

Approved

Wellfleet Conservation Commission
Meeting Minutes
February 17, 2021
Remote Meeting

Attendees: Deborah Freeman, Michael Fisher, Leon Shreves, Barbara Brennessel, John Cumbler, Agent Hillary Greenberg Lemos, and Christine Bates, Committee Secretary.

Regrets: John Portnoy and Ben Fairbank

4:00 - Business Meeting & Conservation Agent's Report
Mail / Discussion

Wellfleet Environmental Protection Regulations: Nate Kelly from Horsley Witten (H-W) reviewed the comments, suggestions and questions submitted by Commission. Some items to be addressed in the regulations include: tree trimming, prior applicant violations, applicant's ability to demonstrate that the project is for public interest and improvement, timeframe for the completion of a project, and definition of coastal structures including non-biodegradable materials. Definitions of coastal structures including materials to be used such as fill and wood (treated and untreated) and armored shorelines will be reviewed. The definition of living shorelines was discussed and Horsley Witten will provide definitions to the Commission from other towns. Other definitions reviewed were brackish ponds, motorized vessels / vessels/ water craft. The term "resource" is used extensively in the Regulations. The Commission asked if "resource" should be defined separately or if it was included in "wetland resource". Rather than listing vernal pool species under the definition of a vernal pool, the Commission suggested that the Regulations refer to the State list of vernal pool species. H-W was also asked to review The RDA and NOI forms now in use so that they reflect the Regulations, especially regarding site plan requirements, abutter notification vs notification, and the requirement to itemize disturbance. Agent Greenberg-Lemos felt it important to add to the reference material for applicants that the work area must be staked or marked accordingly and that there would be a site visit.

It was recommended that there be another work meeting to continue the review with Horsley Witten. Date to be determined

Harbor Plan: John Riehl stated the draft has been approved by the Select Board and he plans to meet with other Town Boards. Recommendations and comments are still being supplied to him and he will provide everything to all participating parties. John Riehl stated they are concerned about salt marshes and issues with oyster beds.

Jurisdictional Opinions

Peter McMahon 54 Valley Road – there is a power pole which is now in the wetlands which needs to be replaced before it creates a safety hazard. He needs to maintain power to the house. He stated that the pole is from the 1950s. He is working with Farrell Electric and would like to come back to the Commission on March 3 to identify an alternate site for the replacement pole.

99 Way 60: Moore, Map 19 Parcel 13, requesting professional cutting down of 2 oaks and 3 pine trees and planting on the embankment to control erosion. Because there is more than one tree to be removed, the Commission would like to see an RDA filed with a good planting plan. Barbara Brennessel moved to have the applicant file an RDA; seconded by Michael Fisher. VOTE: Barbara Brennessel aye; John Cumbler aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman. 5-0

Ethan Estey requested permission to access to his grant from Old Wharf. He would like to drive to the grant to remove and return his oysters and gear during January, February and March and to be able to drive to the edge of his grant the rest of the year. Barbara Brennessel wants to see what activity is taking place in the area and how the other grants are obtaining access. She stated that some shellfishermen walk out from Old Wharf Point and tow a canoe to get to their grants for the purpose of adding or removing gear. Nancy Civetta will join the Commissioners for a site visit on a minus tide.

Meeting Minutes – to be addressed at the next meeting.

Cyanobacteria in ponds report from APCC: No discussion required. Agent Greenberg-Lemos wanted everyone to be aware of the report and that the project will continue into next year.

Michael Fisher moved to enter the public hearings at 5:08 pm; seconded by Barbara Brennessel. VOTE: VOTE: Barbara Brennessel aye; John Cumbler aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman. 5-0

5:08 - Public Hearings:

Hoeland, Trustee, 1440 Chequessett Neck Rd., Map 18, Parcel 7, NOI, Install 3 sand-filled coir envelopes along toe of the eroding coastal bank. Cont'd. Attorney Zehnder stated he had made proposals to the Board for conditions. Seth Wilkinson stated it takes 2 to 3 weeks for sediment analysis. Sand is taken from the beach and bank as well as sample material from the nourishment sand and sent to the lab for analysis. Attorney Zehnder stated he would like 30 days (March 17) to complete the analysis. Deborah Freeman requested the word "temporary" be removed from Condition #4. There was discussion regarding monitoring and how it would be performed. Seth Wilkinson stated if the amount of sand in envelopes becomes less, it would trigger additional nourishment. If all 3 envelopes deflate, they would lose height and waves would be able to over top the structure. It still functions but is not to the same height. Barbara Brennessel stated that the site plan does not identify the area in square feet of current disturbance and the proposed disturbance. This calculation would include the house, any structures, and driveways and paths within the Commission's jurisdiction. Mr. Wilkinson stated planting on the bank would occur by April 15. The Commission requested a planting plan including the number

