

Final  
Wellfleet Conservation Commission  
Hybrid: in person at 300 Main Street, Wellfleet, and on Zoom  
Meeting Minutes  
February 21, 2024

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

**Also Present:** In person: David Lyttle of Ryder Wilcox, Attorney Christopher Senie representing abutters Elon and Annie Spar and Eric and Denise Kandel, Laura Schofield of Schofield Brothers of Cape Cod, and John and Kathryn Murray; via Zoom: Lauren Taylor of Crawford Land Management.

**Public Hearings:**

At 4:00 pm, Chair Leon Shreves opened the Public Hearings. A quorum was present.

**Murray, 410 King Phillip Road, Map 35, Parcel 186:** Certificate of Compliance for wooden stairway for beach access.

A site visit was made by Agent Beth Pyles and Secretary Jen Elsensohn. Agent Pyles reported that, as officially evaluated by Joel Goodmonson of IMEG Corporation and noted on this site visit, the stairway was built in 2004 in significant compliance with the original plan. The stairway is lacking one of the planned landings (having six rather than seven landings) and the structure is at some points not 18 inches above the ground. But the stairway appears to be well constructed.

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

**Farnsworth, 135 Pine Point Road, Map 21, Parcel 54:** Request for Determination of Applicability to upgrade cesspools to a Title 5 septic system and install new well.

Laura Schofield of Schofield Brothers of Cape Cod was present to represent the project. The site abuts the harbor, salt marsh, and coastal bank. The site is within the Area of Critical Environmental Concern and Land Subject to Coastal Storm Flowage. Only the proposed new well location is within the 100-foot buffer zone. The property will be on the market for sale soon, which is what triggered the need for a septic system upgrade, since the current system comprises two cesspools.

The proposed plan is for a new Title 5 septic system upgrade and new well location. These have been designed for a future homeowner and will be available for implementation after the time of purchase. The new homeowner, by current Board of Health regulations, will be required to upgrade the septic system within three years of purchase of the property. The Commissioners

agreed that the new homeowner must be informed by the current owner that an upgrade to an Enhanced Innovative and Alternative (EIA) system will eventually be required when new regulations are put in place after the State accepts Wellfleet's proposed Section 208 Water Quality Management Plan. The current plans for the property allow space for a future Nitro 2KS system installation, but the lot area could not by current standards support a leach field necessary for such a system. Schofield reported that new homeowners, if they choose to keep the existing dwelling, could install a foundation or basement, which could alter the proposed plans.

A discussion about identifying this property as "riverfront" ensued. A riverfront designation would require a 200-foot buffer zone on the property. The mouth of Duck Creek has never been delineated by the Massachusetts Department of Environmental Protection (DEP). The Conservation Commission had intended, at one time, to make a request of the DEP to do so when an NOI for the neighboring property was approved on April 19, 2023; this applicant, represented by Laura Schofield, accepted the Conservation Commission's view that the waterfront boundary of the property should be deemed a riverfront. Commissioners agreed that if a Notice of Intent is filed on the 135 Pine Point Road property in future, a "riverfront" designation should be requested from DEP. John Portnoy noted that this property is within a very sensitive shorefront area with a revetment. The presence of the revetment makes it impossible for the salt marsh to migrate inland with sea-level rise; therefore, over time nitrate-contaminated groundwater will discharge directly into the nitrogen-sensitive surface water of Duck Creek, with no intervening salt-marsh soils to attenuate the nitrogen. At that time, on-site wastewater treatment to remove nitrogen will become even more important. Robert Stewart asked for construction details of the well, which Schofield was unable to provide, but she stated that the abutting property recently installed a well which, she believes, has been tested and is providing a potable water supply. This project was approved by the Wellfleet Board of Health on February 14, 2024.

Michael Fisher 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 condition that the new homeowner be notified that an upgrade to an Enhanced Innovative Alternative system will someday be required. John Portnoy seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, nay; Barbara Brennessel, aye; Robert Stewart, nay; John Portnoy, aye; Leon Shreves, aye. The motion was approved 4-2-0.

