - To determine if the area where the proposed aquaponics farm is should be considered agriculturally exempt.

Presenters: Atty. Ben Zhender and Barry Viprino

Mr. Zhender said that they were only there to determine if the low property is agriculturally exempt or not. He presented Ms. Usowski and the HCC three statements: one for the purchase of the property; one regarding statement from the Real Estate agent, and one from Barry Viprino stating that the area in question was previously used for the boarding of horses. He also distributed to the HCC a printout regarding Chapter Law regarding "Keeping of Horses". He tried to make his case based on the above documents that it is agriculturally exempt.

Amy Usowski said that she respectfully disagrees. She said that Town Counsel and DEP do not think land in the proposed "Hoop Structure Area" is not in agricultural use. The applicant can file for agricultural use.

Ernie Crabtree addressed issues of: impact on ponds, and that of a commercial enterprise.

Amy Usowski said that there is a question of whether or not boarding and stabling horses is an agricultural use of land.

Walter Diggs asked how many horses were kept by the previous owner. Answer 4 or 5. Mr. Viprino stated that the property had been used for farming for many years. Atty. Zhender said that no permit is required for farming. Ms. Usowski countered that it is an issue of Wetland use. Carolyn O'Leary stated that the HCC must rule under Wetland Protection Regulations. She asked for the applicant to provide documentation that the property had been used for agriculture. She would like something more definitive than opinions from Attorneys, Town Counsel etc. Discussion of Real Estate exemption for agricultural use.

Brad Chase said he has to rely on the advice of the Conservation Agent, Town Counsel and the recommendation of the DEP and then determine whether or not to ask the applicant to come back to file a NOI for a "Hoop House". Rob Mador concurred with Brad Chase.

Walter Diggs asked how the property had been zoned and taxed. Answer: It had been zoned differently. Amy Usowski said that the Wetland Protection is a different and separate issue.

James Knieriem, former president of the Cape Cod and Islands Farm Bureau said the commission only had the power to "reasonably regulate".

Pamela Rodrigues, an abutter, said that permits should have been applied for prior to doing what Mr. Viprino wanted.

Motion made by Brad Chase that the HCC does not view past boarding of horses as examples of agricultural use under Town of Harwich Wetland Protection Bylaw Chapter 310 Section 3 and the Harwich Wetlands Protection Regulations Sections Positive: 1, 2b, 3, 4, and 5. Seconded by Carolyn O'Leary. Vote: 6-0-0.

7:39 Jeff Eldridge, 9 Cranberry Trail, Map 78, Parcel J3 – Pursuant to 310 CMR 10.04 land in agricultural use; the applicant has created a 10-13' wide dirt road around the wetland to access nursery activity. Nursery consists of but not limited to trees and shrubs. Nursery cannot be accessed directly from the Brewster part of the farm and as such, the access from Harwich is necessary. The eastern portion of the road is used to maintain and access crops. The wetland at issue is an old cranberry and blueberry bog which is currently a maple swamp.

Presenters: Atty. Daniel W. Chamberlain, Rubin Rudman, Chamberlain and Marsh and Mr. Jeff Eldridge

Mr. Chamberlain discussed agricultural exemption; road around the bog; permits for the shed; access to area from Brewster, and a Negative Determination.

Amy Usowski said she looked at 2001 and 2010 farm plans and did not find that they showed a roadway, most activity is in Brewster. Mr. Eldridge does have an agricultural exemption in Brewster. Ms. Usowski said it is up to the HCC to determine if the Harwich portion of the property is a use of agricultural land. She also stated that Mr. Eldridge may apply for a NOI to use the land agriculturally. She accepts responsibility for the permitting of the shed. She said that she cannot determine that this property is in agricultural use.

Mr. Chamberlain stated that the property has been used for cranberry and blueberry agricultural use. Ms. Usowski said if land remains fallow for 15 years, it comes under conservation jurisdiction. Activity was done in Harwich prior to permitting process.

Mr. Eldridge explained his farm plan for both the towns of Brewster and Harwich.

Discussion of ownership of property; updated farm plan needed.

Ernie Crabtree said that he wants more evidence that the Harwich land was in agricultural use previously.

Walter Diggs asked what kind of maple trees are on the property. Answer: Sugar maple.

Ms. Usowski said that the HCC should take some time and "needs to tie up some loose ends" before she feels comfortable making a recommendation.

James Knieriem, former president of the Cape Cod and Island Farm Bureau said that "there is nothing pretty about farming" and he stated again that HCC needs to "reasonably regulate." Mr. Knieriem stated, "That Duval Patrick signed into law, the Right to Farm Rules, which state all that is necessary are two acres of land used for agricultural purposes which produce revenue of \$1,000 per acre per year. It can be plants, vegetables, blueberries, dairy, animals, etc."