of plants. Mr. Wilkinson stated there will be no plantings on the envelopes. Mr. Wilkinson stated that if all three coir rolls are reduced by 50%, they would replace them all at the same time, which would be the most cost effective action. At the present time, the envelopes continue to be in good shape. The design life of these envelopes is 2 ½ to 3 years. There was discussion regarding surveying the property after each sand renourishment and Attorney Zehnder stated his client does not want to do survey work and doesn't feel it will provide any useful information. The Commission felt monitoring monthly or after a storm would be the most appropriate. Attorney Zehnder stated that the homeowners will be monitoring the property regularly and after significant storm events they will notify the Commission. Discussion regarding scouring on abutting properties took place. Attorney Dylan Sanders, who is representing an immediate abutter to the North, Dr. Sim Weller, stated he has a concern about a not having a current beach survey and any impacts of the adjacent coastal areas. Nancy Civetta stated she has concerns about the shellfish areas adjacent to the project and is interested in the monitoring. Attorney Zehnder reiterated that there is a general interest in sand movement in the entire area, but his client will not do a survey for other properties. Seth Wilkinson stated that erosion is approximately 5 ft per year, and the height of the coastal bank is 45 feet. The bank was producing 1500 cu yds of sand into the system. Since there is not access to private properties, it will be difficult to do surveys. Now that this structure is in place, additional beach renourishment might be triggered if the beach elevation drops. As the sand comes out from the envelopes to the beach, it would be difficult to prove if the sand is moving into the shellfish areas. Some Commission members requested that if the envelopes require replacement, the applicant should come back to the Commission. However, Agent Greenberg-Lemos stated if there is end scour, it would put the envelopes in jeopardy and she would rather grant permission for continual maintenance. Attorney Sanders stated he wants monitoring to protect his client's property. Michael Fisher moved to approve the Orders of Conditions as amended; seconded by Leon Shreves. VOTE: Michael Fisher aye; Barbara Brennessel aye; John Cumbler no; Leon Shreves aye and Deborah Freeman aye. 4-1.

Hallack Hoeland, Trustee, 1440 Chequessett Neck Rd., Map 18, Parcel 7: The Wellfleet Conservation Commission will hold a Remand Hearing on the Notice of Intent filed by James Hallack Hoeland, Trustee (Blasch), for shorefront protection consisting of the construction and installation of a 241-foot long rock revetment fiber roll hybrid structure and planted sand cover and 928 cubic yards of compensatory sand nourishment on a coastal bank, coastal dune and coastal beach on the property located at 1440 Chequessett Neck Road, Map 18, Parcel 7: This is a remand hearing as ordered by the Barnstable County Superior Court on December 30, 2020 in the matter: James Halleck Hoeland, Trustee of the Family Trust, et al v. Town of Wellfleet Conservation Commission, Superior Court Civil Docket No. 1972CV00053. Chair Freeman reviewed the issues upon which the Conservation Commission was ordered to make a determination. Agent Greenberg-Lemos read a letter from John Portnoy, a member of the Commission dated 2/7/21 opposing the project. She stated there was also an e-mail from Attorneys Sugarman/Rogers and stated they would make statements during the remand hearing. Brian Carlstrom, Super Intendant of the Cape Cod National Seashore, stated that this is a critical location and he doesn't believe a thorough investigation was performed. Carlstrom provided a report / letter dated December 2020 identifying 8 points of concern. He stated that the plans are inadequate, and that the potential impacts are not identified. He requested that technical reports

that were previously were provided be a part of the record. He stated that the design of the house is high risk, and the owners took invasive actions in its construction.

Carlstrom stated the soft solution should be continued and urged the Commission to continue denial of the rock revetment.

Michael Fisher stated the alternatives analysis with the original NOI for the rock revetment did not identify the coir envelopes. The envelopes are operating successfully now and present a soft solution.

