

**Dennis Conservation Commission
May 18, 2023
Dennis Town Offices – Large Hearing Room**

PRESENT: Chairman MacDonald Members: Clark, Olwell, Norman, Hulst, Lombardi, Chamberlain
ABSENT: Staff: None, Members: None
STAFF: Johnson, Burnham, Pereira

As required by Open Meeting Law and Massachusetts General Law, we are informing you that Town will be video and audio taping, as well as broadcasting, this public meeting. In addition, if anyone intends to either video or audio tape this meeting, they are required to inform the Chair. This is to formally advise that, as required by G.L. Chapter 30A §§18-25, and pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain Covid-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021, the Conservation Commission will hold a public meeting on May 18, 2023 in the Large "Stone" Hearing Room (Basement Level), 685 Route 134, South Dennis. The public is welcome to attend either in-person or via the alternative public access provided below.

<p style="text-align: center;">Zoom Meeting information for alternative public access: To call: 646-558-8656. When prompted enter meeting id # 766-003-6712 Zoom: Meeting ID 766 003 6712</p>
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CONTINUED HEARINGS

- A. **Nolan – Notice of Intent (SE16-26XX)** *** CONTINUED TO JUNE 1, 2023 ***
53 DR. BOTTERO ROAD, DENNIS – Proposed raising of dwelling with new foundation, reconstruction of decks, addition of access stairs.

- B. **Town of Dennis – Notice of Intent (SE16-2691)**
91 & 97 OLD WHARF ROAD, DENNISPORT – After-the-fact permitting of emergency repairs to existing revetment.

Agent Burnham stated this project was continued for Natural Heritage comments and indicated these comments were received and will be included in the draft order.

Motion:

Commissioner Clark made a motion approve the Order of Conditions for SE16-2691.
Commissioner Hulst seconded the motion.
Vote: 7-0-0

- C. **13 Port Way Realty Trust – Notice of Intent (SE16-2695)**
13 PORT WAY, WEST DENNIS – Proposed relocation and reconstruction of existing pier, ramp and float with dredging and proposed new/additional pier, ramp, and floats.

Mark Burgess was not present yet. Agent Burnham suggested a motion to table until his arrival.

Commissioner Clark inquired why the hearing was continued. Agent Burnham responded the hearing was submitted on time to be on last hearing, but was continued at applicants request.

Motion:

Commissioner Hulst made a motion to table the hearing.

Vote: 7-0-0

Mark Burgess, with Shorefront Consulting, was present representing the applicant. Project before the Commission is a reduced version of a similar filing that was previously denied by the board.

Mr. Burgess stated the design has been reduced by at least 20-30 ft. of float. Mr. Burgess addressed that one area has been reduced to two floats, about 40 ft. There is 4.1 ft. of water on the land side of the float, and 5.1 ft. of water on the sea side.

Also addressed by Mr. Burgess, was the re-purposed area to the north, now including a jet ski float and two 15-ft. floats instead of one 6x20 ft. float. Mr. Burgess explained dredging will make it so the floats move closer to the bulkhead, an advantage for navigation in the waterway.

Dredging is proposed to increase the draft under the jet ski float and to move the dock closer in towards the bulkhead. Dredging would increase the depth by 2.3 ft.

Applicants had a professional shellfish survey completed, showing where shellfish are present. Upon approval, the shellfish would be relocated out of the dredge area. Mr. Burgess stated on behalf of the applicants, that they are willing to seed and plant the dredge area to get the shellfish back in the area. Mr. Burgess discussed other floats in the area.

Mr. Burgess discussed that they are agreeable to only approving the dredging as a one-time operation.

Nancy Sullivan, a homeowner diagonally located to the project at 6 Starboard Way, was opposed to the project. She discussed the size of the proposed floats and felt they would protrude into the water. She felt the size of the boat to be docked would have adverse impacts to the marsh and the nearby sailing program.