**Gallico, 44 and 55 Bay View Avenue, Map 35, Parcel 35 and 41, Notice of Intent for vista pruning, site improvements, and site restoration (continued from January 3, 2024).**

A site visit was made by the Commission, at which David Lyttle of Ryder Wilcox, Lauren Taylor of Crawford Land Management, and Christopher Senie were also present. Lyttle and Taylor represented the applicant; Senie represented the butters. David Lyttle reported that he had spoken to the homeowners regarding buoys and a lobster pot placed on the abutting Wellfleet Conservation Trust property and that they will remove them. Lyttle recapped the proposed project: 1) on the vacant tract (44 Bay View Avenue): removal of two pitch pines to install two parking spaces, a walking path that leads to a seating view area, the seating view area looking

west, and 2) on 55 Bay View Avenue the removal of several trees on the bank along the private way to increase an already existing vista looking south.

During the site visit, the Commissioners were unable to access the second-floor deck for the proposed vista, so Lyttle provided a photograph of the view from that deck. Concerns by the Commissioners were shared. John Cumbler addressed each aspect of the project, while other Commissioners recommended alterations and received clarifications.

The Commissioners agreed on the following for the 44 Bay View Avenue walkway and seating:

- 1) The seating area will be set back 8 feet farther from the edge of the bank.
- 2) The seating area will be 8 feet rather than 14 feet wide and will have wood chips rather than crushed shells.
- 3) The walkway will be no wider than 3 feet.
- 4) Before installation, both the seating area and walkway will be prepared with a weed whacker, keeping the soil and tree roots undisturbed.
- 5) Invasive species (mainly bittersweet and bristly locust) and poison ivy will be removed by hand and no herbicide is to be used
- 6) The dead tree proposed for removal will be trimmed to fit the walkway only.

Regarding the proposed parking area on 44 Bay View Avenue: it was acknowledged that the paper road is not under the authority of the Commission, but cutting down trees is within the Conservation Commission's authority. The proposed work is subject to the following conditions:

- 1) The pitch pine on the right of the proposed parking area is permitted to be pruned,
- 2) The pitch pine on the left of the proposed parking area is permitted to be removed but the removal must be mitigated by planting of one native tree, the Commission recommended a red cedar.
- 3) Wood chips will be placed in the parking area rather than crushed shells.

Regarding the removal of trees on the bank of 55 Bay View Avenue private road: the Commissioners agreed that the proposed cutting down the six trees in that location was not permissible since they provide stability to the bank. Lyttle asked whether the Commission would be willing to approve the items already discussed and then, after this part of the project is reviewed by an arborist, the owner could return to the Commission with a new application for the vista cutting. The Commissioners agreed. Lyttle is required to revise the current plan to reflect the Commission's Conditions.

John Cumbler moved to approve the Notice of Intent with the following Conditions. For the 44 Bay View Avenue walkway and seating:

- 1) The seating area will be set back 8 feet farther from the edge of the bank.
- 2) The seating area will be 8 feet rather than 14 feet wide and will have wood chips rather than crushed shells.
- 3) The walkway will be no wider than 3 feet.
- 4) Before installation, both the seating area and walkway will be prepared with a weed whacker, keeping the soil and tree roots undisturbed.
- 5) Invasive species (mainly bittersweet and bristly locust) and poison ivy will be removed by hand and no herbicide is to be used

- 6) The dead tree proposed for removal will be trimmed to fit the walkway only.

Regarding the proposed parking area on 44 Bay View Avenue is subject to the following conditions:

- 1) The pitch pine on the right of the proposed parking area is permitted to be pruned,
- 2) The pitch pine on the left of the proposed parking area is permitted be removed but the removal must be mitigated by planting of one native tree, the Commission recommended a red cedar.
- 3) Wood chips will be placed in the parking area rather than crushed shells.
- 4) No vista cutting of trees on the bank of 55 Bay View Avenue without the submission of a new application. Barbara Brennessel seconded.

Michael Fisher recused himself from the vote since these properties abut two Wellfleet Conservation Trust properties.

Attorney Christopher Senie spoke on behalf of his clients, abutters Elon and Annie Spar and Eric and Denise Kandel. Senie expressed his appreciation of the care the Commissioners took in considering this application. Senie then asked Mark Burgess of Shorefront Consulting, who had submitted a letter with recommendations on the project on behalf of the abutters, to be recognized. Burgess recounted some items of concern that were mentioned in his letter including the issue of right-of-way in the private road. Burgess made two arguments: Lyttle should reconfigure the parking area for parallel parking; and Lyttle's measurement to the top of bank was not correct. A technical discussion between the Burgess and Lyttle ensued until Chair Shreves called for a vote.

