

Final
Wellfleet Conservation Commission
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom
Meeting Minutes
March 20, 2024

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

Regrets: Chair Leon Shreves.

Also Present: In person: homeowners Owen and Robin Burns, homeowners Dan Silverman and Janice Gray, and via Zoom: Jeremy Young of J.F. Young Co.; Mark Burgess of Shorefront Consulting, homeowner Ellen Sheetz.

Michael Fisher moved to nominate Barbara Brennessel to act as Chair of the Conservation Commission March 20, 2024 public hearings and business meeting in the absence of Chair Leon Shreves. John Cumbler seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; John Cumbler, aye. The motion was approved 5-0.

Public Hearings:

At 4:01 pm, Acting Chair Barbara Brennessel opened the Public Hearings. A quorum was present.

Burns, 40 Chipman's Way, Map 22, Parcel 18: Request for a Certificate of Compliance for new front porch, screen porch, alteration to driveway, inground propane tank, generator, and shed.

A site visit was made by Project Supervisor, Michael Fisher, in the presence of Jeremy Young of J.F. Young Co. Fisher reported that he had reviewed the plans and saw on his visit that the project appeared to be in compliance with the plan. Fisher observed that the propane tank on the premises had been buried upon installation as was approved by the Commission.

John Cumbler moved to approve the Certificate of Compliance. John Portnoy seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye; Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0.

The paperwork will be picked up by Jeremy Young from the Conservation Office. Homeowners originally said they would pick it up, but it was decided later that Young would convey it to them.

Silvergray, LLC, 55 Eric's Way, Map 8, Parcel 70: Request for a Certificate of Compliance to remove four dead trees, install new patio, and mitigation planting.

A site visit was made by Project Supervisor, Barbara Brennessel. Brennessel reported that she was able to confirm that the work had been done according to plan. Brennessel noted, however, that the lawn is very green and expressed her hope that no fertilizer had been used. Dan Silverman, the owner, confirmed that no fertilizer had been used. Brennessel noted that the project is very much in compliance.

Barbara Brennessel moved to approve the Certificate of Compliance. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye; Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0.

The paperwork will be picked up by the homeowners from the Conservation Office.

Sandy Shoes, LLC, 135 High Meadow Road, Map 12, Parcel 131: Request for a Certificate of Compliance for view corridor project.

A site visit was made by Acting Agent Beth Pyles and Secretary Jen Elsensohn. Jeremy Young of J.F. Young Co., LLC was present via Zoom to represent the project. Agent Pyles reported that the trees and shrubs were planted according to the plan and appeared healthy. Young stated that the Supervisor of the project was a prior Commissioner who is no longer active on the Commission. Young reported that the plantings succeeded with a 90% survival rate, losing one cedar tree two years ago. Young had attempted to close out the Order of Conditions previously, but the Commission voted to delay until the plantings could have an opportunity to be established.

John Portnoy moved to approve this Certificate of Compliance. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye; Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0.

Jeremy Young will pick up the paperwork from the Conservation Office.

Sheetz, 125 Marven Way, Map 21, Parcel 26: Request for a Certificate of Compliance for tree removal, repair of walkway, expansion of deck, construction of platform, and view corridor.

A site visit was made by Project Supervisor, Michael Fisher, on March 18, 2024, to inspect the work in the presence of Jeremy Young of J.F. Young Co. Jeremy Young was present via Zoom to represent the project. Fisher took pictures which he shared with the Commission. Fisher noted that the work is in compliance with the plans. Young stated that:

- 1) the vista pruning was allowed 5 feet above the level of the deck rail and was done accordingly;
- 2) above ground irrigation tubes are present and will be removed this fall when the plantings have been established;
- 3) the project did lose some of the bearberry but they had a 60% survival rate; they had planted twice, and will consider using different ground cover or grasses if they do not have success this time. Young also noted that within six months to a year bearberry spreads, and that, even if every other plant succumbed, full coverage would still be achieved over a period of five years.

4) they had exceeded the required square footage of mitigation.

Fisher stated that the original Order of Conditions requires that the existing tennis court and protecting berm not be repaired. If any future work was proposed on the tennis court, including removal and restoration of the marsh, permits would have to be granted first.

Ellen Sheetz reported that one of the pictures of the property being shared did not show bearberry, but rather creeping juniper.

John Portnoy moved to approve the Certificate of Compliance. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye; Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0.

Jeremy Young will pick up the paperwork from the Conservation Office.

