

Meeting Minutes - Edgartown

Conservation Commission

January 24, 2024 (4 pm)

Commissioners present (6): Peter Vincent (Chair), Lil Province, Max Gibbs, Geoff Kontje, Jeff Carlson, Robert Avakian

Commissioners Absent (1): Christina Brown

Staff (4): Jane Varkonda (Agent), Kara Shemeth (Assistant), Reade Kontje Milne (Inspector of Buildings), Rob Morrison (Shellfish Warden)

Public in attendance (58): 15086271617, Abigail Rosen, Alexis Colantonio, Bill Clearly, Bob Carroll, Brad Holmes, Brooke Kushwaha, Bruce Dew, Ann Floyd, Chris Kennedy, Cynthia, Daniel Karparis, Darci Schofield (TTOR), David Faber, DCron, Douglas Hoehn (SBH), Dylan Sanders (TTOR Legal), Edward B Self, Elizabeth McDonough (TTOR), Gerry Conover, iPad, iPhone16175925323, James Ferreira, Jay Hunter, John Piekos, Jonathan Herman, Jonathan Pinney, Karen Osler, Kirk Oswald, Leslie Self, Lisa Belacastro, Luke Brewer, Mark Carlson, Mary Dettloff, Michael Thompson, Mike Carotta, Morgan Herman, Patricia Hyde, Penn Edmonds, Phil Horton, Rachel Self, Raphael Nogueira, Reid Silva (VLSE), Richard Thompson, Robert, Robert Carroll, Ron Domurat, Ross Kessler (DMF), Russ Hopping (TTOR), Sal Tummino, Steve T, Timothy Moriarty, Tom & Becky Ross, Van B Krzywicki, Victor Colantonio, William Gazaille, Win

**SE20-1625**

Applicant: Bluebird 6 Realty Trust, Red Bull 7 Realty Trust and Greenfield 8 Realty Trust

Location: 14 Bayside South (AP 36-159.15)

Representative: Doug Hoehn (SBH)

Project: The applicant is seeking to add clarifying language to Order of Conditions SE20-1625 condition #12 regarding the usage of the southern portion of a pier.

Lil Province & Max Gibbs recused themselves

Documents shared: Pier Plan, aerial

Doug Hoehn reviewed the situation. He noted that this is a shared pier. The southern side of the pier is to be used by the Houlihan Family, 6 boats total on the southern side. When the permitting proceeded to the Army Corps there was confusion about the wording about condition 12. Condition 12 was initially to refer to the south side only. The proposed change would allow for no more than 3 on the north side, 9 boats total for the whole pier.

Commissioner Comment: Commissioners asked for clarification on the pier extensions.

Public Comment: None

Action: A motion was made, and seconded, to approve the language modification as requested.

Passed unanimously via roll call vote of eligible Commissioners (4)

**SE20-1718**

Applicant: Paul & Tanya Adamson

Location: 9 Katama Point Road (AP 46-37)

Representative: Reid Silva (VLS)

Project: Proposed construction and maintenance of an 8 ft. x 14 ft., in-ground swimming pool, fencing, equipment storage area and associated landscaping within a FEMA Flood Zone AE (EL-10) on the above referenced property. All of the improvements are within a maintained, landscape area.

Documents shared: Aerial, site plan

Reid presented the project, a pool and associated items. The entire lot is within the flood zone, the pool is prefabricated and shallow (+/- 4’) because of groundwater issues. The pool will be above groundwater.

Commissioner Comment: A drywell was requested, REid noted he would add one near the pool equipment

Public Comment: None

Action: A motion was made, and seconded, to approve the proposed project with standard pool conditions and the addition of a drywell.

PAssed unanimously via roll call vote

**Continued Public Hearings**

Christopher Soverns - SE20-1697

Action: A motion was made, and seconded, to continue the hearing to 2/14/24

Passed unanimously via roll call vote

Herring Creek Farm Landowners Assoc., Inc. – SE20-1677

Action: A motion was made, and seconded, to continue the hearing to 2/28/24 per request of the applicant

Passed unanimously via roll call vote

**SE20-1715** Robert & Joanne Carroll

Representative: Environmental Consulting & Restoration LLC Location: 59 Dike Bridge Road (AP 33-2) Project: The proposed project involves the construction of a single family residence, septic system and associated site work within land subject to coastal storm flowage and buffer zones

Documents shared: Site plan

Brad Holmes from ECR reviewed the proposed project and noted that there had been a site visit earlier in the day. He reviewed the resource areas on the site plan and the proposed septic and new dwelling. The house will be constructed on a FEMA compliant foundation.

Commissioner Comment: Jeff Carlson reported on the site visit and noted that there would be very little impact on the resource areas.

Public Comment: None

**Action**: A motion was made, and seconded, to approve the project as proposed with standard construction and septic conditions.

Passed unanimously via roll call vote.

