

Final
Wellfleet Conservation Commission
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom
Meeting Minutes
January 17, 2024

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

Regrets: John Portnoy

Also present: The Open Space Committee Chair John Grieb and former Chair Bruce Hurter.

Business Meeting

4:02 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

Mail/Discussion:

Announcement: Chair Shreves announced that beginning on February 7, 2024, the format of the Conservation Commission meetings will change. Public Hearings will begin at 4:00 pm with the Business Meeting to follow.

Open Space: Properties Reports and request for guidelines/process for accepting property into Conservation.

Chair John Grieb and former Chair Bruce Hurter of the Open Space Committee shared with the Commission their reports on Town-owned Conservation lands. They have inspected 83 of the 84 Conservation properties. Overall, Grieb and Hurter reported, the properties are in good shape and are being used well by the public. A few properties had minor issues that needed to be addressed and a plan was made for Grieb to work with Agent Pyles on a punch list of tasks.

One property on Old Wharf Road has what appears to be a wellhead in a state of disuse and disrepair. The abutting property belongs to John Sullivan, and it is unclear whether the structure is on Sullivan's property or Town Conservation property. Commissioners determined that Sullivan should be asked if he knows what it is, or if he is aware that someone is dumping on his property. Agent Pyles and Grieb will make a site visit. If necessary, Pyles will ask the Department of Public Works whether they can remove it.

At Pleasant Point, a boat has been resting on marsh grasses for some time. It has a Harbormaster sticker on it as well as a name and registration number. The Commissioners agreed that the Harbormaster should remove the boat and hold it in the Town's sandpit storage area.

At the Clover Conservation Area, a resident has expanded the driveway and is storing items near the property borderline. Property lines are unclear there and the question was discussed of whether this matter is enforceable.

At Pilgrim Spring there is an area that has several adjacent Town and Conservation Trust properties, and some parcels have Conservation Restrictions on them. The Conservation Trust customarily clears trails there and cuts some brush to do so. Some of the cut brush serves as wildlife habitat and should not necessarily be removed. AmeriCorps also assists with maintenance. Agent Pyles would like communication among all the organizations so that there is clarity about who is responsible for each activity and location. It was suggested that in the future, Community Preservation Committee funding could be used to assist with some of the brush and rubbish clearing and other conservation land management activities.

Conservation Fund: Application to the Community Preservation Committee (CPC) that would appropriate funds to the Conservation Commission for the purchase of open space, conservation maintenance, and creating trails.

Chair John Grieb and former Chair Bruce Hurter of the Open Space Committee reported that Town Council has approved the current Open Space Committee application for the establishment of a Wellfleet Land Conservation Fund and the Open Space Committee application to the CPC for funding, with the clarification from an earlier application that the Conservation Commission would supervise use of the money. It was further clarified that the Conservation Commission has the right by law to establish such a fund. The initial transfer of money into that Fund would have to be granted by the CPC and then approved by the Select Board and then by vote at a Town Meeting.

The Commissioners raised the question about whether this Conservation Fund might be improperly absorbed by the general Town budget. Michael Fisher noted that Jen Elsensohn is the Coordinator of the CPC and she would be able to keep separate track of the funds. Elsensohn informed the Commissioners that for this CPC-allocated money to be spent, receipts must be submitted to her and only then the money can be released. Grieb also noted that the Open Space Committee has to go before the Select Board for any decisions they would make because the Select Board created the Committee. The question was raised whether the CPC would automatically approve further funding grants into the Wellfleet Land Conservation Fund. Fisher noted that separate Open Space applications would need to be made to the CPC for any future additions to this Fund.

John Cumbler moved to inform the Select Board that the Conservation Commission has voted to establish a Wellfleet Land Conservation Fund. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

John Cumbler moved to endorse the Open Space Committee's application to the CPC for a grant of \$150,000 to be transferred into this Wellfleet Land Conservation Fund. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

Needs List: The Community Preservation Committee's new Open Space Needs List, to be presented by the CPC to the Select Board on February 6, 2024.

In conjunction with the Open Space Committee, the Conservation Committee will review the Open Space Needs List to be presented to the CPC. This list provides the criteria by which the CPC decides which Open Space projects it will fund. The first nine items on the Open Space list have been the same for the last two years. John Portnoy proposed via email a tenth item: "Acquire conservation restrictions or fee title to coastal land that allows inland migration of coastal wetlands with sea-level rise." When questioned by Commissioners, Michael Fisher explained that Conservation Restrictions can be purchased. Chair Shreves asked how the public is served by Town-owned Conservation properties and Conservation Restrictions. Fisher explained that the public is served because Conservation properties and Conservation Restrictions provide ecological services and can offer the public more trails and access to open space.

John Cumbler moved to approve the ten-item Needs List. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The Needs List was approved 5-0.

Minutes:

Leon Shreves moved to approve the January 3, 2024, Meeting Minutes. John Cumbler seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The minutes were approved 5-0.

