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HARWICH CONSERVATION COMMISSION - MEETING AGENDA

TOWN HALL – GRIFFIN ROOM

Wednesday, March 5, 2025 – 6:00 PM

Commissioners and Staff Present

Chairman John Ketchum, Sophia Pilling, Viv Mulhall-Maguire, Wayne Coulson, Mark Coleman, and Conservation Administrator Amy Usowski

Commissioners Absent:

None

Call to Order

Chairman Ketchum called the meeting to order at 6:00 PM and the Pledge of Allegiance was recited.

The following applicants have filed a Notice of Intent

Jeffrey Lang and Sandra Wycoff, 11 River Bend Road, Map 1, Parcel G1-9. Replacement of an existing wooden bulkhead, the installation of floats with scallop growing nets, and dredging at the base of the bulkhead to allow for scallop growing nets to remain submerged at low tide. Salt Marsh restoration is also proposed in eroded areas. *Continuance of the Feb 5, 2025, meeting.*

Applicant Jeffrey Lang of 11 River Bend Rd presented the project in person. Mr. Lang stated that he met with his direct abutter to the south, David Kelleher of 9 River Bend Rd, to discuss bulkhead placement options. Ultimately, Mr. Lang and Mr. Kelleher decided on an option that would eventually bridge the gap between their two bulkheads to better protect their properties and the marsh. The new plan features a 3-way foothold connector which will allow Mr. Kelleher to attach to Mr. Lang's bulkhead when he eventually submits a Notice of Intent to replace his failing wall.

Mr. Lang and Mr. Kelleher also discussed conditions to accompany the project once approved. Those conditions include: 1) The nearest helical anchor to the Kelleher property would be about 4 feet from the end of the bulkhead; 2) There needs to be written confirmation that Mr. Lang's chosen contractor is of good standing, is licensed, insured, and can provide proof of that insurance; 3) All work will occur only from the 11 Riverbend side of the property or water, without any land access across the Kelleher property except for the interconnector sheet requested by Mr. Kelleher.

Mr. Lang requested three variances to Bylaw Section 1.01: Unavoidable Impacts to Resource Areas; and Bylaw Section 1.10: 200 square foot float limit and seasonal floats only.

Ms. Usowski stated her approval of the project under the Wetlands Protection Act and Town Bylaw. In Ms. Usowski's opinion, the current poor condition of the marsh is due at least in part to the failing bulkhead. The

project will overall stabilize the marsh by protecting it with a stronger structure while still allowing for tidal exchange.

Ms. Usowski does not see dredging as a big threat to land containign shellfish given the limited number of shellfish in the area and poor quality sediment. Considering recreational interests, Ms. Usowski said she does not see the project as having a significant impact on the public's ability to recreate in the river. Lastly, she recommended a specific condition stipulating that all commercial activity should take place from the water and that access should not be provided by land. Commercial concerns, Ms. Usowski reminded the audience, are not under the purview of the Conservation Commission.

Mr. Coulson, Ms. Mulhall-Maguire, and Mr. Coleman all said they had no further questions about the project. Ms. Pilling expressed uncertainty regarding the condition requiring all work to be done by the water, stating that it might make sense for some storage of machinery and materials to be kept by the 11 Riverbend house.

Chairman Ketchum asked if the applicant had moved the floats North. Mr. Lang explained that he had heeded the Waterways Commission's advice to do so. Then, Mr. Ketchum agreed with Ms. Usowski's comments.

Harwich resident Noreen Cahalane expressed her discontent with the project, drawing the Commission's attention to the Harwich Bylaw which restricts float area to 200 square feet. Ms. Cahalane also referred to the first draft of the Herring River Study, namely the guidelines to limit water-dependent structures to protect the waterway.

Hill Law Attorney Elizabeth Pyle, who represents neighbors and abutters to the project, participated in the hearing remotely. Ms. Pyle confirmed the agreement on the bulkhead plan Mr. Lang outlined, provided that the three conditions mentioned would be included in the final Order. However, Ms. Pyle reiterated that her clients do not support the inclusion of scallop floats in the project.

Dorothy Hayes participated online, elaborating on the objections to the project, specifically that it does not meet the Town Bylaws. Ms. Hayes also asked if the Commission required an alternatives analysis.

