



TOWN OF

HARWICH

732 Main Street

Harwich, MA 02645

HARWICH CONSERVATION COMMISSION - MINUTES

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WEDNESDAY, MARCH 1ST, 2023

TOWN HALL - GRIFFIN ROOM – HYBRID PARTICIPATION

Commissioners and Staff Present: Chairman John Ketchum, Bradford Chase, Wayne Coulson, Jim Atkinson, Stanley Pastuzsak, Mark Coleman, Alternate Sophia Pilling, and Conservation Administrator Amy Usowski.

Commissioners Absent: Alan Hall

Audience and Representatives Present: Natural Resources Director Heinz Proft, Attorney Michelle Hunton, Don Monroe, Bob Perry, Jason Boyle, Jennifer Crawford, Robert Howard, Mark Burgess, Sean Riley, Lynn Hamlyn, Tabitha Davenport, Michael Picard, Peter Donovan, John O'Reilly, Pamela Neubert, and Attorney Andrew Singer

Call to Order

Chairman John Ketchum called the meeting to order at 6:30PM and the Pledge of Allegiance was recited.

The following applicants have filed a Notice of Intent:

Donald Annino, 14 Mill Point Rd, Map 1 Parcel J1-94. Proposed Pier, Ramp, Float, and Dredging.

Town of Harwich Natural Resources Director Heinz Proft, Attorney Michelle Hunton, and Don Monroe of Coastal Engineering were present remotely as representatives. Mr. Monroe discussed relevant parts of the application including the proposed use of biodegradable shellfish bags and planting. Ms. Usowski went over relevant details of the application including that the proposed project lies within mapped shellfish habitat and that the Massachusetts Division of Marine Fisheries had commented about the potential negative effects of the project on quahog habitat in their letter. Ms. Usowski reviewed the proposed mitigation and recommended approval with conditions Mr. Proft discussed relevant parts of the application noting that ideal shellfish mitigation for this project should include material that will biodegrade rapidly.

Mr. Atkinson noted that the application appears to demonstrate a satisfactory attempt to comply with best practice and supported approval. Mr. Chase noted that dredging for this project does not comply with regulations since the proposed structure is in a shellfish habitat and commented that the need for dredging is concerning. Mr. Pastuzsak asked how quickly the dredged area would fill in again. Mr. Monroe answered that a 5-to-10-year window would be a reasonable timeline.

Mr. Ketchum asked what the heavy metal analysis of the area demonstrated. Mr. Proft answered that according to the 401 Water Quality Certification Regulations, after finding greater than 10% fines in the sieve analysis, they were required to do a chemical analysis which determined that the material could not be reused after being dredged and must be dumped. Mr. Chase noted that there was no new information on

whether the mud in the proposed dredging area was anoxic and said that he would like to know if it is. Attorney Hunton confirmed that the sampling showed that the mud is anoxic. Ms. Neubert reviewed the steps that have been taken to complete the application and the sampling that has been completed in the project area. Mr. Monroe displayed data from sampling in the area and described how dredging and the proposed mitigation would improve the habitat in the project area.

No further discussion from the Commission.

Mr. Atkinson moved to approve the application. Seconded by Mr. Coulson.

Vote: 3:2:1 Motion carried; application for Notice of Intent approved.

Thomas and Gina Flannery, 58 Chase St, Map 4 Parcel E2-B. Replace Bulkhead.

Bob Perry of Cape Cod Engineering was present virtually as a representative. Mr. Perry described relevant portions of the application, noting that a significant amount of erosion has been observed and that total removal and replacement of the old structure was more logical than reinforcement.

Ms. Usowski asked for a more detailed construction protocol. Mr. Perry described that the size, condition, and wooden material of the old structure made removal a necessity and offered to provide a written protocol for the Commission to review.

Ms. Usowski informed the Commission that the Division of Marine Fisheries has reviewed the proposal and sent a letter, noting that they have commented that the project proposal is within mapped shellfish habitat which should be avoided by construction activities to the greatest extent possible and barge work should be coordinated to avoid grounding or operation in shallow water. Mr. Perry commented that work will occur from the upland part of the site as well as from the water.

The Commissioners discussed the possibility of seeing a construction protocol before voting. Mr. Chase commented that the erosion of the area to the south is concerning and asked the representative if reductions of the structure have been examined. Mr. Perry responded that the new structure would be slightly more set back since the old structure would be removed but that a significant reduction would not be likely. Mr. Chase asked if Waterways had given an opinion on the navigability of the area. Mr. Perry said that the project has not been filed, and Ms. Usowski noted that she did not refer it to Waterways because the proposal was in the exact same footprint but suggested that Mr. Perry send over materials to Waterways for review.