1440 Chequessett Neck Road:

The question was raised whether the landowners are breaking the law by allowing their septic system leaching galley to fall onto the beach. The Town has the right to enforce the removal of items that pose a threat to public health and safety. This chamber is dangerous, with spikes sticking out and cable wires attached. It will impact the National Seashore Park's vehicles from traveling safely at low tide. It will break down and the pieces will wash into the ocean. Agent Pyles stated that an emergency order will be sent to the landowner.

Adjournment:

At 4:50 p.m. John Cumbler moved to close the Business Meeting. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. 5-0. The business meeting was adjourned.

Public Hearings:

At 5:00 pm, Leon Shreves opened the Public Hearings.

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

Also Present: In Person: Stephanie Gallico, David Lyttle of Ryder Wilcox, Attorney Christopher Senie and via Zoom: Ethan Poulin, Lauren Taylor and Nick Crawford of Crawford Land Management, Jeremy Young, Sara Shack, and Evan Shack.

Gallico, 44 and 55 Bay View Avenue, Map 35, Parcel 35&41, Notice of Intent for vista pruning, site improvements, and site restoration.

The Commissioners made a site visit to 44 and 55 Bay View Avenue today. Attorney Christopher Senie had sent a letter opposing the project to the Commission through Elsensohn, received on January 16, 2024. This letter was entered into the record. David Lyttle, Lauren Taylor, and Nick Crawford represented the applicant. The project proposes to remove trees and other vegetation, to create a two-car parking area with crushed shell cover, a four-foot-wide crushed shell path, and a 14 foot-long-sitting area at 44 Bay View Avenue which is an unbuildable lot, and also to remove seven mature pine trees at 55 Bay View Avenue.

At the beginning of his presentation, David Lyttle acknowledged that on the site plan the labels for the 50-foot filter strip and the 100-foot buffer zones were reversed. Lyttle described 44 Bay View Avenue as challenging to navigate by automobile and allows very little parking. Ms. Gallico is not averse to allowing others to use this proposed parking area. Lauren Taylor explained that all the marked trees on both lots will be flush cut, leaving the root systems in place for soil stability, and the planting mitigation will be three native shrubs for each tree removed. Barbara Brennessel questioned the width of the path, the size of the sitting area, and the intention to use herbicide. Taylor confirmed the intention to use herbicide and explained that it would be used on aggressive invasive species and applied directly to the stems by state licensed applicators.

Michael Fisher shared his screen to show photographs of the trees proposed to be removed at 55 Bay View Avenue taken by Robert Stewart before the meeting. Commissioners expressed concern about the removal of so many large trees and the consequent instability of the bank. Nick Crawford spoke to this concern saying that the roots of the flush cut trees and the root systems of the proposed shrubs and grasses would instead strengthen the bank. John Cumbler noted that an extensive view was already available without removing these trees, which provide habitat and carbon storage. Brennessel suggested that a filtered view achieved through pruning might be a more acceptable plan. Crawford reported that pruning could make these trees less viable. Further, Cumbler said that two trees should be planted elsewhere after the removal of the two mature trees in the proposed parking area.

Attorney Christopher Senie was present to represent abutters Anne and Elon Spar and Eric and Denise Kandel. The Kandel property wraps around the parcel at 44 Bay View Avenue and includes the coastal bank below it. Senie proposed moving the sitting area further from his client Spar's property and asked if Gallico would provide a screen of plantings to shield the Spar home from the sitting area. Senie further noted that the proposed parking area is very close to Kandel's property. Senie then explained that the road had been laid out around 1890 and was subject to the "derelict fee statute" which pertains to when lots and private roads were recorded on a plan but then the owner sells parcels of that land and leaves, so that the ownership of the private road becomes obscured. According to this statute, every abutting property owner then owns land up to the middle of the road. But this ownership does not allow every type of use and all owners are responsible for keeping the right of way open. The two proposed parking spaces extend into Bay View Avenue. Senie proposed moving the parking area westward and northward so that it will not be in the way, and the removal of two trees would no longer be necessary. A dispute between

the neighbors resulted. Chair Shreves stated that the Commission's authority is limited to protecting wetland resources and does not include resolving disputes among neighbors. David Lyttle reported that all the proposed work is on land owned by Gallico. Lyttle also said that he is willing to make adjustments in the application for the Wetlands Protection Act, but not to satisfy the abutters. Robert Stewart stated that the proposed seating area is very close to the edge of the bank which consists of bare sand. This project has the potential to accelerate erosion significantly.

Lyttle offered to meet the Commissioners at the site to work out a mutually acceptable plan for both 44 and 55 Bay View Avenue. The Commissioners agreed that they would like to visit the site again before making any decisions.

John Cumbler moved to continue the hearing until February 21, 2024. Barbara Brennessel seconded. Michael Fisher recused himself from the vote since he is a Trustee of the Wellfleet Conservation Trust which is an abutter. A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 4-0.

Nozar, 313 Main Street, Map 14, Parcel 177D, Request for Determination of Applicability to install permeable pavers beneath a deck, outline with landscape timbers, and install drains and a drywell.