Chairman Ketchum asked Ms. Usowski if the Commission should discuss the nine conditions Attorney Pyle had requested on behalf of her clients. Ms. Usowski suggested the Commission first vote on the project and then discuss the conditions at the next meeting on March 19, 2025, when the Commission would vote on approving and issuing the Order of Conditions.

No further discussion from the Commission. No additional comment from the public.

Mr. Coulson moved to approve the Notice of Intent pending the review of the Order of Conditions. Ms. Pilling seconded.

Vote: 4:0:1. Ms. Mulhall-Maguire abstained.

Motion carried; Notice of Intent approved.

Eric & Jane Peterson, 277 Great Western Rd, Map 38, Parcel A1-11. After-the-Fact tree and shrub removal and replanting.

Ms. Usowski recapped the array of events that led to a show-cause hearing for the unauthorized clear-cutting of the riverfront area. Ms. Usowski praised the homeowner's quick response to find an engineer to provide the required site plan and planting map. Ms. Usowski said that she expected a fair amount of regrowth to come from the area that was clear cut. Ms. Usowski said she would like the work to begin this spring.

Ms. Usowski drew the Commission's attention to the issue of fines. Since the homeowner would be taking on the responsibility of replanting, and given their prompt action, Ms. Usowski recommended a fine of \$300 for the homeowner. Ms. Usowski recommended a fine of \$900 for the contractor to encourage contractors to know the regulations and reach out to the Conservation Department to ask for clarification and guidance.

Mr. Coulson said he considered the \$900 to be too low given the Commission's ability to fine up to \$6000 for \$300 per tree cut. Ms. Pilling suggested a fine of \$1800. Chairman Ketchum agreed that \$900 was light.

Dorothy Basset of 10 Harden Ln in Harwich attended the hearing virtually. Ms. Bassett advocated for a strong penalty to help dissuade contractors and homeowners from breaking the rules in the future.

Mr. Coulson suggested that the Commission fine the contractor \$300 per tree for a total of \$6000. Mr. Coleman said that he would like to issue the fine only to the owner. Additionally, Mr. Coleman said the \$6000 was more in line with what the Commission had fined in previous violations. Ms. Pilling said she thought the owner should have to pay at least half of the total fine.

Chairman Ketchum said he believed the contractor should have to pay some portion of the fine. He agreed with Ms. Pilling that the fine, once determined, should be split evenly between the owner and the contractor.

No further discussion from the Commission. No additional public comment.

Mr. Coulson moved to approve the Notice of Intent. Mr. Coleman seconded.

Vote: 5:0

Motion carried; Notice of Intent approved.

Mr. Ketchum moved to fine the contractor and the homeowner each \$3000 for the violation. Mr. Coulson seconded.

Vote: 5:0

Motion carried; fine amount approved.

Kathleen & Sal Lupoli, 11 & 15 Shore Rd, Map 2, Parcel B1-14 & B1-11. Repair existing bulkhead and concrete seawall.

Chatham Attorney Anthony Bowers, representing homeowners Kathleen & Sal Lupoli, and Dan Croteau of Moran Engineering Associates presented the project in person. Atty Bowers explained that the homeowners intend on repairing two existing Coastal Engineering Structures (CESS) located at 11 Shore Rd and 15 Shore Rd.

At 11 Shore Rd, there is an existing wooden bulkhead in front of a buried concrete rock bulkhead. There are additional stones in front of the bulkhead on the seaward side. The existing bulkhead reaches an elevation of 8.5'. Last winter, it was overtopped and structurally compromised. As Mr. Croteau and Atty Bowers explained, the owners are proposing to remove the exposed upper sections of the wood and concrete block bulkhead, leaving the middle and bottom portions in place. To better protect the bank, they are proposing to add rock above the bulkhead, raising it to an elevation of 12'. Lastly, they would rebuild the walkway and steps.

At 15 Shore Rd, there is currently a concrete seawall fronted on the ocean side by rock across about 2/3 of the property, up until the landform changes to a coastal dune on the eastward side. Here, they are proposing to rebuild the rock wall without lateral expansion to avoid adverse impacts to the dune. They would also rebuild the stairs at this property.

In terms of mitigation requirements, the representatives explained that all disturbed area on the top of the CESs will be replanted with American Beach Grass upon completion of the work.