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. (Continued from March 6, 2024)

Mark Burgess of Shorefront Consulting was present via Zoom to represent the project. Burgess had submitted a letter, as requested at the March 6, 2024, hearing, which included the total square feet of disturbed area and information on the sand renourishment requirements and current state of the revetment. Burgess traced the history of the nourishment requirement from the time of installation of the revetment in 1994. He stated that the requirement is not contained within the Order of Conditions but is part of the Massachusetts General Law Chapter 91 permit for this property, that the toe stones of the revetment must be covered with sand. Upon examining the revetment, Burgess discovered that the toe stones are beneath other exposed stones and are covered with sand. For this reason, Burgess does not feel that nourishment is necessary at this time. The site’s total disturbed area and the proposed disturbed area for the portion of the work contained in the Request for Determination of Applicability are recorded in the letter noted above. Future proposed work areas will be identified on the plan that will be submitted with a Notice of Intent when the application for next phase of work is filed.

Michael Fisher 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.”). John Portnoy seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye; Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0.

Burgess asked that the paperwork be mailed and emailed to him.

Adjournment:

At 4:30 p.m., Michael Fisher moved to close the Public Hearings. Barbara Brennessel seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; John Cumbler, aye. The motion was approved 5-0.

Business Meeting

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

Also in attendance: in person: Nicole Prager, Jude Ahern; via Zoom Mark Burgess of Shorefront Consulting.

4:30 p.m. Acting Chair Barbara Brennessel opened the Business Meeting. A quorum was present.

Jurisdictional Opinions:

None

Mail/Discussion:**374 and 376 King Phillip Road Bank**

Mark Burgess remained on Zoom for the discussion of this project. John Portnoy began the discussion with the observation that the Commission was expecting to find a living shoreline at the project location, but instead rocks were placed at the base of the coir rolls and no plants were present. The approved plan showed cobbles nestled beneath the fabric rolls and the establishment of a plant community that is meant to connect to the high marsh colony to the south. But the project is at a higher elevation than the marsh to the south and approximately 30 feet further back from the waterline. Portnoy had been present at the location approximately two years ago and witnessed the area being battered by a southwest chop and was unsure whether this velocity zone was an appropriate area for a living shoreline. Barbara Brennessel asked whether all the plants had been lost in the last storm (January 13, 2024). Burgess stated that this is just the first season and first phase of the project. In the recent repair, the fabric rolls were refilled, sand was reset, rocks were replaced, a portion of the irrigation system was put back in place, and when the weather is appropriate, the new plantings will be made. Wilkinson Engineering will maintain the plants when they are planted. Burgess also stated that this project will require time, adjustments, and maintenance to make it a success.

A discussion on the size of rocks at the site yielded an understanding that in terms of geological size classifications, cobble are rocks between 2.5 inches and 10 inches in diameter; anything larger is classified as boulder. Burgess noted that the approved plan allowed for “cobble” up to 12 inches in diameter. Concern was expressed by the Commissioners that if a plant colony is not established, this project must be acknowledged as coastal armoring, which is not permitted. Brennessel stated that the Order of Conditions does not allow for repeated rebuilding of the structure, but only of repairs. Burgess noted that the removal of all of the boulders will make the project compliant with the plans and protocols, and that the project has until March 24, 2025 to repair and maintain the installation. Fiber rolls require maintenance, as do plants. When the conditions expire, if the project is not successful, another solution must be submitted.

Portnoy pointed out that the cobble is a component of the living shoreline, and if there is no living shoreline, the cobble must be removed. Brennessel recognized the consensus of the

Commissioners that the Commission must be notified before work is begun to continue repairs and that any boulders that are larger than 12” in diameter must be removed. The Supervisor, Barbara Brennessel, must be notified in advance and be present to supervise the removal. Portnoy recommended that Burgess and the Commissioners read the paper: Orrin H. Pilkey, et al., “Rethinking Living Shorelines” (2012).

Burgess commented that he had been involved at this site for many years, even before this living shoreline project, and has observed the erosion over time. Nourishment had been provided in the quantity of 200 cubic yards of sand one year, and then 400 cubic yards, then 800 cubic yards. All that sand disappeared very quickly, harming local shellfishing grants. Burgess further commented that he has seen the success of this living shoreline project. Where sand had been coming out of the bank 800 cubic yards per year, it is all being contained now. Natural beach erosion requires only 200 cubic yards of nourishment yearly. Further, since the living shoreline project was installed there has been no significant effect from sand silting upon the shellfishing grants.