A roll call vote was taken: John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 5-0. John Cumbler is the Supervisor for this project.

**Laurel Nominee Trust, 715 Chequessett Neck Road, Map 19, Parcel 113:** Request for Certificate of Compliance to demolish and replace a dwelling, removal of invasive species and planting native species to create a vegetated buffer above the coastal bank.

A site visit was made by Brennessel and Elsensohn on January 26, and by the Commission today. Barbara Brennessel is the supervisor of this project.

No representation for the project was present at this hearing.

Barbara Brennessel reported that the owners have made many changes to the plan over the years, some approved by the former Conservation Agent, Hillary Lemos-Greenberg without informing the Commissioners, and some approved by the Supervisor. Brennessel recounted an email exchange between herself and the project's agent Annie Griffenberg regarding an irrigation system that had been installed "accidentally" and for which the owner requested permission to let it remain during the establishment of the plantings. Brennessel allowed it, with the condition that it be removed in two years.

The Conservation Commission expressed the following concerns with respect to the requested Certificate of Compliance:

- 1) A set of beach access stairs was noted on the site visit that are not listed on the site plan. The stairs are evidently on the adjacent Chequessett Club's property. It is unknown what permissions have been given for this installation.
- 2) The plan for the project being reviewed tonight does not have the total square footage of disturbed area noted on it.
- 3) An open ditch between the house and the coastal bank property needs to be explained.
- 4) Wilkinson Engineering removed invasive species on the bank and replaced them with native species but another landscaping company planted ornamental non-native species in the yard.
- 5) The original plan did not include an outdoor shower, and a revised plan had to be drawn up to include it.
- 6) According to the Order of Conditions, a Cape Cod lawn was to be planted, no fertilizer, pesticides, or herbicides were to be used, and the irrigation system in the 50-foot filter strip was to be removed after a year and a half. The Commissioners noted that the lawn is not a Cape Cod lawn and it appears to have been fertilized, the irrigation system has not been removed, and there is an undocumented ditch.
- 7) Elsensohn's research into the Order of Conditions for this property, MA DEP project SE 077-1151, noted that special condition #8 required beach renourishment to compensate for displacement of sand after a revetment that was installed; this has not been done.

Michael Fisher moved to continue the hearing indefinitely. John Cumbler seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

**Hamacher, 12 Pleasant Point Landing, Map 35, Parcel 106:** After the fact Request for Determination of Applicability for the approval of an existing outdoor rinsing station (continued from February 7, 2024).

No representation was present for this project, so it was not possible to hold the hearing.

Barbara Brennessel moved to continue the hearing indefinitely. John Cumbler seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

**Adjournment:**

At 5:05 p.m., John Cumbler moved to close the Public Hearings. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

**Business Meeting**

5:10 p.m. Chair Leon Shreves opened the Business Meeting. A quorum was present.

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

**Also Present:** In person: Shellfish Constable Nancy Civetta, Patrick Winslow, Brad Morse, Jude Ahern; on Zoom: Diane Brunt.

**Jurisdictional Opinions:**

None

**Minutes:**

Barbara Brennessel moved to approve the February 7, 2024, Meeting Minutes. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, abstained; John Portnoy, abstained; Leon Shreves, aye. The motion was approved 4-0-2.

**Discussion/Mail:**

**Repositioning of the Limit of Disturbance for Mill Creek Structure - Herring River Restoration Project.**

On February 16, 2024, Lauren McKean of the National Seashore contacted the Conservation Commission Office via email and phone to request a Courtesy Notification for Repositioning of the Limit of Disturbance (LOD) for the Mill Creek Structure in order to create safe and adequate space for use of dredging equipment for the Herring River Restoration Project and to achieve compliance with the Commission's review of the project. In the absence of a Conservation Agent, and due to the particular expertise of the Commissioners, Elsensohn referred the project to Barbara Brennessel and John Portnoy. Portnoy volunteered to be the point person on this since he is very knowledgeable about the Herring River Restoration Project. Portnoy reported that he will be having a meeting with Lauren McKean on site on February 22 at 10:15 to gather more information. John Cumbler asked for the details of the meeting, since he would like to attend as well.