**SE20-1713 & SE20-1714**

Solar Properties LLC & Azur Properties LLC

Representative: Doug Hoehn (SBH) & Gerret Conover

Location: 139 & 145 Cow Bay Road (AP 13- 1 & 2) & 153 Cow Bay Road (AP 13- 3)

Project: The proposed project involves the construction of a new dwelling to replace the existing dwelling, construction of a pool, relocation of a driveway, revising the septic system and well, landscaping and related site activities.

Lil Province noted that she has a property across the pond from this project and that she felt she could be impartial in acting on this application. Doug confirmed that he had no problem with that.

Documents shared: Aerial, site plan, renderings from the water, building elevations

Doug Hoehn reviewed the proposal and changes to the driveway layout and confirmed that he had moved the proposed driveway further from the resource area per Commissioners requests at the previous meeting. He also shared renderings of what the structures will look like once built. He noted that there isn’t a landscape plan yet and they would like to come back with a landscape plan once construction is further along. The septics were designed and approved several years ago and they are staying with those plans.

Commissioner Comment: Commissioners noted that there are a lot of mature trees and it would be good to save as many as possible. Commissioners requested a catalog of trees over 4” in caliper prior to any demolition or cutting to note what is there now and what is taken out. A landscape plan would require no net loss of trees. Doug confirmed he would send his crew out to locate all trees within the limit of work noting that there was no need to touch any trees outside the limit of work.

There was discussion about the guest house and noted that while its not currently a part of this application, when the time comes to work on it, it’s strongly suggested that it be moved inland. It was noted that the road to the site would need to be protected during construction as it is narrow.

Public Comment: None

Action: A motion was made, and seconded, to continue to the next meeting to allow time for the tree inventory.

Passed unanimously via roll call vote

Minutes of 12/6/23

Action: A motion was made, and seconded, to approve the minutes as presented

Passed unanimously via roll call vote

Minutes of 12/8/23

Action: A motion was made, and seconded, to approve the minutes as presented

Passed unanimously via roll call vote with 1 abstention

Ratification of emergency permits:

Removal of the WHOI Met Mast from South Beach

Allow excavation of the Herring Creek that was filled in on left fork

Action: A motion was made, and seconded, to ratify both permits

Discussion: The Fin Com had some questions about the Hall Memorial Park warrant article and there was discussion about the history of the lease.

**SE20-1703** - Trustee of Reservations

Address: Cape Poge Wildlife Refuge

Representative: Darci Schofield, TTOR

Project: Seeking authorization for the operation of Over-Sand Vehicles (OSVs) on land The Trustees owns on Cape Poge Wildlife Refuge. Cape Poge Wildlife Refuge is approximately 357 acres with five miles of barrier beaches and approximately 10 miles of OSV trails miles beginning north of the Dike Bridge to the Gut.

The application applies to the following Trustees owned properties: Road to the Gut (AP 15-2, 15-3, 15-4, 3-1, 3-2.1, 4-1, 4-2), 20 Lighthouse Road (AP 17-1), 43 Lighthouse Road (AP 3-12), Shear Pin Lane (AP 3-13.112), 35 Lighthouse Road (AP 3-13.17), Lighthouse Road (AP 3-13.18 & 48-45), 30 Lighthouse Road (AP 3-13.2), 23 Lighthouse Road (AP 3-14), 29 Lighthouse Road (AP 3-15), 10 Lighthouse Road (AP 32-2), 71 Lighthouse Road (3-5.1), 16 Road to the Gut (AP 3-7.1), 23 Pocha Road Extension (AP 49-1) AND on non-Trustees parcels with right to pass: 5 Shear Pin Lane (3-13.111), 20 Road to the Gut (3-5.3), 29 Road to the Gut (AP 3-2.3), Road to the Gut (AP 3-2.2), 40 Road to the Gut (AP 15-1)

Continued from 10/25/23 Eligible commissioners: All except C Brown

**SE20-1702** - Trustee of Reservations

Address: Leland/ Wasque

Representative: Darci Schofield, TTOR

Project: Seeking authorization the operation of Over-Sand Vehicles (OSVs) on land The Trustees own and manages under contract at Wasque Reservation and Leland Beach. The Notice of Intent pertains to approximately 3.6 miles of OSV trails within the 298- acre combined properties.

The application applies to the following properties: 23 Pocha Road Extension (AP 49-1) Lighthouse Road (AP 48-45)

Continued from 10/25/23 Eligible commissioners: All except C Brown

Darci Schofieldexplained that there had been written questions that had been compiled and sent from Staff to TTOR and that she had sent those answers in written form on January 8th 2024. She noted that NHESP had requested additional information regarding rights to pass and some elaboration on shorebird staffing. She noted that on January 19th they submitted an email in response to the Commission's request for proof of financial responsibility and additional clarification on staffing.

Staff questioned the applicants practice of designating land containing shellfish based on maps and suggested working with the Shellfish Constable to determine if there are shellfish present rather than relying on potentially out of date maps.