Chairman MacDonald noted there were two email comments (from William Leavitt and Kristen & Todd Zukowski) both opposing the project based on the maneuverability of the narrow waterway, as well as the environmental effects. Agent Burnham also noted comments from the DMF, Harbormaster, and Shellfish Constable. DMF commented the project area lies within a mapped shellfish habitat for softshell clams, American oyster and they are aware Northern quahog was found during the shellfish survey. Bass River is also spawning habitat for tomcod. Alewife, blueback herring, white perch, and American eel all use Bass River for a portion of their lifecycle. DMF recommended a time of year restriction to protect life stages of winter flounder from January 15th-May 31st. Harbormaster commented there are no foreseen negative impacts on existing mooring holders or navigational traffic. The Dennis Shellfish Constable indicated the area is suitable shellfish habitat and any shellfish in the work area should be relocated. The Shellfish Constable also indicated a Shellfish Mitigation Fee Assessment should be used.

Commissioner Norman noted that it is confirmed to be a viable shellfish area. Commissioner Norman questioned size of boat and how this would impact the shellfish in the area. Commissioner Norman also suggested this area should be preserved. Mr. Burgess stated the applicant's boat is 36 ft., and draws 3 ft. and 3 in. of water. Commissioner Norman voiced concerns over stirring up sediment if a larger boat happened to be docked there..

Commissioner Lombardi stated the jet skis were never permitted by the Conservation Committee and that they would need to be included in the Shellfish Mitigation Fee Assessment. Commissioner Lombardi was also curious about putting a restriction on the size of the boat. Chairman MacDonald indicated they could not restrict the size of the boat.

Commissioner Hulst voiced being uncomfortable with this potential activity and the aesthetics of the design..

Commissioner Olwell also stated unfavourability to the project.

Commissioner Clark inquired why the dredging is necessary and if the project can be done without dredging. Mr. Burgess stated dredging improves the depth and the sediments; and that the dredging is necessary for the project as well as improves navigation. There was a discussion of new versus improvement dredging. Commissioner Clark discussed worries over the shellfish habitat negatively being affected and how he felt the boat traffic and docks could adversely affect shellfish. Mr. Burgess referred back to the shellfish survey

Chairman MacDonald indicated he was not completely opposed.

Commissioner Clark was strongly opposed.

Commissioner Chamberlain stated she would consider the project if reduced.

Commissioner Hulst was opposed to the new portion of the project, but would be willing to work with the portion of the project that is already existing.

Commissioner Lombardi stated he felt this project was excessive.

Attorney Brian Wall, with Troy Wall Associates, was also present representing applicant. Mr. Wall stated he felt the design meets all of the standards. Width requirement has been met, depth requirement has been met, and that there is no length requirement; indicating all interests are protected.

Mr. Wall stated on behalf of the applicants that they wish to continue to work with the board, and will consider mitigation.

Motion:

Commissioner Clark moved to continue the hearing to June 1, 2023 for a revised plan.

Commissioner Hulst seconded the motion.

Vote: 7-0-0

D. Caron- Notice of Intent (SE16-2693)

1 VINLAND DRIVE, SOUTH DENNIS – Proposed raze and replace of existing single-family dwelling and septic system upgrade.

Agent Burnham indicated that a revised plan was submitted including fencing along the 50 ft. buffer and along the town's property. Agent Burnham stated an order was drafted.

Daniel Ojala, with Down Cape Engineering, was present representing the applicant. Mr. Ojala clarified the location of the fences to be installed.

Motion:

Commissioner Hulst moved to approve the Order of Conditions for SE16-2693.

Commissioner Chamberlain seconded the motion.

Vote: 7-0-0

E. Camara – Notice of Intent (SE16-2692)

78 BLEAKHOUSE CIRCLE, DENNIS – Proposed additions to existing single-family dwelling, septic system upgrade, and new retaining wall.

Agent Burnham informed the board that a mitigation area has been added and the bamboo on site is to be eradicated.

Daniel Ojala, with Down Cape Engineering, was present representing the applicant. Mr. Ojala indicated that the 108 sq. ft. mitigation area will have a variety of plants.

