

Final
Wellfleet Conservation Commission
Meeting Minutes
September 20, 2023

In attendance via Zoom: Chair Leon Shreves, Clerk Michael Fisher, Barbara Brennessel, Robert Stewart, John Cumbler, Assisting Agent Hillary Greenberg-Lemos, Committee Secretary Jennifer Elsensohn.

Regrets: Martin Murphy and Benjamin Fairbank

Business Meeting

4:03 p.m. Chair Leon Shreves opened the Business Meeting.

2024 Meeting Schedule:

The 2024 Meeting schedule appeared to be correct and was accepted.

Discussion on meeting in person:

Commissioners discussed the virtues and challenges of holding hybrid meetings. A concern was that the Commission meetings held in the Wellfleet Adult Community Center have the potential to overlap the Planning Board meetings. Gabriel Morton suggested that the Business then Public Hearings meeting format could be inverted: hold the Public Hearings first and the Business Meeting afterward. The decision was made to make the November 1, 2023 meeting a hybrid meeting using this inverted format. Jennifer Elsensohn will make sure the Adult Community Center has the meeting room available before making and publicly announcing these arrangements.

Mail/Discussion:

Update on 215 Gull Pond Road (Map 8, Parcel 63)

Barbara Brennessel had contacted the realtor about activities that had taken place there and heard back from the homeowner who agreed to contact the contractor. Jen Elsensohn added that contractor Charlie Rogers had come to the office in response to the call and was intending to install a split rail fence to prevent parking on a new septic system on the property. This issue will be addressed at a future Commission meeting.

Spraying Pesticides:

Helen Miranda Wilson sent to Barbara Brennessel a proposed Town Organic Land Management Policy about spraying pesticides and questioned the Commission's decision to approve a Jurisdictional Opinion for mosquito spraying at Baker Field, made at the August 2, 2023 meeting. Barbara Brennessel forwarded this proposed Policy to the Commission. Barbara Brennessel had subsequently learned that the Policy has not been ratified by the Selectboard. Hillary Greenberg-Lemos informed the Commission that Curt Felix's company Mosquito Squad has already sprayed Baker's Field without the permission of the Selectboard. Further, Lemos contacted Barnstable County's Cape Cod Mosquito Control, which assessed the situation and treated the surrounding area. John Cumbler asked what was in the spray that was used by the

Mosquito Squad. Michael Fisher shared his screen showing the minutes from the August 2 meeting which stated that the spray contained organic, “non-toxic” ingredients.

Jen Elsensohn explained that the two Conditions to approve the spraying--only with Selectboard approval and that Mosquito Control would be called to assess the issue--were raised during the discussion, but by the time the final motion had been made, the Condition that the Selectboard’s approval was necessary was not included in the motion. Lemos said that the intent was there, and that it had been made known to Becky Rosenberg via email and at the August 2 meeting that the spraying was conditional on Selectboard approval. Cumbler further stated that if Selectboard approval is always necessary, it should not matter if the Commission does not make that an explicit Condition. Elsensohn relayed a conversation that she had earlier in the day with Becky Rosenberg, who informed her that Town Administrator Richard Waldo said that the Commission can approve spraying without permission from the Selectboard. Elsensohn asked Rosenberg to get that in writing for the Commission. Lemos cautioned the Commission against approving chemical use on Town property since the Commission does not have the authority to make such decisions. The care, custody and control of such property lies with the Selectboard. Lemos suggested that the Commission attempt to obtain a better understanding of how the Town wants to control their land. Leon Shreves posed the question whether anything needed to change on the August 2 minutes and the Commissioners decided to leave them as they are.

Minutes:

Barbara Brennessel moved to approve the minutes from the August 16, 2023, meeting. Michael Fisher seconded, and a roll call vote was taken: Robert Stewart, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye; John Cumbler abstained. The minutes were approved 4-0.

Jurisdictional Opinions:

Kraft, 580 Old Chequessett Neck Road., Map 19, Parcel 601, cutting down trees that will be damaged in the Herring River Project. Mr. Kraft requested via phone to have his hearing continued until an unspecified future date. The Commissioners determined that, given the scale of this project, it looks like the application should be submitted as a Request for Determination of Applicability.

At 4:37 pm, Michael Fisher moved to adjourn the Business Meeting. Leon Shreves seconded, and a roll call vote was taken: Robert Stewart, aye; Barbara Brennessel, aye; John Cumbler, aye; Michael Fisher, aye, Leon Shreves, aye. The motion was approved 5-0.

Public Hearings:

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

Present were Robert Stewart, Barbara Brennessel, John Cumbler, Michael Fisher, Assisting Agent Hillary Greenberg-Lemos, and Committee Secretary Jennifer Elsensohn.