**Upper Herring River Culverts**

Lauren McKean of the National Seashore contacted the Conservation Office on February 16, 2024, with a Courtesy Notification for work on the Upper Herring River Culverts to achieve compliance with the Commission's review of the project. In the absence of a Conservation Agent, and due to the particular expertise of the Commissioners, Elsensohn referred the project to Barbara Brennessel and John Portnoy. Brennessel volunteered to be the point person on this since she is very knowledgeable about this aspect of the Herring River Restoration Project. Brennessel reviewed the documents and asked some questions including: will there be any time of year restrictions; what the traffic flow/access to homes will be for residents during the work. Brennessel reported that the Herring River Restoration Project will be replacing the current culverts with larger ones. These will have "daylighting": they are see-through, will include wildlife passage, will have guard rails to protect traffic, and the road will be made wider. Fish will still be able to get through, but the water will have to be diverted for a time. There is no need for a new Order of Conditions or the filing of a Notice of Intent for the scope of this work.

Barbara Brennessel moved to accept this courtesy notification and approve the work. Michael Fisher seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara

Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Elsensohn will inform Lauren McKean of this decision.

### **374 and 376 King Phillip Road Bank.**

Acting Agent Beth Pyles reported that while inspecting the beach access stairs at 410 King Phillip Road, she and Jen Elsensohn discovered significant erosion of the bank located at 374 and 376 King Phillip Road. Elsensohn shared her screen to show pictures of coir rolls that are falling apart and displaced, wires, hoses, and other equipment hanging from the bank, and deteriorated netting that had been installed on the bank. A port-a-potty was on site. Elsensohn found files for these properties that showed that as late as July 31, 2023, they were in compliance with the beach nourishment and planting approvals. The landowner's engineers are aware of the damage and have been assessing conditions there. John Portnoy remarked that living shorelines can work, but not in high velocity zones like the one at which this property is located. This NOI file is still open. The Commissioners asked Acting Agent Pyles to contact the owners to share their concern about the viability of the approved living shoreline. A revetment is not an option for this property, so the homeowners and engineers should assess the project and revise their plan.

### **Mail:**

#### **Jude Ahern: Email Query about Permitting.**

Ahern sent an email to the Conservation Commission this morning stating that she is still waiting for documentation about the last five years of cultching. She is concerned in light of a recent Wellfleet Oyster Alliance (WOA, formerly SPAT) announcement that they provided funding to the Shellfish Department. Barbara Brennessel, who helped review the successful application for WOA, explained that the request is for obtaining the appropriate funding to apply to the numerous agencies and organizations that will view future applications for permitting. Furthermore, this request does not imply that the whole harbor will be cultched, but rather that studies on the whole harbor will be conducted to clarify what sort of permitting should be pursued.

Shellfish Constable Civetta said that she had provided the Commission with a report containing information about cultching from 2020-2023, which has also been available on the Town website for several months. Before 2020, there was no requirement for Civetta to do the monitoring that Ahern is requesting, nor has the Shellfish Department had the workforce to be able to support such reporting activity. A study has been conducted recently, under the direction of Brennessel, to make a preliminary study of the successes of cultching in Wellfleet. Civetta stated that she will be willing to share the conclusions of the study. Civetta reported that the Massachusetts Department of Environmental Protection has also requested the report and is interested in the progress of this project. It was the Department of Environmental Protection and Coastal Engineering who recommended to Civetta that she apply for a notice of project change, and all future activity will be properly permitted.

### **Chipman's Cove Research**

Chair Leon Shreves began this conversation by stating that the extent of the Commission's jurisdiction in conjunction with the shoreline science reviewed by the Commission are the foundation of this inquiry, and that this will be a long process, perhaps months. He continued that the goal of the Commission is to work with the Shellfish Constable and the shellfishermen in order to find an equitable solution that protects both the resources of the marsh and the livelihood of the shellfishermen.