Motion:

Commissioner Norman moved to approve the Order of Conditions for SE16-2692.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

F. 37-B Uncle Stephens Road, LLC – Notice of Intent (SE16-2697)

37-B UNCLE STEPEHENS ROAD, WEST DENNIS – Proposed demolition of two existing single-family dwellings (in conjunction with 41 Uncle Stephens Road) and construction of a new dwelling and upgraded septic system.

Hearing was opened to discuss both 37-B & 41 Uncle Stephens Road.

Daniel Ojala, with Down Cape Engineering, was present representing the applicant. Mr. Ojala presented a planting plan to restore the dune area with American beach grass with a little fertilizer to start. Project is to remove both houses and reconstruct one. Western lot will just be responsible for some planting.

Mr. Ojala emphasized the environmental benefit of reducing five bedrooms to three bedrooms; and two houses reduced to one. Instead of being in the dune with huge decks as with the existing, the proposed project is to be less than half the square footage and elevated on open piles so the sand can blow underneath them. Restoration and revegetation will be implemented on both sides. Brand new Micro FAST IA with UV treatment is to be installed for septic system.

No public comments.

Commissioner Lombardi inquired about the special conditions regarding how it was suggested that no fertilizer should be used for the new plantings. Mr. Ojala stated that American beach grass does well with just one initial treatment of fertilizer. This single isolated dose of fertilizer is only for the purpose for starting the growth of the American beach grass.

Commissioner Hulst was curious about the date of the reference on the plan. Mr. Ojala estimated early 1990's.

Commissioner Clark suggested for the fertilizer to be applied in the spring/closer to April, instead of November to April. Commissioner Clark also suggested two forms of nitrogen, IDBU or SCU, to be applied as the safest fertilizer option, with a rate of no more than a quarter of a pound per 1000 sq. ft. Commissioner Clark inquired about the properties and there was a discussion of the new property boundaries.

Regarding Commissioner Clark's fertilizer comment; Commissioner MacDonald set this as a condition. Mr. Ojala agreed and stated this is very reasonable.

Motion:

Commissioner Hulst moved to close the public hearing.

Commissioner Clark seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Hulst moved to approve project and issue variances from Section 2(1) and Section 2(2) of the Town of Dennis Wetlands Bylaw Rules and Regulations in order for work to occur within the 50' and 100' of a wetland resource.

Commissioner Clark seconded the motion.

Vote: 7-0-0

G. Scanlon – Notice of Intent (SE16-2696)

41 UNCLE STEPHENS ROAD, WEST DENNIS – Proposed demolition of two existing single-family dwellings (in conjunction with 37-B Uncle Stephens Road) and construction of a new dwelling and upgraded septic system.

Discussed with 37-B Uncle Stephens Road.

Motion:

Commissioner Hulst moved to close the public hearing.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Hulst moved to approve project and issue variances from Section 2(1) and Section 2(2) of the Town of Dennis Wetlands Bylaw Rules and Regulations in order for work to occur within the 50' and 100' of a wetland resource.

Commissioner Olwell seconded the motion.

Vote: 7-0-0

***** Commission returned to Item C *****

H. Pelham Farms LLC – Notice of Intent (SE16-2699)

***** CONTINUED TO JUNE 1, 2023 *****

607 & 621 MAIN STREET, WEST DENNIS – Proposed farm-to-table restaurant, event, and retail building with beer garden.

Kieran Healy, from BSC Group, was present representing the applicant. Plan before the Commission is a revised plan from the original submittal. Stage area has been removed, playground within 100-foot riverfront area buffer has been moved more than 100-feet, wildflower section has been removed, and that area is to be replaced with native plants.

Brian Yergatian, Engineer with the BSC Group, was present via zoom on behalf of the applicant. Mr. Yergatian addressed the previous discussion regarding the amount of fill proposed. After analysis it was determined approx. 4,852 cubic yards of fill would be required.