No further discussion from the Commission.

Mr. Atkinson moved to continue the hearing to the meeting of April 5th, 2023, to allow for the creation of a construction protocol. Seconded by Mr. Coulson.

Vote: 6:0 Motion carried; hearing continued to April 5, 2023.

William Beekman, 194 John Joseph Rd, Map 72 Parcel G1-2. Construction of Retaining Walls, Reconstruction of Patio and Deck, and Site Improvements.

Jason Boyle of Coastal Engineering and Jennifer Crawford of Crawford Land Management were present as representatives. Mr. Boyle reviewed relevant portions of the application, noting that a portion of the

concrete patio was removed when the retaining wall failed, and reviewed the resource areas that are present at the project site and the proposed work. Ms. Crawford described the mitigation plan targeting developed areas and noted that the retaining wall will be replaced further landwards. She described the 1:1 replacement ratio for trees that must be removed and detailed each area on the site to the Commissioners using a large color map.

Ms. Usowski explained to the Commissioners that the property owners had previously received a permit to remove a portion of their concrete slab and deck, and this proposal would return it to its original state with necessary mitigation and reinforcements to help reduce erosion. She recommended approval.

Mr. Coulson asked what material would be used for the new retaining wall. Ms. Crawford responded that they were considering stone without a veneer. Mr. Atkinson asked if the deck would be extended and if an extension was a necessity. Ms. Crawford responded that technically yes, it would be extended, but only over a concrete pad, and that since the property is so small there is very little live-able outdoor space so deck extension would be ideal, though not necessary. Mr. Chase asked if mitigation was required. Ms. Usowski explained that some areas will receive restoration, not required mitigation. Mr. Coleman asked to see more specifics on the retaining wall and Ms. Crawford informed the Commission that a product specification would be created. Ms. Pilling shared concerns about the success of vegetation on the property due to the construction impacts and the presence of bamboo. Ms. Crawford described the three-year management plan for the vegetation to overcome these concerns. Mr. Ketchum asked why new plants are being added to an existing naturalized area, and Ms. Crawford clarified that the area would still be naturalized after the plantings are completed, and the new plantings would enhance the area.

Mr. Atkinson moved to approve the application. Seconded by Mr. Coulson.

Vote: 5:1 Motion carried; application for Notice of Intent approved.

Robert and Paula Bigelow Howard, 7 Nons Rd, Map 6 Parcel C1-9. Increase Float Size.

Robert Howard, owner, and Mark Burgess of Shorefront Consulting were present as representatives. Mr. Burgess described relevant portions of the application, noting that the existing float is shifting and needs to be altered. Mr. Burgess described how the permanent piles will be relocated to the landward side and the structure will be moved back by 1 foot. He reviewed a letter from the Division of Marine Fisheries which mentioned concerns about diadromous fish habitat and water depth at mean low water. Mr. Burgess informed the Commission that the landward edge of the float has 3.5 feet of water at mean low tide.

Ms. Usowski requested an updated plan with corrected typos and stated that she supported the removal of the pipe piles at the site because they have to be installed and removed annually and are a routine yearly disturbance to the habitat at the site. She informed the Commission that the float is only 152 square feet, well under the maximum size of 200 square feet, and recommended approval.

Mr. Ketchum asked for confirmation that the float had at least 3 feet of water around it at mean low tide and Mr. Burgess confirmed that this was measured.

Mr. Howard, owner of 7 Nons Road, commented that he has observed dangerous situations with the pipe piles.

No further discussion from the Commission.

Mr. Atkinson moved to approve the application. Seconded by Mr. Coulson.
Vote: 6:0 Motion carried; application for Notice of Intent approved.

10 Harbor Rd LLC, 10 Harbor Rd, Map 8 Parcel S1-0. Removal and Reconstruction of Single-Family Dwelling and Site Improvements.

