

Final
Wellfleet Conservation Commission
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom
Meeting Minutes
March 6, 2024

In attendance: Chair Leon Shreves, Clerk Michael Fisher, Barbara Brennessel, John Cumbler, Robert Stewart, John Portnoy, Acting Agent Beth Pyles, and Committee Secretary Jennifer Elsensohn.

Also Present: In person: Gordon Peabody of Safe Harbor Environmental, Tim Dickey of Design/Build, and via Zoom: Mark Burgess of Shorefront Consulting, homeowners Sylvia and Frank White, and homeowner Theresa Hamacher.

Public Hearings:

At 4:00 pm, Chair Leon Shreves opened the Public Hearings. A quorum was present.

Miller and Furst, 246 King Phillip Road, Map 34, Parcel 12: Request for a Partial Certificate of Compliance for deck that was installed and a home that was never built.

Barbara Brennessel made a site visit. Gordon Peabody of Safe Harbor represented the project. Peabody was not involved in the original Notice of Intent (NOI) that was approved on April 19, 2023, for the building of a dwelling and deck, and vista pruning. The deck was installed, the dwelling was never built, and a new Request for Determination of Applicability was filed on October 18, 2023, for the vista pruning. Commissioners made a visit to the site on October 18, 2023 and noticed that the property needed some dry wells. Peabody has installed the drywells. The shower beneath the deck has been improved with a nitrogen-mitigating woodchip layering system. Peabody ensured that the debris that was under the deck has all been removed. Brennessel confirmed that the material was all removed from beneath the deck.

Portnoy asked Peabody about the status of sand beach renourishment. Peabody explained that the Indian Neck area is challenging to calculate the proper amount for renourishment. As a Condition for the NOI approved February 3, 2021, Steve McKenna, Cape and Islands Regional Coordinator at Mass Coastal Zone Management, had calculated a regimen of 400 cubic yards per year. But a NOI approved February 17, 2021, agreed on a waiver to allow only 157 cubic yards of renourishment for this year and have Gordon Peabody monitor the area for six months. Peabody reported that, after observing the movement of the sand as it erodes, his study showed that when the sand disperses, it travels in myriad directions, but a good deal of it is moving to the south. EZ Doze-it will perform the renourishment in 2024. Cumbler noted that the Conservation Commission can approve renourishment in perpetuity, so there is no need to file for an extension.

Brennessel commented that site-specific renourishment has not taken place since COVID (i.e., 2020), and that a file exists in the Conservation Commission Office that lists all properties whose owners have been required to apply regular renourishment. The Conservation Agent should send letters to remind delinquent homeowners to fulfill their obligation. The Commissioners

expressed concern that regulatory wording should be developed to specify the volume (cubic yards) required for nourishment at that site but also to allow for adjustments in the volume of renourishment as beach conditions change. All properties should be evaluated periodically to see if adjustments need to be made. Peabody stated that, as a general rule, a third of a cubic yard per linear foot of frontage on the beach is lost per year. Peabody recommended that the amount of renourishment ought to be consistent with the renourishment amounts placed by neighboring properties. Peabody also expressed concern about too much sand harming the shellfishing grants in the area.

John Portnoy moved to approve this Certificate of Compliance with the Condition that this beach be renourished with 157 cubic yards of sand and that the erosion be monitored and evaluated for possible future changes to the renourishment calculations. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Chequessett Neck Properties LLC, 1400 Chequessett Neck Road, Map 18, Parcel 6: Request for a Certificate of Compliance for beach access stairway work that was never undertaken on the property.

Agent Beth Pyles, Commissioner Michael Fisher, and Secretary Jen Elsensohn made a site visit and confirmed that no staircase currently exists. Gordon Peabody was present to represent the applicant. This Request for a Certificate of Compliance is intended to close out an Order of Conditions from March 15, 2017, to install a set of beach access stairs. This NOI lapsed during COVID, and the project was never undertaken. The homeowner had been previously using a seasonal, removable beach access staircase, but this has not been used for many years. Peabody reported that the coastal bank on the property is subject to substantial erosion, but that the removable staircase would not cause further damage.