Commissioner Norman inquired about the storm water management plan and wanted clarification on the adjusted high ground water elevation being 2.9. Mr. Yergatian verified this, as well as the ground elevation being 6.3. Further discussion about the storm water management occurred between Commissioner Norman, Mr. Yergatian, and Mr. Healy.

Commissioner Norman referenced the last meeting where the proposed septic system was declared to remove about 67% of the nitrates. Mr. Yergatian confirmed this. Commissioner Norman inquired about the concentration below the soil absorption system of nitrates level. Mr. Yergatian responded that he would have to look into that.

Commissioner Norman inquired about the two stormwater management tanks, wondering if they are to be installed below the water table. Mr. Healy responded that the one tank to the west side of the building would be sub surfaced. The bottom of the tank would be above ground water as this is a high area. Commissioner Norman then asked if any tanks or structures are to be installed below seasonally high water. Mr. Healy responded most likely not, and that typically these systems are not as deep.

Commissioner Norman inquired about the existing septic system on site. Mr. Healy responded that the system would be excavated and properly disposed of. The existing slabs were questioned, Mr. Healy responded anything that is not to be re-used, would be removed. Also, with it being in a flood zone, it was suggested for gas to be used for heat by Commissioner Norman.

The south ground terrace area was inquired about by Commissioner Norman. This was confirmed by Mr. Yergatian to be either a patio or seating area. Materials used are proposed to be sand or river stone as a surface, not pavers.

Commissioner Hulst inquired about the total impervious area. She stated she was uncomfortable with the amount of impervious surface, and stated she would like to see a more pervious area (pervious pavement or parking area). Mr. Healy indicated the cost of pervious

pavement was prohibitive and they also did not want water running down into the leaching area.

Commissioner Norman inquired about the honeycomb pavers and if it could be a solution instead of asphalt for reducing the run-off amount. Mr. Healy stated all water from run-off would be collected and drained. Mr. Healy argued the issues with that type of pavers. Mr. Yergatian discussed how there is not a significant environmental benefit to the pavers versus asphalt. Alluding to MassDEP not having a preference; since vehicles will be parking and driving over, this area will be compacted and treated for storm water calculations as impervious beforehand.

Commissioner Clark suggested for the Town Engineer and the State to assess the area and amount of fill. Mr. Yergatian stated if pavers were used, run-off would not be able to be treated. Commissioner Clark inquired about the home on the property, Mr. Healy stated It is to be removed. Commissioner Clark suggested to have more plant variety instead of a monoculture of sweet pepperbush. Commissioner Lombardi agreed that a monoculture was not a good idea. Mr. Healy agreed.

Director Johnson read initial engineering comments and inquired to the Board, mainly directed at Mr. Yergatian to make sure there is oil water separation in the drainage basins. Their comments also inquired how the ground water and storm water with oil water situation would be handled in the parking garage. Mr. Yergatian responded that the garage would contain a non-hazardous industrial wastewater holding tank, situated in the driveway to the east of the building. Director Johnson stated engineering will be able to assess the storm water report. Commissioner Hulst stated the state can review the storm plan. All storm water pre-treatment requirements of MassDEP are met with the proposed system, according to Mr. Yergatian.

Motion:

Commissioner Olwell moved to continue the hearing to June 1,2023 for a revised plan and review from Town Engineer and State.

Commissioner Hulst seconded the motion.

Vote: 7-0-0

NEW HEARINGS

**I. Belsito – Request for Determination of Applicability
68 GLENDON ROAD, DENNISPORT – Proposed septic system upgrade.**

Darren Meyer, with Meyer and Sons, was present representing the applicant. Property is located within a flood zone. Proposed is a septic system being upgraded from a three-bedroom to four-bedroom capacity. Existing septic system has previously failed. Proposed system is a nitrogen reducing component, along with a pressure-dosed leaching field. Separation to groundwater is 4 ft.

Commissioner Clark inquired about the height of the wall around the system. Mr. Meyer responded with a height of about 2 ft.

