

Final  
Wellfleet Conservation Commission  
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom  
Meeting Minutes  
April 3, 2024

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

**Regrets:** John Cumbler.

**Also Present:** In person: Katrina Higgins of Wilkinson Ecological Design, Shellfish Constable Nancy Civetta, shellfish grant applicant Daniel Ho, shellfish grant applicant Iris Pickard, and Ezra Ambrose (representing applicant DiRocco); Gordon Peabody of Safe Harbor Environmental, John O'Reilly of J.M. O'Reilly and Associates, and Theresa Sprague of Blue Flax Design; and via Zoom: Sam Hess of Strong Tree Engineering, Mike Ball of Marsh Matters Environmental.

**Public Hearings:**

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

**Rowan, 385 Pilgrim Springs Road, Map 29, Parcel 238:** Notice of Intent to construct a boat parking lot, outdoor rinsing station, deck stairs, and ecological restoration.

A site visit was made by the Commissioners with the homeowner present and explaining the project. Katrina Higgins from Wilkinson Ecological Design was present in person at this Hearing to represent the project and Sam Hess of Strong Tree Engineering was present online to answer engineering questions. Higgins described the project. It includes removal of several invasive species trees, four of which are on the Massachusetts prohibited list, using no machinery but rather hand removal only and hand application of herbicide by State licensed technicians. Once the invasives have been removed, a native seed mix will be deployed to establish an herbaceous layer to promote stormwater infiltration. Next, a shrub layer will be planted to provide habitat. The front lawn area will be planted with a pollinator garden. Higgins explained about the application of the herbicide, that all of the honeysuckle in the work area will be cleared, and that the dead trees to be cut down will be left on the ground for wildlife habitat. Brennessel expressed a concern that a lot of carbon storing biomass will be removed with the proposed tree felling and that bushes alone will not fully mitigate this. Higgins proposed adding tupelo trees or perhaps shadbush (a.k.a serviceberry) to the plan in order to mitigate the tree loss.

Hess explained the engineering portion of the proposed project. Fisher noted that on page 11 of the engineering plan the "net change" listed should be zero. Hess confirmed that it was a typographical error and made a note to correct it. The boat parking area will be fitted with pervious materials and be flanked by a rain garden to prevent runoff. An outdoor rinsing station and stairway to connect to the existing deck will be installed. Hess agreed that the rinse station would have wood chips and gravel below it. The boat parking area as proposed does not entirely fit within the property boundary and would require a curb cut permit onto Luther's Way, which

is a private road owned by abutters Leah and Judith Rosovsky. Hess reported that the owners of the road have given verbal permission for this project. Commissioners discussed making the boat parking area have a smaller footprint or relocating it so that it is entirely within the property. Hess thought that this might be possible. Brennessel suggested relocating the boat parking area to the front driveway. Hess responded that this would require the relocation of an existing lilac bush and potentially impact the septic system and the proposed pollinator garden. Further, this may trigger zoning issues. Acting Agent Pyles recommended that the plan be revised so that the entire project is located only on the owner's property, that the rinsing station be fitted with wood chips, and that tupelo trees be added. It was further noted that the total square footages of existing and of proposed disturbed areas are missing from the plan. They are located within the text but must be added to the plan.

Michael Fisher disclosed that: "I am a Trustee of the Wellfleet Conservation Trust, a 501 (c) (3) non-profit organization which is not a business organization, and the Wellfleet Conservation Trust has an interest that will be affected when I perform my official duties with regard to this application. Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly."

Leon Shreves moved to continue the hearing to April 17 so that the plans can be revised to:

1. Move the boat parking area entirely on the applicant's property;
2. Revise the planting plan to include the planning of tupelo trees;
3. Include nitrogen mitigation in the rinsing station in the form of a layer of wood chips;
4. Include the square footage of the existing and proposed disturbed areas on the plan.

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

Updated materials must be submitted by noon on April 11, and Elsensohn will send outdoor rinsing station guidelines to Hess.

