

Final
Wellfleet Conservation Commission
Meeting Minutes
October 18, 2023

Held in person at Town Hall, 300 Main Street, and on Zoom

In attendance via Zoom: Chair Leon Shreves, Clerk Michael Fisher, Barbara Brennessel, Robert Stewart, John Cumbler, Martin Murphy, and Committee Secretary Jennifer Elsensohn.
Also Present: John Grieb, Peggy Sagan, and Gordon Peabody.
Regrets: Benjamin Fairbank.

Business Meeting

4:01 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

Mail/Discussion:

John Grieb reporting on two Open Space Committee grant applications to the Community Preservation Committee.

John Grieb presented two proposals which will be considered by the Wellfleet Community Preservation Committee (CPC) on November 3, 2023:

1) Open Space Conservation Fund. In December 2022, the CPC voted to create an Open Space Preservation Fund and award to it \$150,000 in Massachusetts Community Preservation Act (CPA) funds. This Open Space Committee proposal was endorsed by the Conservation Commission on January 4, 2023 and April 19, 2023. After discussion with the Select Board, the definition of the Open Space Preservation Fund was altered to provide for a broader range of uses of this Fund. Subsequently, the town attorney and Community Preservation Act officials determined that this new altered definition did not meet the CPA requirements. Hence, this Article was removed from the Spring 2023 Town Meeting Warrant.

In November 2023, this request is again being placed before the CPC, in largely its original form, under the title Open Space Conservation Fund, with a request for \$150,000. This year, the language is very clear, reflecting its intended land conservation use within the CPA regulations. The fund would be used only for conservation projects, proposed through coordination between the Open Space Committee and the Conservation Commission, and subject to approval by the Select Board. Having the money available in the Fund will prevent delay in beginning projects due to the infrequent meeting of the CPC.

2) Building to be removed on a Town-owned parcel of land, 360 Blue Heron Road (map 42, parcel 127), so that the land will be in condition to be received by the Conservation Commission into its care and custody. The structure is 12-foot x 12-foot, constructed of concrete blocks and wood. This building was never legally approved by the Town. The Conservation Commission cannot receive this lot until the structure has been removed. This parcel is part of a larger, private donation to the Town for conservation purposes of four properties (map 42, parcels 125, 126, 127, 132). Once the Open Space Committee has developed its formal proposal for the removal of this building, it will apply for a Notice of Intent to the Conservation Commission. The Open

Space Committee will eventually be applying to the Conservation Commission for acceptance into its care and custody for conservation of all four lots.

John Cumbler moved to endorse the Open Space Committee proposal for an Open Space Preservation Fund, with the Condition that the proposal is funded by the Community Preservation Committee and submitted in its final form to the Conservation Commission. Marty Murphy seconded. A roll call vote was taken: Robert Stewart, aye; Martin Murphy, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye; John Cumbler, aye. The motion was approved 6-0.

Michael Fisher: Korgen, 20 Ryder Ct., Map 14, Parcel 11, Request for Determination of Applicability, unexpected change to protect an unstable bank with a 20-foot-long retaining wall. Michael Fisher, the Supervisor on this project, presented some challenges that have arisen there. A small bridge included in the Notice of Intent that the Commission approved on May 3, 2023, had to be installed approximately two feet south from where it had been identified on the approved plan, in order not to block access to the septic system. On August 23, Gordon Peabody asked Fisher and Agent Meredith Ballinger to make a site visit and make a field approval. Fisher and Ballinger jointly decided that the new location of the bridge does not impact the environment in any negative way since there is a house between it and the wetland, about 70 feet away. Fisher and Ballinger ruled that the new placement should be represented correctly on a revised site map.

The second issue involves an unstable bank of earth that was uncovered when work was being done on the porch. On October 11, Peabody requested a field visit from Supervisor Fisher in order to consider a proposed retaining wall. Since there was no Conservation Agent at that time, Fisher inspected the site alone. Leaving the unstable bank unsupported would pose the threat of severe erosion. This proposed new 20-foot-long retaining wall will be made of appropriate earth-contact timber. The wall will have a porch and stone fill between it and the wetland, about 70 feet away, so it will not have any significant detrimental effects on the wetland. A Request for Determination of Applicability had already been filed for the Commission's November 1, 2023 meeting. Fisher reported that he had agreed that the work could begin in order to stabilize the bank without delay, with the Request for Determination of Applicability to be considered afterward. The wall has subsequently been installed. Peabody offered supporting testimony, saying that the contractor is doing his best and would not have begun the work without field approval by the Supervisor. Fisher provided this evidence as informational, with no action by the Conservation Commission required at this point.