Motion:

Commissioner Chamberlain moved to close the public hearing.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Chamberlain made a motion to issue a Positive 5 Determination as the area/and or work is subject to review and approval by the Town of Dennis Wetland Bylaws. Commissioner Lombardi seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Chamberlain made a motion to issue a Negative 2 Determination as the work described within the Request is within the area subject to protection but will not alter an area subject to protection.

Commissioner Norman seconded the motion.

Vote: 7-0-0

**J. Laiden Cape Realty Trust – Request for Determination of Applicability
234 SHAD HOLE ROAD, DENNISPORT – Proposed decks.**

Darren Meyer, with Meyer and Sons, was present representing the applicant. Proposed project is the addition of two decks in the rear of property. Larger deck is 12.5x15, with a smaller-scale deck in back. Larger deck supported by diamond piers. This project is not within buffer zones, but located in an area subject to storm flowage.

In regards to support, Commissioner Hulst alluded to the fact that anything on land subject to storm flowage must be anchored, so the concrete blocks would not be sufficient. Mr. Meyer responded that the concrete block is actually structurally attached through the ground, with four metal rods in the pier as support. Commissioner Hulst approves the project as long as the concrete blocks are anchored.

Motion:

Commissioner Hulst moved to close the public hearing.

Commissioner Norman seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Hulst made a motion to issue a Positive 5 Determination as the area/and or work is subject to review and approval by the Town of Dennis Wetland Bylaws.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Hulst made a motion to issue a Negative 2 Determination as the work described within the Request is within the area subject to protection but will not alter an area subject to protection, reiterating the concrete blocks must be anchored.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

K. Brodeur – Request for Determination of Applicability

59 BARRISTERS WALK, DENNIS – Proposed septic system upgrade.

Asa Mintz, with AJM Site Design, was present representing the applicants. Currently there is a five-bedroom septic, applicants are proposing to upgrade the septic system. Project is located near an area of wooded swamp to the rear of property, has an intermittent stream amongst swamp, and has bordering vegetated wetland. Proposed is to remove existing system and install a new 2500-gallon tank, 17x33 pipe and stone field. It is an all gravity system which is raised. Proposed is a boulder wall, which is 2 ½ ft. wall at its highest. There is 5 ft. separation from ground water. Project is 60 ft. from edge of wetland and 71 ft. from leach field. All within the 100 ft. buffer.

Commissioner Clark inquired if it is an IA system, Mr. Mintz confirmed it is a conventional system, not IA. Commissioner Clark suggested since so close to wetland, it would be beneficial to remove additional nitrogen, but that will be up to the Board of Health.

Motion:

Commissioner Lombardi moved to close the public hearing.

Commissioner Norman seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Lombardi made a motion to issue a Positive 5 Determination as the area/and or work is subject to review and approval by the Town of Dennis Wetland Bylaws.

Commissioner Olwell seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Lombardi made a motion to issue a Negative 3 Determination as the work described within the Request is within the buffer zone to an area subject to protection, but will not alter an area subject to protection.

Commissioner Olwell seconded the motion.

Vote: 7-0-0

L. Miller-Travis – Request for Determination of Applicability

27 MYRTLE ROAD, DENNISPORT – Proposed addition.

Mr. Carl Travis represented himself, to propose an addition to their single story-two-bedroom residence. Proposed is a 11x12ft. bedroom addition, which is to be moved out towards the road. This location is an existing flat driveway area, located within a flood zone. Poured foundation will be used, upon approval.

Commissioner Norman inquired with Commissioner Hulst if flood vents were required in the basement. Commissioner Hulst recommended the installation of flood vents due to being located in flood area.

Motion:

Commissioner Clark moved to close the public hearing.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Clark made a motion to issue a Positive 5 Determination as the area/and or work is subject to review and approval by the Town of Dennis Wetland Bylaws.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

Motion:

Commissioner Clark made a motion to issue Negative 2 Determination as the work described in the Request is within area of protection, but will not alter an area subject to protection.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

ADMINISTRATIVE

M. Allegretto – Request for Determination of Applicability

9 POND STREET, WEST DENNIS – Proposed driveway renovation and step construction.

Agent Burnham included page of special conditions for silt fencing and mitigation plantings.