Sean Riley of Coastal Engineering and Jennifer Crawford of Crawford Land Management were present as representatives and discussed relevant portions of the application, describing the existing structure and flooding issues, as well as the property's non-compliance with FEMA regulations and the extreme lack of natural buffer zone between human usage areas and resource areas. Mr. Riley reviewed the changes that attempt to comply with the Harwich Bylaws, including a pervious driveway, mitigation, an elevated garage, and more. Ms. Crawford described the proposed mitigation for the property, 1800 feet of coastal bank restoration and 2400 square feet of hardscape removal, noting that some of the proposed planting is in naturalized areas because they are currently dominated by invasive species, and offered to plant eight trees to replace four that must be removed.

Ms. Usowski asked about the elevation of the driveway, and Mr. Riley described several solutions to reach a higher elevation. Ms. Usowski reviewed the size specifications of the proposed property and the mitigation plan and recommended approval. The Commissioners discussed the ability of the property to sustain these changes.

No further discussion from the Commission.

Mr. Atkinson moved to approve the application. Seconded by Mr. Coulson.
Vote: 6:0 Motion carried; application for Notice of Intent approved.

Natalia Wallace, 16 Olde Coach Ln, Map 112 Parcel A6-28. Restoration Plan and after-the-fact application to permit Deck Expansion.

Lynn Hamlyn of Hamlyn Consulting was present as a representative and discussed the application, noting that the unapproved timber and mulch was in the process of being removed. Ms. Hamlyn described the proposed mitigation and the goal to decrease human activity at the water's edge.

Ms. Usowski reviewed the application, noting that the entire unapproved deck extension and landscaping were within the 0-50' buffer zone, but that since being informed of the violation the owner has responded swiftly and diligently. She reviewed the proposed mitigation and the challenge of evaluating an application that has come before the Commission because of a violation.

The Commissioners shared concerns about approving an unpermitted structure, noting that other similar projects have not been approved. Mr. Ketchum asked if the pruning in the area was permitted. Ms. Usowski informed the Commissioners that the pruning was not permitted and that the homeowners were fined for it, and that any further vista pruning would require a permit.

Ms. Hamlyn asked the Commission if the project would be more amenable if a shed on the property in the 50-foot buffer zone was removed. Mr. Chase commented that he believed the violation was inexcusable.

Mr. Atkinson moved to deny the application. Seconded by Mr. Coulson.

Ms. Usowski recommended approval under the Wetlands Protection Act, denial under the Harwich Bylaws, and described the results of such a vote. The Commission discussed the concept of amending the motion to reflect Ms. Usowski's recommendation.

Mr. Ketchum asked Mr. Atkinson if he would like to withdraw his motion, and Mr. Atkinson withdrew his motion and replaced it with a motion to continue the hearing to a later meeting.

Ms. Hamlyn did not agree to a continuance and asked the Commission specifically why the case would be continued. The Commissioners further discussed the concept of denying a proposal under the Bylaws but approving it under the Wetlands Protection Act. Ms. Hamlyn maintained her refusal for a continuance. The Commissioners deliberated their options for approval or denial.

Mr. Ketchum moved to approve the application under the Wetlands Protection Act and deny the application under the Harwich Bylaws due to the bylaw standard that no new structures shall be built in the 50-foot no disturb zone.

No further discussion from the Commission.

Vote: 5:1 Motion carried; application for Notice of Intent approved under the Massachusetts Wetlands Protection Act but Denied under the Harwich Wetlands Protection Bylaw.

Enforcement Orders

117 & 123 Riverside Dr – Review of proposed restoration plan.

Tabitha Davenport of Davenport Farms was present virtually as a representative. Ms. Usowski stated that the application does not contain a restoration plan that meets the needs of the area and that the representatives were given an opportunity to discuss proper plantings, but no initiative was taken by the owner or representation to take advantage of the offer.

Mr. Ketchum asked the representation and the owner to promptly contact Ms. Usowski to review the expectations for materials to be received by the next meeting. Ms. Usowski recommended continuation to the March 15th meeting.

Mr. Ketchum moved to continue the application to the meeting on March 15th, 2023. Seconded by Mr. Atkinson.

No further discussion.

Vote: 6:0 Motion carried; application continued to March 15th, 2023, meeting.

15 & 19 Shore Rd – Review of proposed restoration plan.

Michael Picard of Sudbury Design Group was present virtually as a representative. Ms. Usowski described the violation, noting that a majority of the vegetation at the top of the bank and within the 50-foot buffer zone had been removed. She commented that the restoration proposal included the removal of an established patch of invasive knotweed.

Mr. Picard described relevant portions of the restoration plan, noting that the knotweed would be fully removed, and that new soil would be brought in for the restoration plantings. He commented that the plants have been chosen for the coastal bank environment and that beach grass was a part of the plan.