Brian Mullen from the audience said that the property was not a farm previously, and that the road was bulldozed.

Karen Baker from the audience referring to the road, said that there was no farming previously on that land and that she feels he has damaged the area. She complained of smoke from burning trash.

Marina Boch from the audience spoke regarding placement of the road.

Motion made by Brad Chase to continue 9 Cranberry Trail to March 15, 2017. Seconded by John Rossetti. Vote: 6-0-0.

ORDERS OF CONDITION

8:52 Massachusetts Department of Transportation, 0 Mid Cape Highway, Map 70, Parcel C10 – Mass. DOT proposes storm water retrofits, upgrades and installation of new BMP's to improve infiltration, reduce runoff volumes and erosion and improve water quality of runoff being discharged into Pleasant Bay, Rock Harbor and Cedar Pond (Cape Cod Bay Watershed). (SE 32-2287)

Motion made by Ernie Crabtree to approve the Orders of Condition for Mass. DOT, 0 Mid Cape Highway. Seconded by Carolyn O'Leary. Vote: 6-0-0.

8:54 Eric and Reva Fishman, 39 Strandway, Map 1, Parcel J1-31A – Renovations to existing pool and adjacent landscape. (SE 32-2288)

Motion made by Ernie Crabtree to approve the Orders of Condition for 39 Strandway. Seconded by Carolyn O'Leary. Vote: 6-0-0.

8:56 Amended Order of Conditions for Unit 11, 23 Snow Inn Road (Added to agenda).

Motion made by Ernie Crabtree to approve the Amended Order of Conditions for Unit 11, 23 Snow Inn Road. Seconded by Carolyn O'Leary. Vote: 6-0-0.

CERTIFICATES OF COMPLIANCE

9:00 Stanley Selkow, 480 Pleasant Lake Avenue, Map 100 Parcel W2 (SE 32-2284)

Stanley Selkow, 480 Pleasant Lake Avenue – Indefinitely Continued.

9:02 Great Sand Lakes Association, 7 Association Owned Beaches, Map 72, Parcels BA-A, BA-B1, BA-B2, Map 63, Parcels BA-C & Map 73, Parcels BA-H, BA-K & BA-D (SE 32-1889)

Five year extension permit granted with annual report of maintenance with photos supplied to Conservation Administrator by May 1st each year. No vote required.

8:35 Stevens Wequasset Trust/Rita C. Stevens, Trustee, 19 Wequasset Road, Map 5, Parcel K1-1 (SE 32-2214) (Regarding fiber rolls, etc.)

Motion made by Ernie Crabtree to approve the Certificate of Compliance for 19 Wequasset Road (SE 32-2214) with annual monitoring including photographs. Seconded by Rob Mador. Vote: 6-0-0.

8:35 Stevens Wequasset Trust/Rita C. Stevens, Trustee, 19 Wequasset Road, Map 5, Parcels K1-41 & K1-40 (SE 32-2067) (Regarding removal of rock retaining wall)

Motion made by Brad Chase to approve the Certificate of Compliance for 19 Wequasset Road (SE 32-2067). Seconded by Carolyn O'Leary. Vote: 6-0-0.

MINUTES

December 21, 2016

Motion made by Ernie Crabtree to approve the Minutes of December 21, 2016 with one correction on pg. 4, line 1 correct spelling of now to "know". Seconded by Brad Chase. Vote: 6-0-0.

Minutes of February 1, 2017 - Work in progress.

ADJOURN

Motion made Brad Chase to adjourn at 9:10 PM. Seconded by Ernie Crabtree. Vote: 6-0-0

Minutes respectfully taken and transcribed by Marie Hickey, Board Secretary

SIGN IN SHEET
Donn B. Griffin Room
February 15, 2017

Caroline T. Elliott
Sally Davis
Larry and Virginia Koss
John Schnaible, Coastal Engineering
John Pezzull, Harbourwatch Condos
Karen K. Baker, 7 Squantum Path
Margaret Boberg, 9 Squantum Path
Richard Boberg, 9 Squantum Path
Alan Pollock, Cape Cod Chronicle
Daniel Chamberlain, 9 Cranberry Trail
Ben Zhender
Adam Lucente, Cape Cod Times
Roberta Day, Lovers Lane
Jeff Eldridge, 9 Cranberry Trail
Audrey Greenway, 69 Lovers Lane
Anthony Rodrigues, 75 Lovers Lane
Pam Rodrigues, 75 Lovers Lane
Nanell Brown
Arlene M. Wilson, A.M. Wilson Assoc., Inc.
Annalise Mecham, 64 Lovers Lane
Beverly Bangs, 43 Chatham Road
Barbara J. Bauer 187 Chatham Road
Marina Broch

W W Digger
4-5-17