

Final  
Wellfleet Conservation Commission  
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom  
Meeting Minutes  
November 15, 2023

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

**Also present:** Nancy Civetta, Sonya Woodman, Nick Nicholson, Nate Johnson, Tim Hughes, Jude Ahern, Lisa Dexter, Brad Morse, Diane Brunt, and Richard Blakely.

**Absent:** Robert Stewart

**Business Meeting**

4:03 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

**Mail/Discussion:**

**Trucks driving/parking on Chipman's Cove**

Last March, former Health and Conservation Agent Hillary Greenberg-Lemos was notified about commercial and non-commercial vehicles being driven and parking on vegetation on the northeast shore of Chipman's Cove. The Conservation Commission, in agreement with the former Agent, chose to postpone an investigation until after the summer. Parts of that shoreline are high marsh which must be protected as it is valuable in delaying erosion, preventing storm surge, and providing habitat for many species of marine life. The Conservation Commission has jurisdiction over driving on beaches and has the responsibility to uphold State and Municipal bylaws, including: Massachusetts Wetlands Protection Act (WPA) Massachusetts General Law (MGL) 131 40, WPA MGL 131 40, Wellfleet Environmental Protection Regulation (WEPR) 1.02, and WEPR 1.01(2). The Commission is sensitive to the concerns of the shellfishing community, recognizing that it is a challenging livelihood and one that is a major part of Wellfleet's economy. Thus, there is apparent tension between the Conservation regulations and the livelihood of valued members of the Wellfleet community. Michael Fisher shared his screen to show pictures of tire tracks through the high marsh taken earlier in the day. Shellfish Constable Nancy Civetta stated that the Shellfish Department rarely encounters people parking on the high marsh and that, when Shellfish Department staff have encountered people parking there, a quick explanation by staff about what is permissible stops the behavior and prevents future infractions. Civetta asserted that shellfishermen are stewards of the wetlands and cooperate with one another to avoid any damage to sensitive areas by backing out instead of turning around, and maneuvering to not block one another's vehicles. Civetta requested that a compromise be found, rather than removing more beach access from the shellfishermen, since they have lost much access already. Civetta recommended that communication be the first course of action, educating people on the regulations and permissible access routes. Then, the shellfishermen present were invited to speak. They expressed frustrations about limiting access to their grants and harvesting areas. Some shellfishermen stated that non-commercial pickers and irresponsible youths were causing much of the damage. Some shellfishermen stated that the Commission is more concerned with environmental issues than the livelihood of people. Some

shellfishermen stated that driving their trucks across the marsh during the dormant, winter season promoted the growth of vegetation in the areas in question. The Commissioners stated that they are required to uphold the law and are sympathetic toward shellfishermen. Further, the environment is continually changing and the shellfish industry must plan for the effects of climate change, including sea level rise. Nancy Civetta suggested that the Shellfish Department, representatives from the shellfishing community, and members of the Conservation Commission hold a public hearing at Chipman's Cove to gain understanding of the fishermen's concerns, identify regulations, and discover ways to work together. John Cumbler moved to postpone any decision until after this public hearing. John Portnoy seconded. A roll call vote was taken: Barbara Brennessel, yes; John Cumbler, yes; John Portnoy, yes; Michael Fisher, yes; Leon Shreves, yes. The motion was approved 5-0.

Barbara Brennessel moved to temporarily close the Business Meeting. John Cumbler seconded. A roll call vote was taken: Barbara Brennessel, yes; John Cumbler, yes; John Portnoy, yes; Michael Fisher, yes; Leon Shreves, yes. The motion was approved 5-0. The business meeting was adjourned at 5:03 pm.

**Public Hearings:**

5:07 p.m. Chair Leon Shreves opened the Public Hearings.

**Present:** Chair Leon Shreves, Barbara Brennessel, John Cumbler, Clerk Michael Fisher, John Portnoy, Conservation Agent Beth Pyles, and Committee Secretary Jennifer Elsensohn.

**Also Present:** Nancy Civetta, Brad Morse, Jude Ahern, Judith Singer (Zoom), Beth Gamse (Zoom), Theresa Hamacher, Matt Farrell, Jay Ellis (Zoom).

**Absent:** Robert Stewart

**Falk/Pascual, 117 Samoset Avenue, 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 and October 18, 2023)

Matt Farrell presented this application on behalf of the owners. As was discussed at previous meetings, two septic proposals had been submitted to both the Board of Health and the Conservation Commission and both were approved. The applicant had made a request for an Amended Order of Conditions to install a FAST System instead of the Nitro system. The Commission requested that the homeowner install the Nitro Nitrex system since it would remove more nitrogen, even though the leach field would extend a short way into the 50-foot filter strip from the coastal bank.

