Final

Wellfleet Conservation Commission

Meeting Minutes

August 16, 2023

**In attendance via Zoom:** Chair Leon Shreves, Martin Murphy, Clerk Michael Fisher, Barbara Brennessel, and Robert Stewart. Interim Conservation Agent Meredith Ballinger, Committee Secretary Jennifer Elsensohn.

**Regrets:** John Cumbler and Benjamin Fairbank

**Business Meeting**

4:02 p.m. Chair Leon Shreves opened the Business Meeting.

**Jurisdictional Opinions:**

**Barbara Finklestein**, 55 Forrest Road, Map 16, Parcel 620.

Meredith Ballinger inspected the property last year and went again today. There is a large pitch pine leaning heavily toward the deck. The homeowner does not want to take down the whole tree, but her arborist recommended trimming to make it less top-heavy. After discussion, Barbara Brennessel moved to approve this Jurisdictional Opinion, Michael Fisher seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

**Mail:**

There was no mail.

**Discussion:**

Meredith Ballinger stated that she has issued two Emergency Certificates after the recent heavy rains. One Emergency Certificate was issued to the Department of Public Works to restore washed out areas on White Crest Beach for the safety of visitors. They placed 200 cubic yards of sand there. The second Emergency Certificate was issued to the Chequessett Club to add 20 cubic yards of sand to repair the ramp that goes to the beach with the Condition that they restore the grade to what it had been previously.

The Commission discussed Barbara Brennessel’s note that vessels are being left on the marsh vegetation at Field Point. Meredith Ballinger stated that she had subsequently stickered nine boats on the vegetation at Field Point, eight to ten boats at Pleasant Point, and one at Power’s Landing. The Harbormaster will remove those vessels if they are not moved off the vegetation. When Meredith Ballinger revisited Power’s Landing, that boat had been removed. The beach is eroding at Pleasant Point, so it would be advisable for the Commissioners to make a site visit there.

The Commission discussed Barbara Brennessel’s note that at Long Pond, the Department of Public Works had left piles of sand and had inadequately marked the approved path to the beach. Meredith Ballinger reported that Department of Public Works did not fully understand the regulation that it must provide the Conservation Commission with full information about its plans and the materials it will use before doing any work on that beach and that all work must be approved by the Conservation Commission. Meredith Ballinger will arrange for an employee of the Department of Public Works and the Commissioners to visit the site together.

The Commission discussed Barbara Brennessel’s note that that there has been some mowing near Hawes Pond by the new owners of the Copper Swan. Meredith Ballinger has sent them a violation letter explaining that they must apply for approval from the Commission before disturbing the protected buffer zone around this wetland.

Meredith Ballinger reported that the owners of the Fox and Crow did some unapproved work on their parking lot and will file an after-the-fact Notice of Intent.

Martin Murphy stated that his term on the Commission would be ending this year. Since he will be in Florida from late October until the end of his term, he feels it best to resign on October 31st. The other Commissioners recognized his contributions and his consideration in providing advance notice of his resignation.

Meredith Ballinger reported that the Town Administrator is trying to find coverage for the Conservation Agent’s responsibilities until a qualified permanent Agent can be appointed. Meredith Ballinger is also working with neighboring towns to get help. The former Agent, Hillary Greenberg-Lemos, is on contract with the Town to be Guest Agent and will attend the September 20th meeting.

Everyone expressed their appreciation for Meredith Ballinger’s contributions during a difficult transition and affirmed that they would miss her. They all wished her well in her new position.

**Minutes:**

Leon Shreves moved to approve the August 2, 2023 Meeting Minutes, Robert Stewart seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, abstained; Leon Shreves, aye. Approved, 4-0-1.

At 4:25, Leon Shreves moved to adjourn the Business Meeting, Robert Stewart seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

**Public Hearings:**

At 5:00 p.m.Chair Leon Shreves opened the Public Hearings.

**Ross,** 945 Chequessett Neck Road, Map 19, Parcel 98was erroneously listed on the preliminary agenda but will be heard as officially scheduled on September 20, 2023.

**Douglass,** 925 Chequessett Neck Road, Map 19, Parcel 100, Notice of Intent, install new permeable paving; continued from meeting of August 2, 2023.