Town of Wellfleet, Wellfleet Harbor, Town of Wellfleet Aquaculture Project, Extension Permit of Order of Conditions (continued).

Shellfish Constable Nancy Civetta, Assistant Shellfish Constable John Mankevetch, and Don Munroe of Coastal Engineering represented this project. Leon Shreves asked to see a map of the approved cultching areas in question. Civetta shared her screen showing the currently approved map which had been adjusted after working with the Massachusetts Environmental Protection Agency [MEPA], the Army Corps of Engineers, and the National Seashore, and then filed with the Town. The mooring basin had to be removed from the cultching area due to the Town's dredging plan. This map was the most accurate and up to date and contains latitude and longitude of cultching areas. Barbara Brennessel said that the map should reflect areas that were marked for cultching but where cultching is not taking place. Brennessel also questioned whether the Shellfish Constable should be required to come before the Conservation Commission to renew this Order of Conditions every three years since this is an ongoing project that has been in place since the early 1900's. Hillary Greenberg-Lemos said that there cannot be an Order of Conditions in perpetuity. Leon Shreves asked if this is the final extension of the current Order of Conditions that the Commission could grant. Lemos stated that, if the Commission decided to make an extension for more than a year, its decision could be appealed. Brennessel said a longer extension is appropriate since this is an Ecological Restoration Project. She would also like to see data supporting that aspect of the project. Civetta and Munroe stated that they have been working on an historical comprehensive report for the National Park Service on the areas within the National Seashore and for the Town on all the cultching areas that will include: the restoration aspects of this project; the GPS coordinates of the cultching; photographs of spat which will assist in providing qualitative information about the success of the project; and the location of buoys and bamboo stakes designating the endpoint of cultching strips.

Jude Ahern asked for extensive information about cultching over the past three years. The Shellfish Department stated that a full record of cultching during past years is impossible to provide, but that going forward the requested information will be included in reports. Ahern also requested that this information be posted on the Town and Shellfish Department websites and thus be made available to the public. Leon Shreeves also requested that all available information about cultching during the last three years be posted. The Commission noted that all information submitted to the Town and Conservation Commission is available to the public upon request.

Bradford Morse was recognized and asked if any cultching had been done in the 8A section. Civetta and Mankevetch explained that no cultching had been done there, and described the minimal items that had been temporarily placed there and would soon be removed.

Barbara Brennessel moved to approve a three-year extension of the proposed aquaculture project (to June 19, 2026) with the Conditions that: the Commission receive a comprehensive report about future cultching, including cultching coordinates and maps and evidence of ecological restoration; that buoys or bamboo will be placed to mark the cultching areas; and that the existing Conditions on the project be continued. Michael Fisher seconded, and a roll call vote was taken: Barbara Brennessel, aye; Robert Stewart, aye; John Cumbler, aye; Michael Fisher, aye, Leon Shreves, aye. The motion was approved 5-0.

Town of Eastham, Route 6 Town Line to West Road, Request for Determination of Applicability, Eastham Water System Wellfleet Extension.

Jackie Tupper of Environmental Partners presented the project. Eastham had been approached by the Town of Wellfleet requesting extension of a water line into Wellfleet as far north as Maurice's Campground. Because the Massachusetts Department of Transportation will be paving and installing sidewalks and drainage on Route 6 soon, this is the time to do this project. This work will not be done in any wetland resource but rather will only be done in buffer zones. The water pipe will be only on previously disturbed areas within the asphalt and shoulder of the road and pass above the existing stream culverts. The Natural Heritage and Endangered Species Program agency (NHESP) has approved this project.

John Cumbler moved to identify this 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". Barbara Brennessel seconded. A roll call vote was taken: Barbara Brennessel, aye; Robert Stewart, aye; John Cumbler, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 5-0.

Town of Wellfleet, Lieutenant Island Road, Notice of Intent, Repairing and Repaving Lieutenant Island Road.