The Commission requested the original Emergency Certification file and its Notice of Intent and Order of Conditions on the same coastal property be made part of the non-emergency record, clearly showing the coir envelopes were not suggested as an alternative solution in the Alternatives Analysis for the rock revetment

It was also recommended that the owners move the house back because there is no long-term solution due to the natural sand movement. As a consequence of armoring, this property will eventually become a peninsula jutting into the Bay.

After two or three years, the envelopes will be sticking out into the beach approximately 7 feet.

Helen Miranda Wilson, as an individual, reported that exactly 2 years ago, the Select Board sent a letter about this case and requested that it now be allowed in the record. She read the letter.

Lauren McKean of the National Seashore stated the Seashore sent a letter to MEPA and MA DEP. Attorney Kwesell stated Mr. Carlstrom's letter is in the record (page 260) dated June 6, 2019, as well as a letter from Dr. Rebecca Beaver dated 6/11/2019, which can be included in the record.

The focus of the Commission is to determine if the structure is pre 1978 and if there is a feasible alternative to the rock revetment.

Attorney Sanders, an abutter's attorney, stated the Commission should include these reports in the record. He reviewed several issues of where the abutter raises objections to the Applicant's proposed rock revetment which include: no reference affirming there will be no impact to abutters; no comprehensive expert opinions; the fact that the court was specific about what information was required. Applicant needs to provide from qualified experts to determine that the revetment will not have an impact on the coastal area; and that the project has not demonstrated that it will meet the performance standards. Mr. Sanders indicated that there appears to be evidence the revetment may impact other properties and this possibility requires technical and qualified expert review. Mr. Sanders indicated that the opinions of Dr. Borrelli should be reviewed and be allowed into the record. It is the abutter Dr. Weller's opinion that the Commission should observe whether the envelopes will work and he requested a peer review for the revetment.

Attorney Kwesell stated there was some dispute whether scientific evidence was presented by the Department of Interior and National Seashore. Attorney Kwesell stated that the Commission may identify any required information needed to the court. Ms. Kwesell stated the court has not been clear on what the review at the time of remand entails. She noted that there is a line in the

decision that the Commission has enough information to make certain recommendations, but is not limited. The Commission needs to know that the Applicant supplied additional information to the court but not to the Commission.

Ms. Kwesell noted that this alternative solution (the three coir rolls filled with sand) is in place and it is working and feels the Commission can use this additional information. The Commission is allowed to have peer review based on regulations and the litigant would have to pay for a peer review. She stated she had a discussion with Attorney Zehnder and his client did not want to present alternatives to the Court. Attorney Moriarty, also representing the homeowner, stated they would object to any peer review and further information being presented.

Helen Miranda Wilson provided history on boulders that were placed on Town owned land next door to the property which had to be removed due to scouring.

Discussion took place regarding the insertion of further evidence and statements into the record. Attorney Kwesell stated that since this is a Public Hearing with additional information being presented, this new information should become part of the record for the court. In the original findings, the Commission noted the damage that could occur. The court never addressed whether the performance standards were discussed and whether they could be met.

Lauren McKean stated the Park Service engaged two professionals for their analysis and wonders why the information was not shared with the court.

John Cumbler moved to reject the NOI due to not having an adequate alternatives analysis, the Commission's not having an opportunity to review additional needed evidence, and that the Commission needs to explore the soft solution as an alternative; seconded Leon Shreves. VOTE John Cumbler aye; Barbara Brennessel aye, Leon Shreves aye; Deborah Freeman aye and Michael Fisher 5-0. Attorney Kwesell stated we can review the decision at the 3/3/21 meeting

Stillman, 115 Main St., Map 15 Parcel 122: Certificate of Compliance This is an order of conditions from 1976. Although the project was completed many years ago, Agent Greenberg-Lemos stated a site visit was recently made and that she feels everything is in compliance. John Cumbler moved to approve the Certificate of Compliance; seconded by Barbara Brennessel. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman aye. 5-0.

Cavanaugh, 80 Peace Valley Road, Map 8, Parcel 234: Certificate of Compliance Agent Greenberg-Lemos stated a site visit made and everything in compliance from 1981. John Cumbler moved to approve the Certificate of Compliance; seconded by Barbara Brennessel. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman aye. 5-0.