Theresa Sprague of Blue Flax Design presented the application and the owners Laura and Stephen Douglass also attended. Theresa Sprague explained the revised plan and the new planting plan. She also responded to the Commission’s earlier requests for information: The plans now state that the rinse station will be fitted with wood chips and gravel to reduce nitrogen. The Commission asked for an update on the straw wattle that had been incomplete during the site visit. Stephen Douglass stated that he had instructed the contractor, Cape Associates, to complete it. He will be on the premises tomorrow and will make sure it has been done. Leon Shreves moved to approve the Notice of Intent, Robert Stewart seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, abstained; Leon Shreves, aye. Approved 4-0-1. Leon Shreves will be the Supervisor of this project.

**Melvin,** 35 Holbrook Avenue, Map 20, Parcel 138, Notice of Intent, Demolish and reconstruct dwelling (continued to October 4, 2023)

At the request of the applicant, Leon Shreves moved to continue this hearing to October 4, 2023, Michael Fisher seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved 5-0.

**Bross,** 46 Sandpiper Hill Road, Map 22, Parcel 6. After-the-fact filing of a Request for Determination of Applicability for a replacement of wooden stairs to the beach.

Peter and Victoria Bross represented themselves. Peter Bross informed the Commission that the previous stairs had been a safety hazard. They believed that they were making a one-to-one replacement and did not realize that they needed permission. The Commission stated that any work in the buffer zone must come before the Commission. Michael Fisher shared his screen to show a picture of the new stairs. In addition to the application fee, a $300 fine was imposed and paid. Michael Fisher is the Supervisor for the approved Notice of Intent project of house expansion on this property, and he reminded the owners that he must be notified before the construction begins. Michael Fisher moved to identify this Request for Determination of Applicability as a 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, said work does not require the filing of a Notice of Intent”) with the Condition that a permanent label be placed on the stairs identifying the owners in case the stairs are dislodged, Martin Murphy seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved 5-0.

**Goff,** 2078 Weatherly Avenue, Map 20, Parcel 19. Requesting a Certificate of Compliance for work previously completed; construct 136 square feet screened porch on pin piles, with 200 square feet of native plantings for mitigation.

Gordon Peabody of Safe Harbor represented the homeowner and recounted the difficulty she suffered due to the inconsistency of staff within the Building Department and the changes in her contractors. The work has finally been completed. The construction, plantings, and rinse station have all been completed according to plan, as inspected by Meredith Ballinger. Martin Murphy moved to approve the Certificate of Compliance, Michael Fisher seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

Gordon Peabody expressed his appreciation of Meredith Ballinger, and thanked her for being a wonderful Agent.

**McCrory,** 30 Arey Lane, Map 36, Parcel 23. Requesting a Determination of Applicability to repair and resurface existing driveway using permeable materials.

Eileen McCrory represented herself. The Commission’s site visit revealed significant erosion in the driveway, especially due to runoff from Arey Lane. The proposed plan includes a berm at the top of the driveway, a reduction and redirection of the driveway area to direct drainage into adjacent absorptive areas, replacement of gravel the length of the driveway, and additional native plantings. The homeowner also approached the Department of Public Works to get permission to provide drainage down the bank from Arey Lane, which is a private road. McCrory will ask permission of her neighbors to do that work (which is outside of the jurisdiction of the Commission). Meredith Ballinger said that there is a 14-day appeal period so any work before the end of that period is at her own risk. Leon Shreves moved to identify the Request for Determination of Applicability as a Negative 3 (“The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to conditions.”), Robert Stewart seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, abstained; Leon Shreves, aye. Approved, 4-0-1.

**Wasserman,** 29 D Street, Map 40, Parcel 23. Requesting a Determination of Applicability to upgrade septic system.

Jason Ellis of J.C. Ellis Design represented the homeowner who would like to upgrade the existing failed Title 5 septic system with a nitrogen reducing Innovative/Alternative system, Orenco Advantex AX-20, and relocate the leach area further away from the wetland resource. The whole project area is within the flood hazard zone. The Commission requested that the total disturbed area within the buffer zone be put on the plan. Jason Ellis said that he would add both the pre-existing and proposed disturbed area totals on the plan. Michael Fisher stated that the Commonwealth Ethics Commission and the Wellfleet Select Board have approved his Disclosure of Appearance of Conflict of Interest (MA GL c. 268A para 23(b)(3)) form and that he is able to perform his official duties objectively and fairly in this case. Barbara Brennessel moved to identify the Request for Determination of Applicability as a Negative 3 (“The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to conditions.”), Martin Murphy seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

**Kaplan,** 110 Blue Heron Road, Map 42, Parcel 100. Requesting an Amended Order of Conditions to retrofit existing septic system with a new tank, nitrogen reducing system and pump vault.