**Lynch/Kenny, Indian Neck Flats, 235 Nauset Road, Map 22, Parcel 23:** Request for Determination of Applicability for commercial shellfishing of oysters and clams.

Justin Lynch and Eben Kenny experienced technical difficulties and were not able to log onto the meeting. Shellfish Constable Nancy Civetta spoke on their behalf. Portnoy asked whether the tidal depths recorded on the application (6 feet at mean low tide and 20 feet at mean high tide) are correct. Civetta responded that it was not as high as that on a regular basis, but that there would be some intertidal activity. Placing the grant where it is proposed would be better for the grant which had been struggling, better for boaters, better for commercial dragging, and has been approved by the Harbormaster and Select Board. This project has been many years in the works and overall is good for the community.

Barbara Brennessel moved to identify this Request for Determination of Applicability as Negative 2 ("The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, the said work does not require

the filing of a Notice of Intent.”) with the condition that the Massachusetts Environmental Protection Agency response be obtained and submitted to the Conservation Commission. John Portnoy seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Laurel Nominee Trust, 715 Chequessett Neck Road, Map 19, Parcel 113:** Request for Certificate of Compliance for the removal of invasive species and planting native species to create a vegetated buffer above the coastal bank (continued from February 21, 2024)

Brennessel is the Supervisor of this project and had spoken to the applicant. In order to address the concerns of the Commission, the applicant has requested an indefinite continuance. This is their second continuance.

Brennessel moved to continue the hearing indefinitely. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Ho, Wellfleet Harbor, Map 34, Parcel 17.01.03:** Request for Determination of Applicability for commercial shellfishing grant.

Daniel Ho was present to represent his application along with Nancy Civetta. This grant is located on Town Property and uses Omaha Road for access. Ho currently uses boat access for his shellfishing. He will have to obtain permission from the surrounding grants to move through them by truck if he accesses his grant from the shore. Ho uses a Carolina skiff. He will apply to the Harbormaster for a mooring spot in the harbor. If this is not possible, Ho will transport the skiff on a trailer and remove it each day.

Barbara Brennessel moved to identify this Request for Determination of Applicability as Negative 2 (“The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, the said work does not require the filing of a Notice of Intent.”) with the condition that a response from the Massachusetts Environmental Protection Agency be obtained and submitted to the Conservation Commission. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Kane, 155 Pine Point Road, Map 21, Parcel 56:** Request for Certificate of Compliance for installation of a septic system.

Michael Fisher made a site visit and found no evidence of work except for a slightly sandy patch on the property. This septic system was approved in 2016, subsequently installed, and so the backfilled area is now well restored.

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

**Osowski, 35 Kendrick Avenue, Map 22, Parcel 99.1:** Request for Determination of Applicability for commercial shellfishing grant.

Iris Pickard was present to represent the application for her mother Angela Osowski, as was Nancy Civetta. The area is Town owned. This is an extension of an existing grant that was in use but was not permitted. Previously that other grant holder believed that they had been permitted to shellfish in the same area and had placed quahogs there. When it was discovered that they were not supposed to be shellfishing in that area, they removed as much inventory as possible. This history explains the discovery by the Department of Marine Fisheries of hatchery raised quahogs in the area. Brennessel provided her book *Good Tidings: The History and Ecology of Shellfish Farming in the Northeast* (University Press of New England, 2008) which illustrates the difference in shells between farmed and wild quahogs. There is currently a ten-foot alleyway between grants there. Osowski uses a Carolina skiff which is stored at the town pier.

Barbara Brennessel moved to identify this Request for Determination of Applicability as Negative 2 (“The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, the said work does not require the filing of a Notice of Intent.”) with the condition that a response from the Massachusetts Environmental Protection Agency be obtained and submitted to the Conservation Commission. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Pickard, 555 Chequessett Neck Road, Map 19, Parcel 2000.2:** Request for Determination of Applicability to commercial shellfishing grant.

Iris Pickard represented the application of Stephen, Iris, and Benjamin Pickard. The Pickard’s have applied for Massachusetts Environmental Protection Agency approval but have not received a response yet. This application is to extend a shellfish grant on Egg Island. The Pickard’s use the same skiff that is used on Angela Osowski’s grant.