Agent Burnham discussed how the planting plan states that substitutions can be made with prior approval in the event that something was not established, another species could be substituted. Agent Burnham also discussed the condition that there is to be no fertilizer for mitigation plants, and that monitoring with reports for three years on mitigation is required.

Motion:

Commissioner Clark moved to sign the Determination of Applicability.

Commissioner Olwell seconded the motion.

Vote: 7-0-0

N. Trask- Order of Conditions (SE16-2690)

52 UPPER COUNTY ROAD, DENNISPORT – Proposed raze and rebuild of single-family dwelling with appurtenances.

Motion:

Commissioner Hulst moved to approve and sign the Order of Conditions for SE16-2690.

Commissioner Lombardi seconded the motion.

Vote: 7-0-0

O. Old Wharf Dennis LLC – Order of Conditions (SE16-2694)

217 & 241 OLD WHARF ROAD, DENNISPORT – Proposed replacement of two existing beach access stairways.

Motion:

Commissioner Hulst moved to approve and sign the Order of Conditions for SE16-2694.
Commissioner Clark seconded the motion.
Vote: 7-0-0

- P. Kelly – Certificate of Compliance (SE16-2598)
20 SURFSIDE ROAD, WEST DENNIS – To close out permit for the raze and replace of the existing dwelling.

Motion:
Commissioner Clark moved to issue the Certificate of Compliance for SE16-2598.
Commissioner Olwell seconded the motion.
Vote: 7-0-0

- Q. Tippett / Dunham – Certificate of Compliance (SE16-241)
16 & 20 WISTERIA LANE, WEST DENNIS – To close out permit for new dwelling construction.

Kieran Healy, from BSC Group, was present representing applicants.

Motion:
Commissioner Lombardi moved to issue the Certificate of Compliance for SE16-241.
Commissioner Olwell seconded the motion.
Vote: 7-0-0

- R. DiPrima / Dunham – Certificate of Compliance (SE16-358)
16 & 20 WISTERIA LANE, WEST DENNIS – To close out permit for new dwelling construction.

Motion:
Commissioner Hulst moved to issue the Certificate of Compliance for SE16-358.
Commissioner Olwell seconded the motion.
Vote: 7-0-0

- S. DiPrima / Dunham – Certificate of Compliance (SE16-976)
16 & 20 WISTERIA LANE, WEST DENNIS – To close out permit for dock and landing construction.

Motion:
Commissioner Hulst moved to issue the Certificate of Compliance for SE16-976.
Commissioner Lombardi seconded the motion.
Vote: 7-0-0

- T. Pelham Farms, LLC – Enforcement Order Discussion
39 INDIAN POND ROAD, WEST DENNIS

***** CONTINUED TO JUNE 15, 2023 *****

- U. **Conservation Agent's Report**

Agent Burnham informed the Commission that a violation letter was sent to 11 Bowsprit Lane. The beachfront property was posted on Facebook showing bulldozer tracks coming out of the dune pathway located on beach. Agent Burnham spoke to the homeowner who claimed they

rented the bobcat and had gone out themselves because some of the large boulders on the beach had injured beachgoers last year. Agent Burnham explained the homeowner moved the rocks for their own purpose, causing a disruption in the walkway. Agent Burnham's violation letter included requiring the owner to show up to hearing June 1st to discuss where the rocks were and where they were moved to. Agent Burnham expressed concern about false jetties being created and was curious if the rocks are somewhere benign.

V. Director's Report

Director Johnson discussed the current Town administrators report on the Town of Dennis website about where the piping plovers are and future beach closures.

Motion:

Commissioner Chamberlain moved to adjourn the meeting.

Commissioner Hulst seconded the motion.

The Committee voted 7-0-0.

The meeting was adjourned at 7:53 p.m.