Minutes:

Leon Shreves moved to approve the October 4, 2023 Meeting Minutes. Michael Fisher seconded. A roll call vote was taken: Robert Stewart, aye; Martin Murphy, aye; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye; John Cumbler, aye. The minutes were approved 6-0.

Jurisdictional Opinions:

Douglass, 925 Chequessett Neck Rd, Map 19, Parcel 100, Jurisdictional Opinion, remove three cypress trees and two pitch pines that are dead or dying.

Leon Shreves, the Supervisor for this site, and Assistant Health Agent, Gary Locke, independently visited the site and both noted that the trees that were marked were in very bad shape and need to be taken down. However, the homeowner is requesting to remove more trees than what Shreves was able to see on his visit. Shreves stated that this needed to be a Request for Determination of Applicability due to the number of trees to be removed.

Shreves moved to reject the Jurisdictional Opinion and recommended that the homeowner apply for a Request for Determination of Applicability. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 6-0.

Other Business:

John Cumbler questioned whether Benjamin Fairbank should remain on the Commission since this is the fourth meeting that he has missed. Further, Fairbank has informed the Commission that he has moved out of Town, which disqualifies him from a seat on the Commission. Jen Elsensohn will reach out to Fairbank to thank him for his previous service and let him know that he has been released from his responsibilities to the Commission.

Jude Ahern asked to be recognized. Ahern asked whether the Commission had yet received any further information that had been requested from the Shellfish Constable Nancy Civetta. Jen Elsensohn stated that she had spoken to Nancy Civetta earlier in the day and Civetta acknowledged that she needed to complete her report to the Commission. Chair Shreves reported that he had emailed Civetta asking for information on when the cultching had begun, ended, and the amount of cultch placed in the harbor for the last three years. Elsensohn will reach out to Civetta with these specific questions.

Barbara Brennessel reminded the Commission that on June 21, 2023, she had recommended that the Commission make a site visit to Long Pond landing to inspect the work the Town has done there. The Commission decided to make a site visit on November 1.

Alexander Bates, Conservation Agent of Eastham, introduced himself. Bates stated that he was present to support the Commission in case they had any questions or concerns that he could address.

4:35 p.m. John Cumbler moved to adjourn the Business Meeting. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 6-0.

Public Hearings:

5:00 p.m. Chair Leon Shreves opened the Public Hearings. A quorum was present.

Present: Chair Leon Shreves, Robert Stewart, Barbara Brennessel, John Cumbler, Martin Murphy, Clerk Michael Fisher, and Committee Secretary Jennifer Elsensohn.

Also Present: Gordon Peabody, Matt Farrell, David Lyttle, Theresa Sprague, and Mac Hay.

Crowell, 36 Wigwam St., Map 35, Parcel 139: Request for Determination of Applicability, limited hand trimming for vista relief.

Gordon Peabody spoke on behalf of the homeowner, reporting that this same proposal had been approved by the Conservation Commission on August 5, 2020, but the work had been delayed due to Covid. It is minimal work, taking down only the growth that has advanced in the past three years. Barbara Brennessel inquired whether this would be a request every three years to maintain the view. Peabody said that it seemed that way.

John Cumbler moved to identify this Request for Determination of Applicability as 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”). Marty Murphy seconded. A roll call vote was taken: John Cumbler, yes; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 6-0.

Miller, 246 King Phillip Road, Map 34, Parcel 12: Request for Determination of Applicability, limited plantings and removal of pitch pines.

Gordon Peabody spoke on behalf of the homeowner, and immediately clarified that the pine trees that were awaiting removal are dead—not living. Peabody stated that he has been working on this property for some time and knows it well. The homeowner would like to revegetate the coastal bank. Brennessel, the Supervisor for this site, observed that she had investigated the side of the property and observed a dead tree. Peabody drew attention to the planting plan that he had submitted to the Commission. There is a new deck on the property for which a Notice of Intent had been approved on January 20, 2021. While on the site visit, the Commissioners observed that the old decking lumber is being stored beneath the new deck. Peabody said he would address it with the homeowner and that both he and their contractor are proactive and he was confident that it would be taken care of quickly. Peabody stated that he would speak with the contractor by Wednesday, October 25, 2023 and provide an update to the Commission. Fisher noted that a Condition for the Notice of Intent was the installation a nitrogen-reducing layer of woodchips under the outdoor rinse stations. Peabody stated that he believes that the station on the side of the house is installed with a proper woodchip system as required, and he will look into the second station attached to the new deck. Fisher also noted that the downspouts on the house do not appear to have dry wells beneath them. Peabody confirmed that there are none at present, and assured the Commission that they will be installed soon.