Kevin McHugh from Coneco presented the project to reshape the roadway and direct stormwater runoff into catch basins. A previous Notice of Intent for the paving of Lieutenant Road had been submitted in 2019 but had not been concluded due to a difference regarding the allowed stormwater infiltration amounts between Commonwealth standards and a Town Bylaw: Article 7, Section 30. This new Notice of Intent will be fully compliant with State requirements, the Environmental Protection Act, and complies with the Town bylaw. In this plan, outflows from catch basins will be capped while the Town reconsiders this bylaw and uncapped when the bylaw changes. Michael Fisher asked about the plan's term "Cape Cod Berm." Kevin McHugh explained that these are asphalt berms that direct water to basins. Abutters John Schuster and Martha Rullman had questions about how this project would affect their property. The Commission suggested that their questions be directed to the Department of Public Works whose representative could come out for a site visit and meet with them and any other concerned abutters. This project is likely to start in Spring 2024. Since the collected Notice of Intent acknowledgements from abutters have not yet been submitted to the Conservation Department and since the Department of Environmental Protection has not yet approved this project and assigned it a file number, the applicants requested that this hearing should be continued. Michael Fisher stated that he has already submitted in writing 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 continue the hearing until October 4, 2023, and John Cumbler seconded. A roll call vote was taken: Barbara Brennessel, aye; Robert Stewart, aye; John Cumbler, aye; Michael Fisher aye; Leon Shreves, aye. The motion was approved. 5-0

Ross, 945 Chequessett Neck Road, Map 19, Parcel 98, Certificate of Compliance, replace 30' of seawall (continued).

Mr. Ross emailed a request for a Continuance to the Commission's next meeting. Michael Fisher moved to continue this hearing until October 4, 2023, Barbara Brennessel seconded. A roll call vote was taken: Barbara Brennessel, aye; Michael Fisher, aye; Robert Stewart, aye; John Cumbler, aye; Leon Shreves, aye. The motion was approved. 5-0

Bartlett, 50 Steele Road, Map 4, Parcel 33, Notice of Intent, restoring view corridor by pruning and installing native plantings

Ponderosa's Charles Wentz and Ken MacPhee presented this project. Wentz said that his clients would like to restore their view to Higgins Pond. This project would include the removal of some trees, height reduction of others, and pruning elsewhere. The owners have submitted a letter from the Department of Public Works granting permission for the part of the work on Town property. The applicant would like to be able to control the growth of the vegetation every three to five years to keep the vista clear. Their proposed mitigation plan includes planting trees and shrubs in the buffer zone; some on Town land, and some on the owner's land. Hillary Greenberg-Lemos commended the Bartletts for the planning of this project. Wentz described the property boundaries and stated that the plan does not include any work in the National Seashore. Lemos said that the Department of Public Works' letter did not include permission for cutting down trees entirely and she asked for a more specific letter from the Department of Public Works. Robert Stewart asked for a clearer description of some technical terms in the proposal. John Cumbler moved to approve this Notice of Intent with the Conditions that: a more specific letter be obtained from the Department of Public Works and that no tree cutting be done on Town land without explicit permission for that; permission from the Commission be obtained before any work beyond the plan be done on the property; and that a vegetation management plan be submitted. Barbara Brennessel seconded. A roll call vote was taken: Barbara Brennessel, aye; Robert Stewart, aye; John Cumbler, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was accepted. 5-0 Barbara Brennessel is the supervisor of this project.

Belvernon, 75 & 91 Commercial Street, Map 21, Parcels 133 & 129, Notice of Intent, constructing a covered deck and seasonal pergola over a proposed dining area.

David Lyttle, Blue Flax Design's Theresa Sprague, and Mac Hay presented this project. The owner would like to move the restaurant's outdoor dining from the current tented location on its south side, which will be restored to a parking area, to a screened pergola on the north side of the property. A proposed small, covered ramp from the north side of the existing building will lead to a walkway that takes customers directly to the new dining area. The proposed new pergola will be on the location of a current garden, adjacent to the marsh.

The pergola is a nine-post structure with a lowered roof system, seasonal fans, surrounding screens, and seasonal plastic rain curtains. The material for the flooring will be permeable crushed shells. The pergola's louvers will be closed only in case of rain during the restaurant's summer open season. When closed, the louvers will direct rain to a gutter and trench system to be absorbed by the ground. When the restaurant is closed for the winter, the louvers will remain open. Some regrading will occur. Invasive and dying trees will be removed. The current lilac shrub barrier will be thinned. The remediation plan includes significant plantings of native grasses and plants, woody vegetation, and a rain garden. The plantings will prevent customers

from stepping onto the marsh bank. The plantings will also help strengthen the bank, mitigate stormwater flow toward the marsh, and improve wildlife habitat value. The view of the marsh will be improved both for patrons and the town.