Rosenbawm sic, 100 2nd Ave., Map 40, Parcel 136, NOI, construct 2nd Floor and reconstruct existing deck. Replacement of sand fill on northern side of dwelling. John O'Reilly provided an overview of the project and identified the resources. Discussion took place regarding the decking and locations of the decking. There was discussion regarding the fill and where it will

be located. Beach grass will be planted. Leon Shreves questioned whether the second story will be detrimental to the bank due to the weight imposed on the foundation. Attorney Zehnder stated the fill is going to be used around the foundation as a zoning solution and that the house will have 3 bedrooms, although 4 are shown on the house plans. This is a Board of Health issue. The Commission requested calculation on the weight of the second story, the amount of fill to be used, total calculations of disturbance identified on the site plan, and calculations regarding the decking. Barbara Brennessel moved to continue to 3/3/21; seconded Michael Fisher. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman aye. 5-0.

Miller, 246 King Phillip Rd., Map 34, Parcel 12, NOI, excavate along existing basement, construct 16 'x 14 'study, reduce and rebuild existing deck, expand another deck, maintenance on beach boardwalk and stairs Cont'd Mr. Miller stated there was a misunderstanding regarding the previous tree pruning. Agent Greenberg-Lemos stated that she received a letter from Mr. Miller and recommended a \$200 after-the-fact fine. Mr. Miller stated he would like to do additional plantings. Barbara Brennessel stated she would like to see square foot coverage of walkways, driveways, structures and all disturbed area be identified on the plan. Mr. Miller stated he is working with Easy Doze-It and they calculate he will require 157 cubic yards of nourishment. The Commission request a planting plan, vista pruning plan, calculation of disturbance on the property and a beach nourishment plan. The property had not been staked when site visits took place. John Cumbler moved to approve the NOI with conditions; seconded by Michael Fisher. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman aye. 5-0. Supervisor: Deborah Freeman

Shaderowfsky, 77 and 83 Samoset Ave., Map 28, Parcels 114 and 113, NOI, construct vinyl seawall Cont'd At the request of the applicant, Barbara Brennessel moved to continue to 03/03/21; seconded by Michael Fisher. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman. 5-0

Business Meeting continued

Barbara Brennessel proposed that the Commission vote to accept to the revised regulations to the small vessels section of the Regulations. Ryan Curley stated that the Town needs for its regulations on this subject to be consistent so people know what the regulations require and where to find them. The existing regulations for vessels are under the State, the Harbormaster, and Town regulations. The fees for use of town property are under the Beach Dept. He would like to see all the regulations rolled into one document. Barbara asked if this can be completed by April 1, the date when small vessels can be returned to racks. The Select Board will at some point make an amendment to the vessel regulations. Discussion took place about the amount of time the Commission has already put into drafting this regulation with input from other boards and town employees and that the proposed amendment is time-sensitive., It was noted that the Commission can change the rest of the small vessel section in the future. John Cumbler moved to approve the regulation as drafted; seconded by Barbara Brennessel. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman. 5-

John Cumbler advised the Commission he will be out of town the month of April.

John Cumbler moved to adjourn at 7:55 pm; seconded by Barbara Brennessel. VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler aye; Michael Fisher aye; and Deborah Freeman. 5-0

Respectfully submitted,

Christine Bates, Committee Secretary

Documents:

APCC Cyanobacteria Monitoring Report for 2020

Hoeland Trustee, Conditions for NOI

Remand Documents:

Cape Cod National Seashore comments by Superintendent dated 2/17/21

Cape Cod National Seashore comments dated 12/3/18

Town of Wellfleet from Select Board to MA DEP 02/19/19

Dept. of Interior / National Seashore to MEP dated 07/25/19

Dept. of Interior to National Seashore from Rebecca Beavers, PhD, Coastal Geologist & Coastal Adaptation Coordinator dated 06/11/19

Childs Engineering Corp to National Seashore dated 06/06/19 NPS Assets & Land Ownership

US Dept of Interior to Kathleen Theoharides, Environmental Affairs and Erin Flaherty dated 06/11/19

Dept of Interior to Wellfleet Conservation Commission dated 12/03/18

02/17/21 Sugarman/Rogers (Atty's) to Cons Comm

Wellfleet Environmental Protection Regulations – review

Letter from Ethan Estey

Stillman: Request for Certificate of Compliance

Cavanaugh: Request for Certificate of Compliance

Rosenbaum: NOI application and back up material

Miller: Letter from Mr. Miller

Shaderowsky: Request for Continuation