Ms. Usowski explained that the structure would not expand farther east. Last year, during the large winter storms, Ms. Usowski visited the property to view the damage to the wall. Ms. Usowski said she believes that the proposed improvements will be better than the current alternative, especially because the added rock would absorb more wave action rather than deflect it to the beach and cause erosion.

Ms. Usowski advised the installation of three benchmarks to help monitor beach levels. In addition to the American Beach Grass, Ms. Usowski suggested the incorporation of butterfly milkweed and seaside goldenrod. With those specific conditions, Ms. Usowski recommended the Commission approve the project.

Chairman Ketchum said he had concerns over the plastic azek that was installed in 2007 and would like to see it removed over the course of the project. He would like to include a condition that specifies this. Mr. Croteau confirmed the contractors would try to remove as much of the current material as possible, including the azek.

Chairman Ketchum also voiced concerns over the management of the lawn, especially the landscaper's use of fertilizers to enhance the lawn.

No further discussion from the Commission. No public comments.

Mr. Coulson moved to approve the Notice of Intent. Mr. Coleman seconded.

Vote: 5:0

Motion carried; Notice of Intent approved.

Request for Abbreviated Notice of Resource Area Delineation

Ken & Nicole Moniz, 50 Main Street Extension, Map 55, Parcel E1-1. Non-Perennial Stream Determination for Mapped Hydraulic Connection.

Applicants requested a continuance to the March 19th meeting to allow more time for abutter notifications.

Mr. Ketchum moved to continue the hearing to March 19. Mr. Coulson seconded.

Vote: 5:0

Motion carried; hearing continued.

The following applicants have filed a Request for Determination of Applicability

John Shaw, 175 Gorham Rd, Map 24, Parcel R4. Enclosing a 108 sq. ft. area to connect two existing rooms.

John and Roberta Shaw of 175 Gorham Rd presented the project in person. Mr. Shaw explained that over the years, the house has undergone many room additions. Now, they would like to build an additional area of 108 square feet in between two existing rooms. The small addition would connect the gap and allow for a larger

kitchen space. Mr. Shaw said they had already sought approval from the Zoning Board of Appeals and Board of Health.

Ms. Usowski emphasized that the project is within the AE floodplain, and not within a buffer to an additional wetland resource area. In Ms. Usowski's opinion, the proposed addition would not have an adverse impact on the land subject to coastal storm flowage. Therefore, Ms. Usowski recommended approval of the project with a Negative 2 Determination.

Chairman Ketchum asked about the utilities in the area. Mr. Shaw said access to the gas line is within the work limit and would be moved. Ms. Usowski said the relocation of the utilities would fall under the jurisdiction of the Building Commissioner.

No further discussion from the Commission. No public comments.

Mr. Coleman moved to approve the Request for Determination of Applicability. Mr. Coulson seconded.

Vote: 5:0

Motion carried; Request for Determination of Applicability approved.

Dianne Imbriani, 13 Harden Lane, Map 76, Parcel A4. Construction of a backyard fence.

Dianne Imbriani of 13 Harden Lane presented the project in person. Ms. Imbriani explained that she would like to install a fence in her backyard, to have a safe and enclosed area for her dog, which is within the 200ft Riverfront Area to Muddy Creek.

Ms. Usowski explained that Ms. Imbriani recently removed trees on her property, with the administrative approval of the Conservation Department. Had it been known that Ms. Imbriani wanted to install a fence in addition to the tree removal, Ms. Usowski likely would have recommended all work to be grouped under one permit application.

Ms. Usowski expressed concern with the fence's proposed placement, which crossed into the 100ft riverfront area. Upon speaking with Ms. Imbriani prior to the hearing, Ms. Usowski encouraged updating the plan to move the fence entirely out of the 100ft area. Ms. Imbriani provided a new plan showing these changes.

Ms. Usowski said she also discussed with Ms. Imbriani the placement and quantity of mitigation plantings. Ms. Usowski recommended Ms. Imbriani add at least 200 sq. ft. of mitigation plantings to her property shortly after constructing the fence.

Chairman Ketchum said he thought the mitigation area could extend beyond 200 square feet. Ms. Imbriani said she would comply with that request. Ms. Usowski said she would meet with Ms. Imbriani to advise her on the location of the mitigation plantings.