The Agent noted that several answers were “non-answers” and simply referencing the barrier beach guidelines was not a sufficient answer. She commended the applicant on putting together the new plan. Darci confirmed that the BMP incorporates the clarification from NHESP regarding the buffer around nests. Staffing continued to be a concern, specifically , does TTOR have the necessary staff to implement the plan they are proposing and what will be done if staffing is found to be inadequate or shorthanded.

Commissioner Comment: Commissioners expressed disappointment with lack of funding and perceived lack of commitment from the applicant, specifically in maintenance of OSV trails revolving around the use of dredge sand provided by the town. Commissioners expressed the need for financial commitment from TTOR.

Commissioners asked about the condition of the beaches following the three major storms. Darci noted that there was overwash in the usual areas and that they had seen a buildup of sand along east beach and significant erosion and washover at Wasque. She noted that the barrier beach at Wasque had changed significantly and looks to potentially be prime shorebird habitat.

The stairs at Wasque were discussed, the plan had always been to leave the lower portion intact so as not to damage the coastal bank. The stairs are very important for beach access and TTOR is planning to reinstall with all proper permitting once the storm season dies down.

Darci was asked about NHESPs questions and explained how through NHESPs inquiry, TTOR discovered they do not have a right to pass on the “USA” parcel on the northern tip of Cape Pogue and they have removed that parcel from the

Commissioners expressed their desire to not have rental vehicles issued OSVs. Darci noted that they have 6 rental OSVs in their program and it had not been a condition to not issue OSV passes to rental vehicles.

Commissioners expressed approval of the plans for Leland and Wasque and looked forward to potentially issuing an ORder of Conditions for that application. They asked TTOR what they would like to see for capacity limits. Darci noted she would like to confer with their management partners at Division of MArine Fisheries (land owner) before putting a capacity number out there.

Darci confirmed that TTOR has been using their vehicle counters year round to gather data. Commissioners expressed interest in seeing numbers going north of the Dike and south of the Dike to compare usage. Commissioner Kontje suggested regular reports starting on May 8th including OSV counts, staff numbers, trail conditions, any trail closures and bird reports. Plans for high usage weekends would be requested. The report would run from ⅝ to 11/13 and would help plan for any changes for the next season.

Ross Kessler (DMF) raised concerns about not allowing rental vehicles as that may speak to equitable access and may go against the standards with which the property was purchased.

There was disagreement whether there had been a previous “ban” on rental vehicles with Darci Schofield stating that it had not been a condition of SE20-1672 and not issuing OSV passes to rental vehicles had not been agreed to by TTOR. She clarified that she works with local rental companies and there are 6 rental vehicles with OSV passes and every new renter is required to watch the OSV safety video and purchase a day pass.

Commissioners asked about realistic capacity regarding Cape Pogue. The 1891 partition was brought up and it was asked if the current trail in use is the same one referenced in the 1891 partition. It was suggested that a survey should be conducted to show the trails in relation to the 1891 partition.

Commissioners expressed their desire to see OSV travel in the intertidal zone where shellfish are not present included in the application.

Atty. Dylan Sanders responded to the questions about the right of way and noted that current litigation only involves one parcel.

Commissioner Carlson asked about staffing, confirming 7 staff members and 20 seasonal staff from May to October. He requested that TTOR provide more detail regarding shifts, hours, job descriptions, etc. Darci offered to send the job postings which include the full job descriptions.

Darci Schofield expressed her gratitude for the questions and concerns regarding the management of this special place

Public Comment:

William Gazaille: Would like to see the Commission require the applicant to provide surveys showing where their property is, abutters properties, and where existing trails are opposed to land court records showing “lighthouse keepers access”. He noted that the right of way was for Government employees, lighthouse keepers, not the general public.

John Piekos: chose to defer his statement to the next meeting

Timothy Moriarty: After reviewing the recently submitted materials by the applicant he has concerns: Concerned that there is no increase in funding, staffing or training The two ponds on 29 Road to the Gut remain un-delineated and leaves the applicant open to an appeal. The plans provided do not meet the basic requirements of an NOI. The site plans and surveys are necessary to show the conditions of the site.

Darci clarified that the ponds were included in the resubmission and Mr. Moriarty questioned if the NOI was amended.

Victor Colantonio: Expressed desire for the Commission to push harder against rental vehicles and seriously consider their elimination.

Chris Kennedy: Agreed with eliminating rental vehicles. Asked that it be kept in mind that today's beach profile is much different from summer profiles. He referenced the MVBAG study that confirmed that TTOR has more staff per mile and in comparison to other OSV beaches, TTORs carrying capacity is very reasonable.

Edward B. Self: Reminded attendees of the changes to the beaches in just the past 10 years and encouraged people to go out and see just how much of the beach is gone.

Action: A motion was made, and seconded, to continue the hearing to 2/21/24

Passed unanimously via roll call vote

**Discussion Item**

Extension of TTOR Local Order (SE20-1672) (will be discussed with SE20-1702 & 1703)

Action: A motion as made, and seconded, to extend the local portion of SE20-1672 to 2/21/24

The meeting was adjourned at approximately 6:36 PM