The Commissioners stated their concerns that: the project is in the 50-foot buffer zone; the site is adjacent to the marsh; the tent will have to be removed anyway due to the end of Covid conditions; and the pergola will be subject to flooding in storms and due to sea level rise. The Commissioners requested more information about the nature of the footings for the posts and the total square footage of disturbed area. Mac Hay stated that he would welcome guidance on the installation of the posts on either diamond piers or sonotubes. Sprague noted that the planting plan exceeds the State and Town regulations for coastal banks, will enhance and stabilize the bank, improve eco-diversity, and provide a long-term benefit to the Area of Critical Environmental Concern. The Commission noted that the current tented area has been a parking lot for decades and so no remediation would be required there. Lyttle asked for a continuance until October 4 to provide further information. Michael Fisher moved to continue the hearing to October 4, 2023. Barbara Brennessel seconded. A roll call vote was taken: Barbara Brennessel, aye; Robert Stewart, aye; John Cumbler, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0

At 7:22 pm, John Cumbler left the meeting.

The meeting was briefly suspended from 7:30 to 7:35 pm.

Johnson/Alford, 156 Pleasant Point Road, Map 35/ Parcel 110, Notice of Intent, reconfiguring existing porch and deck.

Safe Harbor's Gordon Peabody and architect Trevor Pontbriand represented the owners. This house had been a seasonal home and was flooded during the past winter freeze. The proposed project would repurpose the current screened-in porch into a dining room, adding walls but not extending the footprint. Currently seaward of the porch are a set of steps and a flower bed enclosed by concrete walls. There are other concrete retaining walls on the property. The plan includes the removal of 15 cubic yards of the concrete walls and adding a deck on diamond pier footings in place of the flowerbed. There is about 1,000 square feet of remediation with native plants and ground cover.

The Commission asked if the retaining wall removal will require regrading and Peabody said there would be minimal regrading. The Commission asked the square footage of the new deck. Pontbriand calculated new deck to be 136 square feet. The deck will have ¼ inch slots between each floorboard so the rain will go right through and native ground cover will grow beneath it. The Commission stipulated that nothing will be stored underneath the deck.

The current septic system is a seven-year-old Title 5 system. The Commission advised the homeowners of the upgrade requirements that are coming and that construction time is a good time to upgrade to an enhanced Innovative/Alternative system, for which there is currently a Town subsidy of \$12,500 available. Michael Fisher moved to approve the Notice of Intent with the Conditions that nothing will be stored underneath the deck and that the total area of disturbance within the 100-foot buffer zone, including the driveway, be marked on the plan.

Robert Stewart seconded. A roll call vote was taken: Barbara Brennessel, aye; Michael Fisher, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was accepted. 4-0. The Supervisor will be John Cumbler.

Kaplan, 135 Old Truro Road, Map 8, Parcel 164, After the fact Notice of Intent, completion of exterior mitigation.

Safe Harbor's Gordon Peabody represented Mr. Kaplan, who was also present. The property is under sale contract and the closing is scheduled for October 17, pending approval of the After-the-Fact Notice of Intent and two Certificates of Compliance. The sandy soil on the property is not a good planting platform for large vegetation. The Conditions for approval should include maintenance of existing ground cover on the slope and a plan for continued removal of resprouting invasives. Michael Fisher has visited the property and seen substantial improvement with knotweed removal and growth of native plants on the top and the slope of the bank so that the bank is becoming stable.

The previous Notice of Intent (approved June 5, 2019) is nearly expired, and a Certificate of Compliance for that Notice of Intent is needed. The newly filed After-the-Fact Notice of Intent is for work already completed and it also requires a Certificate of Compliance. The Commissioners were unable to vote on the After-the-Fact Notice of Intent because the necessary paperwork was not in their packet. Needed for the next meeting are: the After-the-Fact Notice of Intent (which had been submitted); a revised site plan with total areas of disturbance; and an invasive vegetation removal plan (including for knotweed). After the After-the-Fact Notice of Intent has been approved and registered, the Certificate of Compliance for that can be considered by the Commission. Michael Fisher moved to continue the hearing to October 4, 2023. Barbara Brennessel seconded. A roll call vote was taken: Michael Fisher, aye; Barbara Brennessel, aye; Robert Stewart, aye; and Leon Shreves, aye. The motion approved. 4-0

Adjournment:

At 8:37 pm, Leon Shreves moved to adjourn the Public Hearings and Barbara Brennessel seconded. A roll call vote was taken: Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 4-0.

Respectfully submitted by,
Jennifer Elsensohn, Committee Secretary



Documents:

2024 Meeting Schedule

Draft Meeting Minutes for August 16, 2023

Town of Wellfleet—Order of Conditions and supporting documents

Ross—Certificate of Compliance and supporting documents

Town of Eastham—Request for Determination of Applicability and supporting documents

Town of Wellfleet—Notice of Intent and supporting documents

Bartlett—Notice of Intent and supporting documents

Belvernon—Notice of Intent and supporting documents

Johnson and Alford—Notice of Intent

Kaplan—After the Fact Notice of Intent and supporting documents