Barbara Brennessel moved to approve the Certificate of Compliance with the Condition that any future projects will require the filing of a Notice of Intent. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Glassmeyer, 475 Chequessett Neck Road, Map 19, Parcel 125: Notice of Intent to replace existing walkway over a salt marsh.

Tim Dickey of Design/Build represented the applicant and remarked that the engineering will be done by J. M. O'Reilly and Associates. On January 3, 2024, the Conservation Commission issued a Certificate of Compliance for the completion of the current walkway over the marsh to the beach in preparation of the sale of the property. It was conditioned at that time that a new walkway would require a Notice of Intent.

The current project proposes to remove and replace the entire existing walkway in the same location, 18 inches above the marsh, using cedar posts and planks, and a hand-powered post hole digger to install the posts. The existing walkway posts are 6-inch-square but were not driven deep enough to remain stable. Dickey noted that the walkway at the adjacent property used 4-

inch-square posts, which held up in the recent storms. Dickey proposes to use 4-inch-square posts in this project and to drive them deeper. John Portnoy recommended driving the posts rather than using a post hole digger. It was agreed that cedar is the best material.

Michael Fisher shared his screen to show a wood and lattice structure, possibly a garden bed, near the landward beginning of the existing walkway. This structure was discussed during the Certificate of Compliance hearing on January 3, 2024. Dickey was not aware of the structure but will be sure to have it removed if it has not been removed already.

John Cumbler moved to approve the Notice of Intent with the following Conditions:

1. The posts will be driven in place by hand rather than using a post hole tool, and will be 4 inches square; and,
2. The lattice structure will be removed by the time the project is completed.

Barbara Brennessel seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0. John Cumbler is the Supervisor.

White, 1305 Route 6, Map 30, Parcel 159: Certificate of Compliance for removal of trees and mitigation plantings.

A site visit was made today by the Commissioners. Frank and Sylvia White were present via Zoom to answer questions. The trees had been removed and mitigation plantings were in place and healthy.

John Portnoy moved to approve the Certificate of Compliance. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

White, 1305 Route 6, Map 30, Parcel 159: Request for Determination of Applicability to replace existing well to proposed new location.

A site visit was made by the Commissioners. Frank and Sylvia White were present via Zoom to represent the project. The plan is for Jenkins Well Drilling to put a new submersible pump in the current well, located inside the basement. If this is unsuccessful, a new well will be drilled upland of the house. The approval they are seeking today is for this contingency plan.

John Portnoy moved to identify this Request for Determination of Applicability as Negative 3 (“The work described is in the Buffer Zone, as defined in the Regulations, but will not alter an Area subject to protection under the Act. Therefore, the said work does not require the filing of a Notice of Intent, subject to the following conditions, if any.”) with the Condition that either both outdoor rinsing stations have a woodchip-layer installed for nitrogen remediation, or one station receives the mitigation and the second station is decommissioned. The function and purpose of the nitrate remediation was explained to the Whites, and Jen Elsensohn will email them a copy of “Outdoor Rinse Station Guidelines” by Gordon Peabody. John Cumbler seconded. A roll call

vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Armstrong, 145 3rd Street, Map 40, Parcel 109: Request for Determination of Applicability (RDA) to replace existing patio blocks with “Trex” decking and reconstruct existing steps.

A site visit was made by the Commissioners. Mark Burgess of Shorefront Consulting was present via Zoom to represent the applicants. A larger plan for the property has been developed, but this RDA is for the portion of the whole project that is landward of the Area of Critical Environmental Concern (ACEC), the coastal bank 50-foot filter strip, and any Massachusetts Endangered Species Act (MESA) limits. But it is within the 100-foot buffer from the top of the Coastal Bank. The plan proposes:

- 1) Replace existing patio blocks with pressure treated wood;
- 2) Replace timber steps on the east side of the dwelling with Trex decking;
- 3) Replace the existing rinsing station;
- 4) Replace a wood patio on the north side of the building in the same footprint, but increasing its width by 1 foot; and,
- 5) and replace the steps from the patio to the driveway with Trex decking 4 feet wide, instead of the current 3 foot width.