Ms. Usowski recommended substituting the holly trees with Eastern red cedar trees and the inkberry with Carolina beach roses or bayberry, since the site is exposed, and the substitutions are better suited to the environment.

Ms. Pilling asked if there was a fine for this violation, and Ms. Usowski said that there was no fine. Mr. Ketchum asked if complete removal would be completely effective, or if treatment would be necessary. Mr. Picard responded that the goal was complete eradication of the knotweed, and that treatment would be administered if the knotweed resprouted after removal. Mr. Picard asked Ms. Usowski to repeat her recommendations for plant substitutions.

No further discussion from the Commission.

Mr. Atkinson moved to approve the restoration plan with the changes outlined by Ms. Usowski. Seconded by Mr. Coleman.

Vote: 6:0 Motion carried; plan approved.

Discussion and Possible Vote

As-Built Road Plan for Chloe's Path

Owner Peter Donovan, John O'Reilly, and Attorney Singer were present as representatives. Mr. O'Reilly described relevant portions of the restoration plan, noting that two sketches have been provided based on Ms. Usowski's recommendations.

Ms. Usowski recommended that the Commission request review of the as-built by a third-party engineer. She asked how the plantings would be kept alive. Mr. O'Reilly stated that a water meter would be installed. Ms. Usowski recommended that the restoration plantings occur in the Spring with the use of loam or compost. Ms. Pilling encouraged the applicants to put genuine care into this project because of the community investment in it. Mr. Ketchum agreed with Ms. Usowski that third party review is ideal. Ms. Usowski also recommended ensuring that abutters are aware of the next steps in the project.

No further discussion from the Commission.

Mr. Atkinson moved to approve the planting plan and the as-built plan for Chloe's Path.

Vote: 6:0 Motion carried, planting plan approved.

Order of Conditions:

John Leong and Charis Cladouhos, 25 Trout Brook & 27 Sound View Rd, Map 26 Parcels C1-6 & L1-9. SE32-2523. Construct Reinforcing Retaining Wall.

Pleasant Bay Community Boating, 2285 & 2287 Rte 28 – Head of the Bay Rd, Map 119 Parcels N7-3 & N8-0. SE32-2518. Changes to parking areas, retaining walls, walkways, stairs, and deck.

Round Cove Resort Owner LLC, 2173 Rt 28 – Head of the Bay Rd & 4 Cove Landing Rd, Map 115 Parcels S1-3 & R2. SE32-2521. Raze and Replace Buildings A, B, and K, Planting, and Hardscape Improvements.

HFH Development, (4, 8, 11, 12, 16, 17, 20) Chloe’s Path & 0 Forest St, Map 31 Parcels D4-3, D4-4, D4-5, D4-6, D4-7, D4-8, D-4-9, & D3. SE32-2519. Re-establishment of the turtle protection plan set forth in NHESP 09-20086.

Wychmere Harbor Real Estate LLC, 23 Snow Inn Rd, Map 8 Parcel P2. NHESP File #11-29126. Amendment to SE32-2387. Reconfiguration of beach grass mitigation area, and incorporation of HCP filed with NHESP.

The Commissioners discussed voting for the Orders of Conditions together in one motion.

No further discussion from the Commission.

Mr. Atkinson moved to approve all the above applications for Orders of Conditions. Seconded by Mr. Chase.

Vote: 6:0 Motion carried; applications approved.

Discussion and Possible Vote:

Update on ongoing land management tasks:

Herring River Study

No updates.

Minutes

September 21, 2022

October 5, 2022

February 24, 2023

No discussion from the Commission.

Mr. Ketchum moved to approve the minutes from September 1st, October 5th, and February 24th, 2023. Seconded by Mr. Atkinson.

Vote: 6:0 Motion carried; minutes approved.

Mr. Hall informed the Commission that he has received a quote for blueberry plants at \$12.25 per plant for the bogs in the Bells Neck Conservation Area off Depot Street. Mr. Coulson asked if any suppliers had bare root plants available. Mr. Hall confirmed that some suppliers did, but that the price per plant was between \$16-\$18. Ms. Usowski offered to investigate other vendors.

Mr. Atkinson moved to adjourn the public meeting at 9:45pm. Seconded by Mr. Coulson.

Vote:6-0 Motion carried; meeting adjourned.

Minutes respectfully submitted by Kalea Trudeau, Executive Assistant.