Peter Lapointe of 7 Harden Ln drew the Commission's attention to the neighborhood's shared access of Muddy Creek. Ms. Usowski confirmed that the installation of the fence would not impede the neighborhood's access and would provide a plan to Mr. Lapointe upon his request.

Dorothy Bassett of 10 Harden Ln asked if the property had been professionally surveyed recently given that it abuts Harwich Conservation Trust land. Ms. Usowski responded that the plan submitted included a sufficient survey.

No further discussion from the Commission. No additional public comment.

Mr. Coulson moved to approve the Request for Determination of Applicability. Mr. Coleman seconded.

Vote: 5:0

Motion carried; Request for Determination of Applicability approved.

Request for Amended Orders of Conditions

Alan and Amy Delany, 117 Riverside Dr. Map 4-A1, Parcel A11, SE32.2579. Construct of a single-family house and appurtenant site work.

Bob Perry of Cape Cod Engineering presented the project in person. Mr. Perry reminded the Commission that applicants Alan and Amy Delaney applied for the Notice of Intent to build a new home only one month prior, which the Commission had heard over the course of three meetings and approved.

Now, Mr. Perry explained that the applicants are requesting to increase coverage of the home within the riverfront area by 144 square feet and by 64 square feet within the 100ft buffer to a coastal bank. Mitigation for the expansion would include an additional 200 square feet of native plantings.

Ms. Usowski agreed with Mr. Perry that the Commission would have approved this version of the plan had it been presented to them prior to issuing the Order of Conditions. Therefore, Ms. Usowski recommended approval of the changes.

No discussion from the Commission. No public comments.

Mr. Coulson moved to approve the Amended Order of Conditions. Ms. Mulhall-Maguire seconded.

Vote: 5:0

Motion carried; Amended Order of Conditions approved.

Peter Lavoie, 74 Depot Rd, Map 44, Parcel P2, SE32-2551. Raze and replace single-family dwelling and install new septic system.

Applicant Peter Lavoie of 74 Depot Rd, an engineer himself, presented the project in person. Mr. Lavoie explained when he and his wife bought the property, they did not favor the size nor placement of the home that the Commission originally approved. Instead, Mr. Lavoie proposed to downsize the structure and move it farther away from the wetland resource area along with the proposed driveway. Additionally, Mr. Lavoie would like to repurpose the existing dilapidated cottage into a shed within the same footprint, instead of demolishing it completely. Mr. Lavoie explained that the proposed shed would have gutters that direct stormwater into drywells and downspouts. The shed would not have any plumbing.

Ms. Usowski emphasized that the new home is well outside the Commission's jurisdiction. Ms. Usowski suggested that Mr. Lavoie take out the invasive burning bushes on the property if able. Ms. Usowski recommended approval without mitigation requirements given that the footprint within the buffer zone would not be changing.

Michael Payne of 62 Depot Road, an abutter of the property, said he was happy to see the old cottage converted into a new space. Mr. Payne also expressed concern about the wildlife on the property, drawing Mr.

Lavoie's and the Commission's attention to a beehive on site. Mr. Lavoie said he would get in touch with an apiarist.

No further discussion from the Commission. No additional public comment.

Mr. Coulson moved to approve the Amended Order of Conditions. Ms. Pilling seconded.

Vote: 5:0

Motion carried; Amended Order of Conditions approved.

Discussion and Possible Vote

1. Unresolved violation 435 Route 28, SE 32-2554. Relocation of unpermitted structure

Bahechar Bhai Patel, owner of 435 Route 28, and his uncle attended the hearing in person. Ms. Usowski recounted that the Commission had given the owners the option to either relocate the unpermitted structure or remove it entirely. The Commission also directed Mr. Patel to provide updates on his decision and any action taken. However, Ms. Usowski said there had been no communication between the Commission and Mr. Patel since April of 2024.

Mr. Patel asked if it was possible to reduce the size of the shed by several feet instead of removing it altogether. Because it is within feet of the wetland, thus well within the 50ft no disturb zone, Ms. Usowski said she could not recommend keeping it in any capacity.

Ms. Pilling said she agreed with Ms. Usowski. Mr. Coleman said he too saw no substitute for removal. Ms. Mulhall-Maguire asked why they would like to keep the shed in place. Mr. Patel responded that it provides on-site storage.