Jason Ellis of J.C. Ellis Design spoke on behalf of the homeowner. A plan for this property had been previously submitted to the Commission which included two decks. The Commission did not approve the second deck, which would be within the 50-foot filter strip, without the mitigation of an upgraded septic system. The homeowner is now applying to include the second deck which will add 325 square feet to the footprint and the new plans include an Innovative/Alternative system, Orenco Advantex AX-20 septic system that is compliant with the current State regulations. Jason Ellis agreed to use diamond piers rather than sonotubes to support this deck and will put gravel beneath the new deck for drainage. The Commission, the homeowners, and the contractor understand that plantings will not do well under the new deck, and hence will not be required as part of this project. Martin Murphy moved to approve the Amended Order of Conditions with the Condition that nothing is stored under the deck, Leon Shreves seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

The Agent will continue as the project supervisor.

Jason Ellis thanked Meredith Ballinger for her service to Wellfleet.

**Kleeman,** 170 Bayberry Lane, Map 41, Parcel 121. Request for Amended Order of Conditions to construct dwelling, deck, and driveway.

Presenting this application were Kleeman’s attorney Benjamin Zehnder, Theresa Sprague of Blue Flax Design, architect Peter Haig, and owner Jan Kleeman. John O’Reilly (engineer) intended to be there but was detained at another meeting. The new plan has reoriented the house and increased the disturbed area by 636 square feet. The home is within the 100-foot buffer zone, but no construction is within the 50-foot filter strip. The entire project will total less than 3,000 square feet of disturbed area within the buffer zone. The driveway will be made of pervious material or gravel. No clearing for a vista is included in the plan. All disturbed areas will be restored with increased native plantings from the previous plan. The foundation is changed to a concrete slab. The Commission requested information on proposed drainage since the construction might cause runoff into the wetlands, pooling on the site, and consequently mosquito problems. Theresa Sprague stated that the sand naturally present there provides good drainage and that native plantings will mitigate the runoff. Jan Kleeman stated that she would like eventually to add paths for the public across her property. The Commission reminded her to apply before creating any further disturbance or vista pruning. The Commission asked for clarification on how equipment would get onto the property and where materials would be stored. Ben Zehnder assured the Commission that the contractor will have to be very careful in his planning and execution. Abutter John Grieb stated that Jan Kleeman’s surveyors had been on his property and he is concerned that there will be encroachment during the construction process. He has a path from his property that leads to the marsh and would like to be sure that it does not become an access way for the workers. Ben Zehnder said that surveyors are allowed to be on other people’s property insofar as they need to find property line. All other presence of workers during construction would be trespassing. Further, Miss Kleeman can make no disturbances on the abutting Greib-Corcoran property. Michael Fisher stated that the Commonwealth Ethics Commission and the Wellfleet Select Board have approved his Disclosure of Appearance of Conflict of Interest (MA GL c. 268A para 23(b)(3)) form and that he is able to perform his official duties objectively and fairly in this case. Martin Murphy moved to approve the Amended Order of Conditions, Barbara Brennessel seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

Leon Shreves will continue as Supervisor.

**Adjournment:**

At 6:30 pm, Leon Shreves moved to adjourn the Public Hearings, Michael Fisher seconded. Vote: Martin Murphy, aye; Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye. Approved, 5-0.

Respectfully submitted by,

Jennifer Elsensohn, Committee Secretary

**Documents:**

Douglas—Notice of Intent and supporting documents

Bross—Request for Determination of Applicability and supporting documents

Goff—Request for Certificate of Compliance and supporting documents

McCrory— Request for Determination of Applicability and supporting documents

Wasserman— Request for Determination of Applicability and supporting documents

Kaplan—Request for Amended Order of Conditions and supporting documents

Kleeman—Request for Amended Order of Conditions and supporting documents

Draft Meeting Minutes for August 2, 2023