Burgess will email a summary of this conversation to Seth Wilkinson and Steven LaBranche of Wilkinson Engineering:

1. That boulders over 12 inches in diameter must be removed;
2. That the Conservation Commission must be notified in advance so that the supervisor may be present to observe the removal of the boulders;
3. That when the Order of Conditions expires, if a sustainable living shore is not established, a new solution must be considered.

Burgess will copy Acting Agent Pyles and Secretary Elsensohn on this email.

Letter from the Dow Drive Homeowners Association Trust

Vice Chair Brennessel explained that the Dow Drive Homeowners Association wanted to make the Commission aware that the proposed subdivision at 538 and 548 Old Kings Highway will require a filing with the Natural Heritage Endangered Species Program (NHESP). Brennessel and the other Commissioners discussed the fact that this project is not in the Commission’s jurisdiction, but perhaps the Planning Board should be aware of the necessity of the filing. Michael Fisher shared his screen to show the MassMapper imagery which illustrated the fact that the properties in question, 538 and 548 Old Kings Highway, are subject to the NHESP, but not to Conservation Commission oversight. Acting Agent Pyles, who is also the Wellfleet Town Planner, will make sure that the Homeowners Association is aware that the Commission has no jurisdiction, and will ensure that proper communication is observed.

Nourishment Guidelines for Bayside Beaches

Acting Chair Brennessel asked for comments on an article “Nourishment Guidelines for Bayside Beaches”(2024) by Gordon Peabody of Safe Harbor Environmental. Robert Stewart said that he should have a conversation with Gordon Peabody about relevant geological issues. Brennessel mentioned that Chair Leon Shreves had expressed interest in having Coastal Zone Management offer some guidance on coastal resiliency. The formulas and calculations for the amount of sand used for renourishment seem to be based on inconsistent criteria. Different conditions exist on different properties. The question was raised whether the Commission can do anything about revetments built in the 1980’s that were given no Orders of Condition. Currently, some

properties are required to renourish, others are not. John Cumbler noted that the dynamic shoreline conditions are changing so rapidly that what was appropriate five years ago may not be so today, and what is appropriate today may not be so in five years. Brennessel suggested that a workshop or meeting with appropriate agencies and individuals might be of use.

John Cumbler moved to have the Conservation Agent set up a meeting of the Commission with Steve McKenna, Cape and Islands Regional Coordinator at Mass Coastal Zone Management, Mark Borrelli of the Center for Coastal Studies, and potentially other individuals to discuss sand renourishment. Barbara Brennessel seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; John Cumbler, aye. The motion was approved 5-0.

It was noted that Katie Castagno from the Center for Coastal Studies will be presenting a talk about the geology of Duck Harbor and the Herring River at the library on Sunday, March 24, 2024, at 3:00 p.m. John Cumbler mentioned that he will be away for the April 3 public hearings.

Hawe's Pond Culvert

Michael Fisher shared his screen to show pictures related to Hawe's Pond. John Portnoy explained that, as shown in the map from 1848, Hawe's Pond was a large pond at the head of Duck Creek with marsh on either side, connected by a tidal creek to Duck Creek. When Route 6 was built in 1952, much of the Pond was buried, a ditch fitted with rip-rap was installed and maintained, and a culvert was built beneath Main Street to maintain the connection between the Pond and the Creek. Thirty to forty years after the culvert was installed, the valve failed and a significant high tide caused the Duck Creek Inn at 70 Main Street to flood. The then owner of the Inn complained to the State, which installed a new valve, stopping the natural flow between the Pond and the Creek, and reducing the salinity of the Pond to almost zero. In those new conditions, phragmites replaced the native salt marsh plants.

When the current reconstruction of the intersection between Route 6 and Main Street was proposed, the Wellfleet Conservation Commission recommended that a study be done which led the State to agree to install a new culvert in the same location as the non-functioning one. This new culvert will have a self-regulating tidal gate which will allow flow between Hawes Pond and Duck Creek once more. A float on the gate will be adjusted in increments until it is finally set to stop the flow when the tide hits five feet in order to prevent flooding. The Wellfleet Department of Public Works will be responsible for maintaining the culvert once it is operational. The renewed tidal exchange between the Creek and the Pond will eventually yield a salinity in the Pond of approximately 15 ppt (parts per thousand), which will not meet the designation of "saline" water, but will restore the habitat of many species of saltwater flora and fauna.

The conversation moved to the impending demolition and reconstruction of the part of the building associated with the Inn (now renamed Copper Swan Inn) where a fire occurred in September 2023. The owners have submitted an incomplete Notice of Intent which includes a report from a wetlands expert, Robert Prokop of Wetland Consulting Services, who has not yet visited the property to make his determinations. Acting Agent Pyles, Elsensohn, and Fisher, who is the expected Supervisor on the project, have been working with the applicant to try to obtain the required elements to make the application complete.