Mr. Coulson agreed with Ms. Usowski's recommendation. Chairman Ketchum agreed with Ms. Usowski, stating that the Commission would have never issued the permit had the Patels applied as required.

Ms. Usowski said that at the bare minimum, Mr. Patel would have needed to secure a shed permit from the Building Department.

Ms. Usowski recommended the Commission require the removal of the shed and area restoration within the 60 days. Chairman Ketchum agreed so long as the demo permit was acquired within 30 days.

Chairman Ketchum moved that an application for the demo permit be presented to Amy within 30 days. Mr. Coulson seconded.

Vote: 5:0

Motion carried.

Mr. Coulson moved that Mr. Patel pay a fine of \$600 for the violation and negligence. Mr. Coleman seconded.

Vote: 5:0

Motion carried.

2. Update regarding 50 Main Street Extension violation

Ms. Usowski said that the property owner was working with Daniel Croteau of Moran Engineering and Lynne Hamlyn of Hamlyn Consulting to determine if the resource area would be considered a perennial or intermittent stream. If perennial, any work within 200ft would be within the Commission's jurisdiction. Otherwise, the Commission's jurisdiction is 100ft from the edge of the wetland, as delineated by Mr. Croteau and Ms. Hamlyn.

3. Herring River Study Update

Ms. Usowski suggested that the Commission postpone the conversation until March 19th so that the Commission has time to read the report fully.

4. Wrap-up of Jan 31 Nutrient Management Meeting and discussion of next steps

Ms. Usowski said the meeting was productive and praised the civility of those present.

Mr. Coleman agreed, and said he appreciated the speaker's presentation. Mr. Coleman suggested that the Commission consult the towns on Cape that have implemented similar regulations to understand any positive or negative feedback on the policies so far.

Ms. Pilling said she was still considering the issue of composting within the buffer zones.

Ms. Mulhall-Maguire said she agreed with her fellow Commissioners. She would like to see if a representative from another town on the Cape that has implemented similar regulations could come to speak about their impact. She would like to continue to brainstorm ways to reach homeowners, especially seasonal visitors, interested in responsible landscaping.

Ms. Usowski said there are occasional town meetings for non-resident taxpayers, which could present an opportunity to discuss water quality issues on Cape.

Mr. Coulson concurred that the meeting went well. He asked for clarification as to whether concerns over fertilization had to do primarily with drinking water. Chairman Ketchum responded that while drinking water is among the concerns, excessive nutrient loading affects water quality – both in freshwater and marine systems – which then impacts wildlife and aggravates health concerns.

Mr. Coulson also brought up the issue of road salting to melt ice overwinter. The Commission agreed that chemical solutions to de-icing on roadways was an issue worth considering, especially how that salt might impact resource areas. Ms. Usowski said she would follow up with the DPW director, Link Hooper.

Chairman Ketchum explained that he'd be interested in hearing from a turf expert. Chairman Ketchum said that one question he still has after the meeting is what the environmental impact of excess nutrients is. He said it would be worth having resources available on landscape best practices.

The Commission discussed the book titled, "Nature's Best Hope" by Douglas W. Tallamy. Mr. Tallamy will be visiting Cape Cod Tech on Saturday, March 29.

The Commission tentatively scheduled the next discussion on fertilizer to the afternoon on Friday, March 28, depending on the availability of the large hearing room.

Minutes

2.19.25 and 2.27.25

Mr. Coulson moved to approve the minutes. Ms. Pilling seconded.

Vote: 5:0

Motion carried, minutes approved.

Meeting Attendance

Jeff Lang	Sandy Wycoff
Bahechar Bhai Patel	Michael Payne
William Conley	Peter Lavoie
Cynthia Lavoie	Anthony Bowers
Daniel Croteau	Noreen Cahalane
Bill Cahalane	Mary Lou Cahalane
Diane C. Pereira	Bob Perry
Dianne Imbriani	Elizabeth Pyle
Dorothy Bassett	Susan Sangiolo
Charlie Agno	Dorothy Hayes
Jim Donohue	Dan Ward

Adjournment

Mr. Coulson moved to adjourn the meeting. Second by Ms. Mulhall-Maguire.

Vote: 5:0

Motion carried, meeting adjourned.

Minutes taken and transcribed by Lily Gooding, Assistant Conservation Agent