John Cumbler 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, said work does not require the filing of a Notice of Intent”). Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 6-0

Brennessel, the Supervisor for this project, asked how Supervisors are supposed to supervise a project without receiving very specific information about the required Conditions recorded in the

file on that project. Elsensohn explained that she had recently been instructed by former Agent Hillary Greenberg-Lemos to include in the Supervisor's paperwork a separate sheet clearly and inclusively stating the Conditions. Elsensohn will work with the incoming Conservation Agent and all future Supervisors to make sure that this happens hereafter.

Falk/Pascual, 117 Samoset Ave, Map 28, Parcel 107, Amended Order of Conditions for plans that have been previously approved by both the Conservation Commission and Board of Health (continued from October 4, 2023).

Matt Farrell of J.M. O'Reilly and Associates spoke on behalf of the homeowners. The homeowners are requesting an Amended Order of Conditions to install a "FAST" Innovative and Alternative (IA) septic system instead of the currently approved NitROE IA system. The FAST system had been approved by the Board of Health in 2021 and by the Conservation Commission on October 6, 2021. The applicant submitted an Amended Order of Conditions to install a Nitro IA system instead of the FAST system, which the Commission approved on December 23, 2022. However, Farrell stated that he could not fit a NitROE system on the site and still keep the leaching field outside the 50-foot buffer zone. After much discussion, the Commissioners indicated that, in order to protect the very fragile ecosystem as well as the shellfishing resource just below the property, the superior nitrogen removal capacity of the NitROE system is preferable, even if the leach field has to extend into the 50-foot buffer zone. Farrell requested a continuance to November 15, 2023.

Michael Fisher moved to approve the continuance until November 15, 2023. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 6-0.

Kaplan, 135 Old Truro Road, Map 8, Parcel 164, Certificate of Compliance, completion of exterior mitigation
This case had already been thoroughly heard and understood during the October 4, 2023 meeting when the Notice of Intent was approved. Hence, the Commissioners had no further questions.

Barbara Brennessel moved to grant the Certificate of Compliance. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 6-0.

Town of Wellfleet, Lt. Island Road, Notice of Intent, Repairing and repaving the road
(Continued from October 4, 2023)

Kevin McHugh at Coneco has written asking for an indefinite continuance since that there is no identifiable time by which the project would receive the required letter from the Natural Heritage and Endangered Species Program.

Michael Fisher moved to grant the indefinite Continuance. Barbara Brennessel seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Robert Stewart, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 6-0.

5:30 p.m. Robert Stewart left the meeting.

Belvernon, 75 & 91 Commercial Street, Map 21, Parcels 133 & 129, Notice of Intent, constructing a covered deck and seasonal pergola over proposed dining area (Continued from October 4, 2023).

David Lyttle spoke on behalf of the owner. Lyttle acknowledged that, when calculating the measurements that the Commission has requested, he discovered that the proposed total disturbed area was 5,182 square feet. In order to reduce the disturbed area below the regulation 5,000 square feet, he submitted a revised plan that will replace 194 square feet of gravel parking area near the studio with mitigation plantings. Theresa Sprague explained her proposal to plant a fescue/clover mix there so that occasional parking might be possible, as well as continuing to provide an area for the use of landscape artists. Commissioners indicated that it would be better to have native small shrubs or other natural plantings instead of fescue/clover so that this area would remain undisturbed. Sprague then proposed native bayberry and ornamental grass since this would prevent parking and also provide animal habitat. Lyttle asked for approval of this Notice of Intent subject to a new planting plan from Sprague.

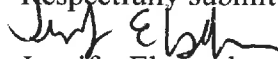
Michael Fisher moved to approve the Notice of Intent with the following Conditions: 194 square feet of the gravel parking near the studio be removed and planted with appropriate native vegetation, a new planting plan be provided, and the temporary dining tent on the east side of the restaurant be removed permanently. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0. John Cumbler is the Supervisor of this project.

Adjournment:

At 5:52 pm, Barbara Brennessel moved to adjourn the Public Hearings. Martin Murphy seconded. A roll call vote was taken: John Cumbler, aye; Martin Murphy, aye; Barbara Brennessel, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0

Since this was Martin Murphy's last meeting as a Commissioner, the Commissioners thanked and applauded him for his excellent service to the Town and the protection of its very delicate environment.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

Draft Meeting Minutes for October 4, 2023.

Douglass—Jurisdictional Opinion and supporting materials.

Crowell—Request for Determination of Applicability and supporting materials.

Miller – Request for Determination of Applicability and supporting materials.

Falk/Pascual—Amended Order of Conditions and supporting materials.

Kaplan—Request for Certificate of Compliance.

Belvernon—letter from Ryder-Wilcox with additional information and request for variance.