The intention of the Inn's owners is to demolish the current building and rebuild it, retaining the current footprint. Cumbler asked whether the Commission could require a change of footprint or the raising of the structure since it is within the FEMA flood zone and debris could cause damage to the Pond, and subsequently, the Creek. Sea level rise will be a continuing concern. Fisher noted that moving the footprint of the structure west would bring it into the 100-foot buffer zone of the Creek across Main Street. It was noted that in order to have the building insured against flooding, the proximity to the Pond will have to be addressed.

Cape Cod Commission Freshwater Initiative Meeting

Barbara Brennessel attended the meeting organized by the Cape Cod Commission about the Freshwater Initiative on Tuesday March 19, 2024, at 1:30 pm at the Wellfleet Public Library. It was not well publicized, so there was a very poor turnout. The presenters discussed a new database that included information on phosphorus, temperatures, monitoring, and other parameters related to ponds. Brennessel suggested that this might be a good resource. There are two follow-up meetings at the Wellfleet Public Library: one on April 22, 2024, from 12:30-2pm and the second on June 3, 2024 from 12:30-2pm. Acting Agent Pyles forwarded the invitation to the Commission.

Wellfleet Seasonal Resident's Association

Michael Fisher reported that the Seasonal Residents Association is planning to meet on either July 18 or 25, 2024, for presentations about the Wetland Protection Act and septic systems, provisionally titled "Water and What Homeowners Need to Know About It." The Association is looking for presentations from the Health Agent and Board of Health and from members of the Conservation Commission. Gary Locke, the Assistant Health Agent, has volunteered to participate if the Agent, Heith Martinez, is unavailable. Fisher volunteered to represent the Commission unless someone else would rather do it, or to do it in tandem with another volunteer. Fisher noted that this is an excellent opportunity to explain why activities within the Conservation Commission's Wetland Protection Act jurisdiction matter.

Interview Process for a Conservation Agent

Commissioners asked about the current status of the interview process to hire a new Conservation Agent. Acting Agent Pyles reported that the interviews should be conducted within the next couple of weeks. Leon and one other member of the Commission (to be determined) will be welcomed to the interviews to ask questions, but not to contribute to choosing the appointee. A list of questions from the Town will be used for the interview process, but the Commission may add questions.

Minutes:

For Glassmeyer, 475 Chequessett Neck Road, Map 19, Parcel 125: Notice of Intent to replace existing walkway over a salt marsh, the minutes were amended to: "The current project proposes to remove and replace the entire existing walkway in the same location, 18 inches above the marsh." John Cumbler moved to approve the March 6, 2024 Meeting Minutes as amended. Barbara Brennessel seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye;

Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0.

At this time the Acting Chair recognized Jude Ahern. Ahern reported three items:

1. Michael Parlante reported at the Select Board meeting that a debris buildup at the High Toss Road culvert bridge is causing the flooding at Bound Brook. Barbara Carboni will be attending a meeting about it tomorrow. According to Ahern, Parlante said the Town has one week to address the clog.
2. The Wellfleet Oyster Association has voted to approve \$41,000 for the Shellfishing Department to hire consultants to prepare a permit to expand their cultching efforts. Ahern believes that this will be brought to the Conservation Commission eventually, and she will revisit this issue at that time. Brennessel, who was a reviewer of the grant proposal corrected Ahern to say that the grant is for the preparation of permits for additional cultching, not for the actual clutching.
3. Ahern asked whether the Natural Resource Advisory Board was present at the Cape Cod Commission Freshwater Initiative meeting. Brennessel reported that they were not.

Adjournment:

At 5:35 p.m. Michael Fisher moved to close the Business Meeting. Barbara Brennessel seconded. A roll call vote was taken: John Cumbler, aye; John Portnoy, aye; Robert Stewart, aye; Barbara Brennessel, aye; Michael Fisher, aye. The motion was approved 5-0. The business meeting was adjourned.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

Sandy Shoes, LLC—Request for a Certificate of Compliance and supporting documents.

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

Silvergray, LLC—Request for a Certificate of Compliance and supporting documents.

Sheetz, LLC—Request for a Certificate of Compliance and supporting documents.

Armstrong—Request for Determination of Applicability and supporting documents.

Minutes—March 6, 2024.

Letter from the Dow Drive Homeowners Association Trust

Nourishment Guidelines for Bayside Beaches

Hawe's Pond Hydraulic and Salinity Study by VHB.