The Commissioners made a site visit today. Ethan Poulin presented the project and a site plan illustrating the proposed work, which is intended to address the issue of stormwater collecting by the building and running into its entranceway. Poulin's scope of work is as follows:

- 1) install a barrier near the building to hold water back;
- 2) Lay permeable pavers 3/8-inch to 1/2 inch apart with permeable epoxy-coated sand between the pavers; and
- 3) Build 12-inch x12-inch drains at the four corners of the area directing water into a drywell in the middle of the area.

The capacity of the drywell is approximately 150 gallons, with the gravel below the pavers adding another fifty gallons of drainage and temporary storage. Poulin will plant sweet ferns and viburnum on the downslope side for further mitigation. Commissioners asked about the epoxy and why sand would not be used instead. Poulin replied that the epoxy allows the spaces between the pavers to remain clean and permeable. Regular sand washes out and allows plants and other matter to get in those spaces. This project will add an additional five to six inches of headroom beneath the deck. No storage of materials will be needed for this project since all materials will go directly from Poulin's truck to the project site. There will be no effects on the Wesley Swamp behind the property since there is a retaining wall already existing that will contain runoff in that direction.

John Cumbler 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."). Michael Fisher seconded. A roll

call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

Shack, 137 Nauhaught Bluffs Road, Map 21, Parcel 10, Notice of Intent for landscaping, timber stair replacement, and site restoration.

The Commissioners made a site visit today. David Lyttle and (via Zoom) Jeremy Young, Sara Shack, and Evan Shack presented the project. Lyttle explained that the existing privacy fence needs to be replaced as well as a timber retaining wall. The replacement of the fence will disturb two mature maple trees, whose roots are the cause of the fence's instability. Two dogwoods are proposed to replace the maples. The location of the replacement dogwoods will be to the south of the current lawn.

While the pilings of the beach access staircase are still good, the decking and railing throughout need to be replaced.

The project also proposes to remove invasive plants and replace them with native shrubs and trees. The homeowners intend to have the vegetation on the bank trimmed at four to six feet tall. They propose to remove the existing grass lawn in favor of a natural lawn, installing only a flagstone path from the deck to the beach stairway, and removing the buried irrigation system.

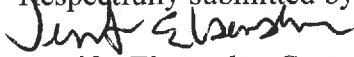
Jeremy Young informed the Commission that he had intended to attend the meeting in person, but the doors were locked so he could not get into the building. Young mentioned that there will be ½-inch spacing between the deck boards. John Cumbler expressed appreciation for the removal of the lawn. But he and other Commissioners also expressed concern about the removal of two healthy maple trees. Cumbler noted that dogwoods are susceptible to blight and do not grow as tall as maples, and so suggested cedars instead. After more discussion on the replacement trees, Lyttle stated that the homeowners are trying to keep the trees under twenty feet to retain their view. Young suggested planting eastern red cedars at the corner of the lot line at the rear of the deck. Lyttle also corrected his use of the word "prune" in his plan to "maintain" the vegetation on the bank for the preservation of the vista. An emergency water well had to be installed in 2022, which is when the last pruning had been done. Cumbler suggested the wording be "maintain at existing height." The Commissioners recognized that some very good choices are being made for this project and that the environment will benefit by it. Fisher mentioned that wood chips should be placed beneath the rinsing station, to which Lyttle and the homeowners agreed.

Michael Fisher moved to approve this Notice of Intent with the following Conditions: the plan is to be updated with wood chip mitigation beneath the rinsing station; two eastern red cedars will be planted as mitigation for the removal of the two maples; the buried irrigation system be removed; and no fertilizer will be used on the open area between the house and the bank. John Cumbler seconded. Lyttle will send a revised plan. Brennessel noted that this order of conditions lasts for three years, and that if further work is intended, the Commission must be consulted. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0. Michael Fisher is the supervisor of this project.

Adjournment:

At 6:22 p.m., Michael Fisher moved to close the Public Hearings. John Cumbler seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; Leon Shreves, aye. The motion was approved 5-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:**Open Space Committee Property Reports****CPC Needs List:**

1. Preserve threatened resources especially in ACEC land.
2. Protect regional water supply/aquifer.
3. Protect regional wetlands and bordering areas.
4. Protect shellfishing/wildlife habitat.
5. Preserve special and unique native vegetation.
6. Provide links with existing conservation land for wildlife corridors.
7. Protect for limited and appropriate public access land near ocean, bay and ponds.
8. Seek land for passive recreation.
9. Continue to educate the population regarding the benefits of conservation, and the relationship between excessive growth and ground water quality, waste disposal, harbor health, natural resources, and town character.
10. Acquire conservation restrictions or fee title to coastal land that allows inland migration of coastal wetlands with sea-level rise.

Conservation Fund—application and correspondence with Town Counsel.

Minutes—January 3, 2024.

Gallico—Notice of Intent and supporting documents.

Nozar—Request for Determination of Applicability and supporting documentation.

Shack—Notice of Intent and supporting documentation.