Patrick Winslow stated that he had been a member of the Conservation Commission fifteen years ago (c. 2010), and that the Commission had extensively studied these issues at that time. Winslow was able to give context to the map presented to the Commission by Mr. Nicholson in November 2023, saying that it was part of an agreement between the Commission and the shellfishermen at that time. The agreement with the Commission at that time was that the commercial shellfishermen were permitted to drive on the sand in this location, but not on the marsh grasses or other vegetation. Winslow also reported that the combination of a posted sign limiting the area where driving was permitted and ticketing offenders was effective. It is unclear when that sign disappeared, but Constable Civetta noted that in her six years of employment with the Town, she has never seen one. Civetta had put up a temporary sign, but the last windstorm blew it away. Shellfisherman Brad Morse reported that, in his experience, no one had ever driven beyond the location of the sign Winslow discussed.

The Commissioners expressed their concern that the marsh is changing, that sea level rise is going to cause the low marsh to move up the shore as the upper marsh also migrates upland. There is evidence of this already occurring. John Portnoy noted that if the previous sign was located at the southern bend in the marsh, that area is vegetated now. Constable Civetta explained that:

- 1) Shellfishing only occurs on this shoreline in the winter
- 2) Only two to three trucks are on the beach there at a time
- 3) And she showed, through Elsensohn sharing her screen, pictures of walking paths that have permanently compacted the ground.

Brennessel noted that the Commission does not have jurisdiction over walking in wetland areas, only driving. Civetta suggested that the Commission make another visit to the site in June or July to see the actual long-term impact of driving in this location and the recovery of the vegetation. The Commissioners agreed. Brennessel further suggested that the Commission delineate at that time the driving termination point, which will be where the vegetation ends.

Michael Fisher commented that the private properties of six owners are being driven over and that they should be notified so they could take part in the discussion. Three of these properties extend to the mean low water line, and one of them has a Conservation Restriction on it that does not permit the owners to allow for driving vehicles on their property. The other deeds extend either to mean high water or else vaguely to "Chipman's Cove." Fisher further asked whether the 1641-47 charter allowing "fishing" on private beaches overrules the homeowners' right to keep individuals off that part of their property. Constable Civetta confirmed that Town Counsel ruled that the 1641-47 charter allows access to fishermen with no discrimination about what type of



vessel they could use: whether boat, horse and cart, or truck. At present, this is assumed to include pickup trucks.

Civetta advocated for clear communication with the shellfishermen with clear delineation by signs about where they may drive. Brennessel stated that Stephen McKenna of Coastal Zone Management had attended a fact-gathering session with members of the Commission and offered suggestions on how to protect the marsh (see document “Brennessel Tech Assistance Letter - 2-14-24” under Chipman’s Cove button on Town website Conservation Commission page: <https://www.wellfleet-ma.gov/conservation-commission/pages/chipmans-cove-research>). Brennessel commented that there were some recommendations in the letter that are more extensive than the Commission would like to put into effect, including depressurizing tires, permeable grating, and indicative barriers.

John Cumbler moved to put the Chipman’s Cove discussion on the Commission’s Agenda during the summer in conjunction with a site visit, and then on an Agenda for further discussion in September to make decisions about delineating areas where driving can occur. John Portnoy seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Diane Brunt noted that the summer is a very challenging time for the fishermen to get together. Brennessel explained that the Commission will consult with them after their summer visit to Chipman’s Cove.

On an unrelated matter, Jude Ahern stated that anyone can take anything from the files at the Health and Conservation Office and that this problem should be addressed by the Town Clerk.

**Adjournment:**

At 6:19 p.m. Michael Fisher moved to close the Business Meeting. John Cumbler seconded. A roll call vote was taken: Michael Fisher, aye; John Cumbler, aye; Barbara Brennessel, aye; Robert Stewart, aye; John Portnoy, aye; Leon Shreves, aye. The motion was approved 6-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

**Documents:**

**Murray**—Certificate of Compliance and supporting documents.

**Farnsworth**—Request for Determination of Applicability and supporting documents.

**Gallico**—Notice of Intent and supporting documents.

**Laurel Nominee Trust**—Certificate of Compliance and supporting documents

**Hamacher**—After the Fact Request for Determination of Applicability

**Ahern**—letter of complaint

**Chipman’s Cove Research**—to be found on Town Website on Conservation Page

**Minutes**—February 7, 2024.