John Cumbler moved to approve the amended Order of Conditions approving the Nitro Nitrex system. Barbara Brennessel seconded with the Condition that the site plan be updated with the total square footage of disturbed area. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, abstained; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 4-0-1. Agent Beth Pyles is the Supervisor.

**Morse, Blackfish Creek, Map 34, Parcel 17-852, Request for Determination of Applicability for shellfish grant rack and bag method for commercial oyster growing, seed to sale.**

Brad Morse and Shellfish Constable Nancy Civetta presented this application. Morse explained that he had accidentally been fishing on this site since 2011, believing it was part of his already approved grant. When it came to his attention that he was beyond his boundary, Nancy Civetta, recognizing that Morse's operation was cleanly run, well-maintained, and following the contour of the topography, encouraged Morse to get official approval to extend his grant to where he is currently shellfishing. Morse's application has been approved by the Select Board, the Harbormaster, the Shellfish Department, and the Massachusetts Division of Marine Fisheries. His approval from the Army Corps of Engineers hinges on the approval of the Conservation Commission. Brennessel expressed concern that this grant is jutting out into the channel beyond its neighbors which could endanger marine life. Morse explained that there have been no stranding incidents in the fifteen years he has been shellfishing there. Morse also stated that sand renourishment on beaches in the area of his grant has been eroding into the marsh, causing a desert-like environment. He has lost oysters to the sand. The Commissioners acknowledged the challenge of determining the proper amount of sand renourishment. Civetta shared her screen to show maps of the grant area, and the contour line beyond Morse's proposed extension and two other extensions recently approved by the Commission. Civetta also noted that this particular grant has been scrutinized more fully than most. The Commission noted that this Request will not set a precedent since each application will be assessed on its own merits.

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, the said work does not require the filing of a Notice of Intent."). Leon Shreves seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, abstained; Michael Fisher, aye; Leon Shreves, aye. The motion was approved 4-0-1.

**Johnston, 256 Browns Neck Road, Map 13, Parcel 168, Request for Determination of Applicability to upgrade (install new) septic system within 100' buffer zone on top of Coastal Bank.**

A site visit had been made by the Commissioners. Jason Ellis (on Zoom) represented the homeowner who is in the process of selling the house. The scope of this plan is to replace and upgrade the current failed septic system, locating the new Title 5 system with an Orenco Advantex nitrogen reducing system, further away from the coastal bank. The leach field will be 83 feet from the top of the coastal bank but the tank will be within the 50-foot filter strip. The dwelling is between the resource area and the new septic system. The old septic system will be filled and abandoned. Brennessel requested that the square footage of disturbed area be added to the site plan. Fisher shared his screen to show an outdoor rinsing station that is in need of nitrogen remediation with a layer of woodchips. Ellis questioned why this requirement was not stated in the regulations. John Portnoy asked when the regulations were last updated. The

Commissioners responded that they are in the process of revision, and this is nearly completed. The new regulations should include the nitrogen remediation for all outdoor rinsing stations.

Barbara Brennessel 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 Conditions that the total disturbed area be recorded on the plan and that the outdoor rinsing station receive a nitrogen-reducing woodchip layer. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, aye; Michael Fisher stated that the Commonwealth Ethics Commission and the Wellfleet Select Board have approved his Disclosure of Appearance of Conflict of Interest (MGL c. 268A para 23(b)(3)) form and that he is able to perform his official duties objectively and fairly in this case, aye; Leon Shreves, aye. The motion was approved. 5-0

**Downs, 40 Arey Lane, Map 36, Parcel 24, Notice of Intent to build a proposed addition within the 100-foot buffer zone to salt marsh and land subject to coastal storm flowage.**

A site visit had been made by the Commissioners. Jason Ellis represented the homeowner. The proposed work is to construct the addition of a three-season porch, to extend the existing deck and to add a staircase which would provide access to the new porch. The plan contains calculations for the total disturbed area which include the driveway, structure, shed, portable platform and deck. Portnoy asked how runoff from the new structure would be managed. Ellis explained that a drywell on the northwest side of the house would be installed below the gutters and downspouts. The addition would be within the most recent Federal Emergency Management Agency (FEMA) 50-foot coastal storm flowage zone and within 100 feet of the saltmarsh. There is also a large pine tree that must be removed because it has pine bores. When asked about mitigation, Ellis proposed approximately 450 square feet of new native plantings between the house and the road. Portnoy recommended establishing a shrub thicket which would provide wildlife habitat. Shreves added that there will be a Condition that nothing be stored beneath the porch.

Leon Shreves moved to continue the hearing on this Notice of Intent until December 6 to give Ellis time to submit a planting plan. Michael Fisher seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0.