Leon Shreves moved to identify this Request for Determination of Applicability as Negative 2 (“The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, the said work does not require the filing of a Notice of Intent.”) with the condition that a response from the Massachusetts Environmental Protection Agency be obtained and submitted to the Conservation Commission. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Linder, 60 Fifth Avenue, Map 40, Parcel 50:** Notice of Intent to replace the on-site sewage disposal system.

A site visit was made in the presence of the owner by the Commission. Mike Ball of Marsh Matters Environmental was present online to represent the project. Ball remarked that he is very much in favor of the online application process. This property was recently purchased with a

failed septic system. The homeowner would like to replace the system with a Norweco Singulair Green 960-600DN system, which was approved by the Board of Health on January 10, 2024. This project would include removing and replacing a concrete slab patio with a pervious patio of equal or smaller footprint or an herb garden. The applicant also proposes moving some mature trees while the septic system installation work is being done, and then replanting them in their current location. Commissioners noted that it would be a potential problem to plant them over the leach field, since the roots could cause damage to the system. It was also noted that there is space down the bank where these trees might do better, but the transplanting process and the large size of the trees might damage the bank. Ball agreed that it might be prudent to plant smaller oak and cedar trees below the bank. Ball recommended a Condition that would require the planting of one new tree for each of the existing trees that does not survive. The existing and proposed total disturbed areas are not noted on the plan, but the Commissioners concurred that the proposal can be approved with the Conditions that an updated plan with this information be submitted to the Commission.

There is an existing, but not currently functioning, rinsing station on the side of the house. If this is to remain or to be replaced, mitigation by adding a layer of woodchips will be required. The owner agreed to this Condition during the site visit. Elsensohn will send information on rinsing station mitigation to Ball.

Michael Fisher moved to approve this Notice of Intent with the following Conditions:

1. A one-to-one replacement of relocated trees that do not survive being moved;
2. A woodchip mitigation system be installed beneath any rinse station on the property;
3. A revised plan be submitted recording both the existing and proposed total disturbed areas;
4. Robert Stewart is the Supervisor of this project. No work should commence until he is notified.

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

**Haslun, 215 Gull Pond Road, Map 8, Parcel 63:** Request for Determination of Applicability to increase deck size, provide kayak and trash storage, and remove and replace three trees.

A site visit was made by the Commission. Gordon Peabody was present at the meeting to represent the project. This property had recently been purchased. The new owners had both an insurance adjuster and building inspector look at the property. Both deemed the current deck to be unsafe. An arborist inspected a tree that has been growing into the deck and reported that the tree should come down and be replaced elsewhere rather than building the deck around it. The arborist also identified three additional trees of concern, two of which are dead. The two dead trees will be taken down and the cut branches and trunk pieces will be left in place, while the third tree will be left as a snag for wildlife habitat and perching for raptors.

The cut trees will be replaced by two black oaks (as recommended by Portnoy) and five junipers. The deck will be remade, and the deck width expanded by 16 inches on the front of the house, and 24 inches on the side. The project further proposes an 8-foot x 12-foot enclosed shed for the

storage of kayaks and trash bins. While work is ongoing, erosion controls will be in place, as well as a portable toilet, dumpster, and contractor fencing. The contractor will personally monitor the project the whole time. A native ground cover mix will be planted beneath the deck. Brennessel noted that the shed size is likely too small to enclose kayaks in and it might be better to hang them on the side instead. Brennessel further questioned the width of the proposed walkway to the side of the deck since there is a slope that might not accommodate such a path. Peabody clarified that railroad timbers will be installed to level the walkway. Portnoy noted that on one site plan, the orientation of the property in relation to Gull Pond Road is shown incorrectly. Peabody suggested that it was the mistake of a new engineer.

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.”) with the following Conditions:

1. That the plan be corrected and resubmitted with the number and types of trees to be planted as remediation; and,
2. The orientation of the property in relation to Gull Pond Road be corrected on the site plan.