Fisher asked for more detail about the proposed rinse station, and he requested that a woodchip-layer for nitrogen remediation be placed beneath it. Burgess agreed that this is a good time to do that work since the enclosure will be rebuilt and the decking will be replaced with Trex decking.

The Commissioners explained to Burgess that the official plan must show the total current disturbed area and the total proposed disturbed area. There is a maximum disturbed area within the Commission’s jurisdiction that is allowed on any property and it must be recorded with the deed in the Country Record Office. Burgess replied that he had seen that instruction listed with Notice of Intent (NOI) filings, but not RDAs. Cumbler noted that everything within the 100-foot buffer needs to be calculated on the plan, but that the shed and driveway are not on the property and should not be included in the calculations. Burgess agreed to write a letter to the Commission with the calculations and then will note both the RDA calculations and the NOI calculations on the plans when the NOI is submitted.

John Portnoy asked whether beach renourishment had been required. An Order of Conditions from 1998 did have a Condition requiring beach renourishment. Burgess will look at the revetment and determine whether the toe stones are covered by sand or if more sand should be added to cover the toe stones. The Commissioners requested that Burgess include that information in the calculations letter to prepare for the next hearing. Burgess will get the information to Elsensohn for distribution for the March 20, 2024, Public Hearing. Elsensohn will also email Gordon Peabody’s Rinse Station Guidelines to Burgess.

Michael Fisher moved continue this hearing until March 20, 2024. Barbara Brennessel seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Hamacher, 12 Pleasant Point Landing, Map 35, Parcel 106: After-the-Fact Request for Determination of Applicability for an existing outdoor rinsing station (continued from February 7 and February 21).

Theresa Hamacher was present via Zoom to answer questions about her property. The Commissioners asked whether a woodchip-layer nitrogen remediation system had been placed beneath the outdoor rinsing station. Hamacher replied that it had not. The Commissioners explained to Hamacher that this is a requirement. The nitrogen remediation system project must be completed within the next three months. Hamacher stated that the dwelling is only in use during the summer and is not a rental. Chair Shreves noted that this is not a challenging project. Hamacher replied that a wood floor will need to be taken up for access. It was decided that the rinse station must not be used until the remediation is installed, and that a photograph of the work must be sent to the Commission as proof. Elsensohn will email Hamacher the Peabody Rinse Station Guidelines.

Michael Fisher moved to identify this after the fact Request for Determination of Applicability as Negative 3 ("The work described is in the Buffer Zone, as defined in the Regulations, but will not alter an Area subject to protection under the Act. Therefore, the said work does not require the filing of a Notice of Intent, subject to the following conditions, if any.") with the Condition that the rinsing station be fitted with a woodchip-layer for nitrogen remediation before it is used. Photographic proof of the work must be provided to the Commission. Barbara Brennessel seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

At this time Sylvia White was recognized by the Chair. White had been disconnected from her Zoom link before she heard the outcome of her hearing. White asked whether an inspection by the Commission would be necessary. It is not. White was asked to notify the Commission when the work is completed and send a picture.

Adjournment:

At 5:26 p.m., Barbara Brennessel moved to close the Public Hearings. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Business Meeting

In attendance: Chair Leon Shreves, Clerk Michael Fisher, Barbara Brennessel, John Cumbler, Robert Stewart, John Portnoy, Acting Conservation Agent Beth Pyles, and Committee Secretary Jennifer Elsensohn.

5:27 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

Jurisdictional Opinions:

Kraft, 580 Old Chequessett Neck Road, Map 19, Parcel 601: Jurisdictional Opinion to remove three trees and relocate a cedar.