**Hamacher, 12 Pleasant Landing Road, Map 35, Parcel 106, Request for Determination of Applicability to install concrete block retaining wall to replace existing rotted railroad tie wall and install two dry wells under gutters.**

A site visit had been made by the Commissioners. Theresa Hamacher represented herself. The Commission noted that the outdoor rinse station on the seaward side of the house had not been

approved by the Conservation Commission and that she will need to apply for an after-the-fact Request for Determination of Applicability for it. Hamacher said that she will make it right. Brennessel asked why the material of choice for the wall replacement is concrete and not lumber. Hamacher stated that she chose it for its durability and to support the hill. Abutter Jude Ahern asked if the Commission had been in receipt of her substantial emails regarding this case; specifically regarding the septic system on the property. The Commissioners responded that they had received and read her email, but the septic system was not before them and was not subject to review at this time. The Commissioners noted that the placement of the concrete wall might pose a problem for when the septic system has to be upgraded. Hamacher acknowledged that her septic system will need to be upgraded, but is waiting for the new regulations about this before undertaking that project. The Commissioners requested a site map, showing exactly where and how the wall would be built and how deep the footing would be. Hamacher stated that this now appears to be a much bigger project than what she had understood previously. Hamacher asked that the Commission allow her to withdraw the concrete block retaining wall from her application and that the Commission just approve the dry wells.

Barbara Brennessel 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.") for the dry wells only, not the retaining wall, and with the Condition that an after-the-fact Request for Determination of Applicability be made for the outdoor rinse station. John Cumbler seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0

At 6:07 pm, Michael Fisher moved to adjourn the Public Hearings. Leon Shreves seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0.

At 6:10 pm Chair Leon Shreves reopened the Public Hearings.

#### **Minutes:**

Leon Shreves moved to approve the November 1, 2023 Meeting Minutes. Barbara Brennessel seconded. A roll call vote was taken: John Portnoy abstained; Michael Fisher, aye, Barbara Brennessel, aye; Leon Shreves, aye; John Cumbler, aye. The minutes were approved 4-0-1.

#### **Jurisdictional Opinions:**

**Cohen, 190 Lieutenant Island Road, Map 42, Parcel 135,** Jurisdictional Opinion to pump and fill abandoned existing septic in 100-foot buffer zone and Wellfleet Harbor Area of Critical Environmental Concern.

A site visit had been made by the Commissioners. Jason Ellis represented the homeowner. This house is in the process of being sold. It has a failed septic system and a new Title 5 septic system will be placed outside the 100-foot buffer zone. To protect the environment during the filling of the old septic components, Ellis has placed a silt fence around the area.

Barbara Brennessel moved to approve the Jurisdictional Opinion. Michael Fisher seconded. A roll call vote was taken: Barbara Brennessel, aye; John Cumbler, no; John Portnoy, aye; Michael Fisher, aye; Leon Shreves, aye. The motion passed 4-1.

**Singer and Gamse, 95 Chequessett Neck Road, Map 14, Parcel 155.1, Removing dead trees in driveway and prune dead and hazardous trees in easement.**

A site visit had been made by the Commissioners. Applicants Beth Gamse and Judy Singer represented themselves via Zoom. They reported that three or four weeks ago they attempted to exit their driveway to find that it had been blocked by some very large limbs that had fallen from a dead tree in the driveway. They called Bartlett arborists who identified three dead trees that, because of their pitch toward the driveway, should be removed. The Commissioners asked for clarification on what type of easement the homeowners hold on the area of the trees. Gamse and Singer responded that the easement allows for trimming and removal of trees. Gamse and Singer tried to find out who owns the property but were unable to do so. The Commission noted that the applicants will need to apply to the Commission for any further tree trimming.

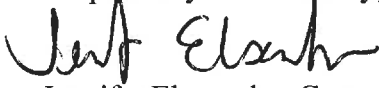
John Cumbler moved to approve the Jurisdictional Opinion. Barbara Brennessel seconded. A roll call vote was taken: Barbara Brennessel, aye; John Cumbler, aye; John Portnoy, aye; Michael Fisher recused himself; Leon Shreves, aye. The motion passed 4-0-1

Barbara Brennessel requested that a discussion about Long Pond beach, at which the Department of Public Works should be included, be placed on the December 6 agenda.

**Adjournment:**

At 6:23 pm, Michael Fisher moved to adjourn the Business Meeting. Leon Shreves seconded. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; John Portnoy, aye; Michael Fisher, aye; Leon Shreves, aye. The motion was approved. 5-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

**Documents:**

**Minutes**—November 1, 2023

**Cohen**—Jurisdictional Opinion and supporting documents

**Singer and Gamse**—Jurisdictional Opinion and supporting documents

**Falk/Pascual**—Amended Order of Conditions and supporting documents

**Morse**—Request for Determination of Applicability and supporting documents

**Johnston**—Request for Determination of Applicability and supporting documents

**Downs**—Notice of Intent and supporting documents

**Hamacher**—Request for Determination of Applicability and supporting documents