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

**Danner, 31 Samoset Avenue, Map 28, Parcel 119:** Request for an Amended Order of Conditions to allow for modifications of landscape items and addition of HVAC generator units.

A site visit was made by the Commission, which was met by the contractor. Michael Fisher is the Supervisor of this project. At the time of the Commission’s visit, Fisher informed the contractor, who had replaced the original one, that he should have been notified before work had begun. John O’Reilly and Theresa Sprague were present at the hearing to represent the project. O’Reilly reported that the original project was approved on December 1, 2021, to tear down and replace an existing dwelling and construction has been slow-going. O’Reilly is requesting approval of amendments to the plan, two of which are after-the-fact. Many of the amendments are meant to address mobility issues of elder family members while keeping the project as far outside the buffer zones as possible, including:

- 1) Replacement of proposed steps up the side of the house with more gently sloping timber or granite risers;
- 2) Addition of a 6-foot x 5-foot gravel pad for a grill, an a separate area for the installation of a house generator;
- 3) Replacement of the proposed sand walkway to the outdoor rinsing station with a removable cedar slat matt for stability;
- 4) Addition of three utility slabs for the installation of HVAC equipment;
- 5) A reconfigured pathway that reflects the location of the retaining wall;
- 6) A new set of steps from the retaining wall to the front of the dwelling; and,
- 7) Installation of a planter to screen the rinsing station.

The after-the-fact amendments include:

- 1) A buried propane tank; and
- 2) the extension of the approved retaining wall for better grading management of the propane tank.

No additional mitigation is proposed for the project in light of the amendments. The total disturbed area was stated on an earlier version of the proposal and does not reflect the proposed amendments. The new total will be added to a revised plan to be submitted to the Conservation Office. At the time of the Commission's site visit, construction was being done on the outdoor rinsing station. Fisher had explained to the contractor that woodchip mitigation would be needed. Fisher shared his screen to show the work on the rinse station that had been going on during the visit. O'Reilly assured the Commissioners that he would make sure the woodchip mitigation would be placed beneath the rinsing station. Fisher also shared his screen to show the Wellfleet "Outdoor Shower Specifications for Conservation Commission." Sprague recommended that the cedar or Azek mat walkway to the shower be rolled up for storage after seasonal use in the summer. No beach nourishment has been conditioned for the management of the groin on the property.

Leon Shreves moved to approve this Amended Order of Conditions with the following Conditions:

1. The outdoor rinsing station will have wood chip and gravel mitigation installed;
2. A revised plan showing the total disturbed area will be submitted to the Commission;
3. The cedar or Azek slat walkway will be seasonal, rolled up in the winter, and not stored outdoors;
4. A plate identifying the property and contact information be installed on a bottom portion of the beach access stairs; and,
5. Michael Fisher, the supervisor of this project, will be notified of progress throughout the project.

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

**DiRocco, 155 Indian Neck Road, Map 28, Parcel 134:** Request for a Certificate of Compliance for the construction of a dwelling.

Barbara Brennessel is the supervisor of this project and made a site visit. Ezra Ambrose was present to represent the project. Brennessel reported that there are some problems with the project and Elsensohn shared her screen to show photographs taken at Brennessel's site visit. The pictures showed that:

- 1) An unpermitted outdoor rinsing station was present;
- 2) The deck was not built according to the plan;
- 3) A shed appears to be connected to the house; and,
- 4) The plan does not show the total disturbed area.

Ambrose spoke to each concern, acknowledging that there was definitely no mitigation beneath the rinsing station, that the deck is not built according to the plan, that the connection between the shed and house is a hot water heater connection, and that the walkway shown in the photographs is also not on the plan.

