

Town of Edgartown
Cape Pogue DCPC

Minutes of Meeting
March 30, 2023 5:00 P.M.

In Attendance (virtual):

Town Administrator (James Hagerty)
Edgartown Conservation Commission (Jane Varkonda)
The Trustees of Reservations Membership (Bob Hayman)
The Trustees of Reservations Staff (Darci Schofield)
County of Dukes County (Martina Thornton)
Cape Pogue Property Owner appointed by the Edgartown Board of Selectmen (Rachel Self)
Edgartown Harbormaster (Charlie Blair)
Massachusetts Environmental Police (Matthew Bass)
Edgartown Police Department (Sgt. Ryan Ruley)

Meeting called to order.

Three sets of prior minutes were submitted for approval. Darci Schofield recommended a change to the December 1 minutes, which indicated that the Trustees had applied for a grant to perform analysis of climate change resilience; she wished to clarify that the grant was to do design feasibility work on the Poucha Pond marsh resilience and water flows between Cape Pogue and Pocha Pond marsh, or, more simply, for natural climate resilience solutions. Rachel Self indicated she would go back and review the meeting recording to be sure what was said is accurately reflected in the minutes.

Darci Schofield also recommended a change to the February 9 minutes, which discussed whether the Trustees' NOI required a special permit, and contained a statement indicating OSV use was an alteration. She felt there was some confusion, because the DCPC talks about "development," and the minutes included the words "alternation." She felt it was worth noting in the record that "alteration" in the DCPC language is used in the context of alteration of structures. She wanted to clarify that alteration of a wetland was why TTOR was required to do an NOI, whereas the minutes say that alteration requires a special permit. She stated that the DCPC language indicates that development or alternation of a structure requires a special permit that goes to the planning board. Rachel Self indicated that when preparing the minutes she just goes off what people are saying, and that sometimes people aren't always correct with their thoughts, but just because a person may say something that is incorrect, it doesn't mean that you can go back and change the minutes/change what they said.

Darci Schofield submitted that for this meeting's minutes, she would like to note that she thinks there should be clarification in that she believes an alteration of a wetland is why TTOR is applying for an NOI to receive an order of conditions: because OSV use in a regulated area is considered an alteration of a wetland. The DCPC in terms of the word alteration is specifically speaking about alterations of structures related to development within the district area. Rachel

Self indicated the reason she believed a special permit was needed because in the past, in 1990, a special permit was granted by the planning board in order to allow the management that currently exists, and it was her understanding that OSV use was an alteration of the land, not only under the wetlands regulations but also under the DCPC regulations. She believed a special permit may be needed. She agreed with Darci that there is some confusion.

Bob Hayman moved to accept the January and February minutes. Jane Varkonda seconded. A roll call vote was taken. Due to lack of quorum, the minutes were not able to be accepted.

Water Issues

Matt Bass reported that the new Environmental Police Officer was settling in well. Rachel Self was continuing to work with state representatives regarding housing for an officer on the island.

Rachel Self reported that apparently the plan was to continue the anchoring moratorium, although official steps had not yet been taken to confirm this. Bob Hayman expressed that Cape Pogue would likely be busier this year due to closures at Tashmoo. Rachel Self mentioned that in the past, businesses had been advertising tours in which they dropped passengers off at various beaches, which was not permitted, and discussed past attempts to stop that behavior. Signage on the Gut was supposed to go up a little earlier this year.

Charlie Blair reported the state had granted Edgartown a two-week extension on the bay scallop season. The season had so far been extremely successful. He also reported he had buoys and signage ready to go. The Marine Advisory Committee had not yet discussed extending the anchoring moratorium.

Sgt. Ryan Ruley reported that he expected to launch the patrol boat within the next couple of weeks; their staff had increased by one, but there were still job openings. He hoped to work with Charlie Blair to develop a combined schedule for patrols.

Land Issues

Jane Varkonda reported that the Management Plan for Norton Point was approved by the Conservation Commission, but Mass Natural Heritage was still requesting more information; a resolution was expected soon. The plan would be posted on the Committee's website.

Darci Schofield reported that the revised NOI filed by TTOR for OSV access for Leland and Wasque would be the subject of another public hearing on April 5th, and TTOR continued to work with the Commission and answer their questions.

James Hagerty reported that internal discussions with the town continued regarding the issues surrounding ownership of the Dyke Bridge. Darci Schofield indicated TTOR had discussed moving forward with a management agreement, and planned to have a proposal to the town very soon. James Hagerty expressed the town's view of ownership was very clear, that the bulkhead was owned by TTOR, and Darci Schofield disagreed, expressing that the situation was more complicated. Attorney Dylan Sanders, representing TTOR, added that from TTOR's perspective,

the issue is not just who owns the bulkhead; but rather also who had maintenance responsibility. James Hagerty expressed that he looked forward to finding a solution.

Darci Schofield inquired whether the Committee intended to make recommendations on the NOI for Norton Point Beach, and whether a statement should be made similar to the one the Committee submitted on the NOI for Cape Pogue, Wasque, and Leland. Rachel Self noted that the reason it was clearer with Norton was because there was a detailed management plan that had been submitted to the Commission by the applicant for Norton, but she agreed that it made sense to submit similar recommendations. Rachel Self explained that she believed TTOR had not submitted an actual beach management plan, but rather had set out current practices. She indicated the Norton Point plan had answered many of the questions the Committee had about TTOR's plan. She indicated the Committee could put together a statement on the Norton Point NOI, or could schedule a special meeting to put together recommendations as they previously had for TTOR's NOI. Darci Schofield believed it was important that the Committee be consistent in applying the same rules to all areas within the DCPC. She did not want there to appear to be a conflict of interest within the Committee as to where rules were applied and where they were not. Rachel Self agreed and indicated that it was codified in the DCPC that private entities and municipalities were not necessarily held to the same standards, for instance with language indicating that municipalities maintained all the same power they have under the general laws. Darci Schofield asked whether Rachel Self was suggesting that municipalities should not be held accountable for protection of the resource. Rachel Self explained that no, she was just saying that in the DCPC regulations there is language indicating that municipalities are not necessarily codified the same way as private entities. She reiterated she was happy to hold a special meeting to make recommendations for Norton, and she would think the recommendations would be the same as the ones they had made for TTOR.

Rachel Self asked for a motion for a special meeting to put together recommendations on the Norton Point NOI. Darci Schofield was not sure a special meeting was needed, but was happy to make a motion to make recommendations similar to the ones made on TTOR's NOI. Rachel Self asked for a motion to make the same recommendations with the same language, and indicated she was happy to write that letter. Bob Hayman made the motion. Darci Schofield seconded. A roll call vote was taken. Ayes were unanimous except for abstentions by Martina Thornton and Jane Varkonda. Rachel Self was not sure there was quorum because some members of the committee arrived later in the meeting, but would check and act accordingly.

The next meeting was scheduled for April 27th.

Meeting adjourned.