A site visit was made by Agent Beth Pyles, Commissioner Michael Fisher, and Secretary Jen Elsensohn. John Cumbler had been on the property previously and had spoken with the homeowner. Pyles reported that two pine trees and one oak were proposed for removal, and that one cedar tree was proposed for relocation. The Herring River Restoration project will eventually cause flooding near the property, and it is projected that some of the trees will be affected. The homeowner seeks to ensure that affected trees do not fall on his structures. Fisher noted that the property is currently well vegetated. Mitigation was discussed, and it was decided that shrubs would be a better option than trees. It was noted that there are two outdoor rinsing stations on the property and it is unknown whether nitrogen mitigation has been installed.

John Cumbler moved to approve the Jurisdictional Opinion to remove two pines and one oak, to relocate a cedar, and to provide mitigation planting of three native shrubs for each tree removed. John Portnoy seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Mail/Discussion:

Off Road Vehicle Management Plan

Barbara Brennessel informed the Commission that she had signed up for a webinar that was suggested to her by Steve McKenna of Mass Coastal Zone Management. The webinar is geared toward grant writing for the development of an off-road vehicle management plan. The consensus was that it would not be of much benefit for Brennessel to attend. This is not a project for the Commission to undertake at this time, and the Commission may not be the proper body to do it. It was suggested that it might be more suitable for the Town Planner. There has already been much discussion within the Commission about vehicular access and the Town has already stated what is allowed in the Shellfishing Regulations and Town By-Laws. It would be a good idea to expand the current regulations to include “vessels” and to make more explicit that watercraft cannot be stored on vegetation.

King Phillip Road

Brennessel made a site visit to a property on King Philip Road and she noticed that Frazier construction had installed a driveway in the Commission’s jurisdiction. It appears to be gravel, but whether T-base, a base material for road construction, is below it is unknown and the homeowner did not obtain a permit. The house is next to 79 King Phillip Road, so Brennessel believes that the address is 81 King Phillip Road. The property in question is just a few houses down from a driveway that the Commission required to be corrected. Agent Pyles will investigate.

Beach Nourishment

John Portnoy stated that clarification needs to be made regarding beach renourishment. There appears to be a discrepancy between the purpose of the renourishment and the calculations engineers are making about the appropriate amounts of sand. Portnoy said that he believed the

purpose to be the replacement of sand that would have eroded from the bank or dune given the ambient erosion rate, but engineers seem to believe that it is to maintain revetments and to protect shellfish grants. The system of calculation needs to be reevaluated. Brennessel noted shellfish grants are not used in the calculations and that some of the properties are only monitored, but not nourished. Brennessel also stated that the issue of renourishment should be part of a coastal resiliency plan. Cumbler stated the need to give parameters regarding the renourishment and that language must be developed to account for environmental changes. There are many variables to consider. Portnoy noted that stone walls/revetments create an intractable problem for the migration of the marsh as sea level rises. He inquired about the age of the revetments on Lieutenant Island. The Commission can permit revetments for dwellings built before 1978 since they predate the Wetland Protection Act.

Minutes:

John Cumbler moved to approve the February 21, 2024, Meeting Minutes as amended. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Adjournment:

At 5:48 p.m. Barbara Brennessel moved to close the Business Meeting. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0. The business meeting was adjourned.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

Miller—Request for a Partial Certificate of Compliance and supporting documents.

Chequessett Neck Properties LLC—Request for a Certificate of Compliance and supporting documents.

Glassmeyer—Notice of Intent and supporting documents.

White—Request for a Certificate of Compliance and supporting documents.

White—Request for Determination of Applicability and supporting documents.

Armstrong—Request for Determination of Applicability and supporting documents.

Hamacher—After the fact Request for Determination of Applicability and supporting documents (continued from February 7 and 21, 2024).

Kraft—Jurisdictional Opinion.

Minutes—February 21, 2024.