Michael Fisher moved to continue this hearing until April 17 to allow for revisions to the plan. John Portnoy seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Adjournment:**

At 5:47 p.m., Leon Shreves moved to close the Public Hearings. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

**Business Meeting**

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

**Regrets:** John Cumbler

5:48 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

**Jurisdictional Opinions:**

None

**Mail/Discussion:**

**Wellfleet Conservation Trust and Open Space Committee**

Michael Fisher informed the Commission that the Wellfleet Conservation Trust and the Open Space Committee are working together on a proposal for an American Disability Act (ADA) compliant trail at Pilgrim Spring. This trail would be a 1/3-mile track, mostly on Town owned land under the "Care and Custody of the Conservation Commission." This would be the only ADA compliant woodland trail owned by Wellfleet; Mass Audubon and the National Seashore Park each has such a trail. The Trust and Committee will likely be applying to the Commission for a permit soon.

**Possible Unpermitted Driveway and King Phillip Road**

Barbara Brennessel asked whether Acting Agent Pyles had followed up on Brennessel's inquiry regarding what appears to be an unpermitted driveway on King Philip Road that she noticed while on another visit. Pyles reported that she had not followed up, but it is on her to-do list. Brennessel then updated the Commissioners on the living shoreline project at 374 and 376 King Phillip Road. Both Brennessel and Robert Stewart made visits independently and discovered that many boulders larger than 12 inches across are still present along the shoreline. It is currently acting as a revetment rather than as a living shoreline. Brennessel asked that Acting Agent Pyles notify Mark Burgess of Shorefront Consulting that the project is still not in compliance.

**Living Shorelines**

John Portnoy reported that he had attended a webinar presented by the Department of Environmental Protection regarding waterway resilience. This presentation suggested a change



in Massachusetts General Law Chapter 91 to allow no additional building in high velocity zones. Portnoy wondered whether this would include the building of living shorelines. The shoreline at 374 and 376 King Phillip Road is currently terraced and must have cobbles or boulders at the seaward edge to sustain the slope. This area is mapped by FEMA as a high velocity zone. Salt marshes cannot survive in high velocity zones. This project is trying to install a living shoreline lower than the marsh they are trying to connect it to, so it will not work. A storm surge has already over washed the project. The homeowner has until the Order of Conditions expires to prove that it will succeed. Fisher reported the Order of Conditions was approved on March 2, 2022.

#### **1440 Chequessett Neck Road**

Barbara Brennessel asked whether the project that allowed coir rolls to be placed and maintained at the site is expiring soon. Acting Agent Pyles responded that she is unsure but will check. Pyles reported that Strong Tree Engineering is working on an application for a Notice of Intent to do more work there. Brennessel asked whether the installation of new coir rolls have to be permitted again.

#### **Freshwater Ponds Session Make-up**

Michael Fisher reported that he attended the make-up session from the Cape Cod Commission Fresh Water Initiative. Barbara Brennessel attended the original session and reported about it at the last Conservation Commission meeting. That original session was poorly advertised so the make-up session was held. The Cape Cod Commission is looking for feedback about what information should be collected about the condition of ponds on Cape Cod and how that data should be disseminated.

#### **Minutes:**

Leon Shreves moved to approve the March 20, 2024, Meeting Minutes. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

#### **Adjournment:**

At 6:03 p.m. Leon Shreves moved to close the Business Meeting. Barbara Brennessel seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; John Portnoy, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0. The business meeting was adjourned.

Respectfully submitted by,

Jennifer Elsensohn, Committee Secretary

#### **Documents:**

**Rowan**—Notice of Intent and supporting documents.

**Lynch/Kelly**—Request for Determination of Applicability and supporting documents.

**Laurel Nominee Trust**—Request for a continuance.

**Ho**—Request for Determination of Applicability and supporting documents.

**Kane**—Request for Certificate of Compliance and supporting documents.

**Oswaski**—Request for Determination of Applicability and supporting documents.

**Pickard**—Request for Determination of Applicability and supporting documents.

**Linder**—Notice of Intent and supporting documents.

**Haslun**—Request for Determination of Applicability and supporting documents.

**Danner**—Request for Amended Order of Conditions and supporting documents.

**DiRocco**—Request for Certificate of Compliance and supporting documents.

**Minutes**—March 20, 2024.