

Shellfish Committee Minutes of the Meeting

DATE: September 19, 2012
TIME: 7:30 P.M. to 9:00 P.M.
LOCATION: Barnstable Senior Center

Shellfish Committee Members present:

Stuart Rapp, Bob Lancaster, Richard Haskell, Linda Romano, Les Hemmila, Gerard Ganey, Matt Ostrowski, Andre Sampou

General Public present:

Ann Canedy, Janet Golito, Mario A. Gonzalez, Lynn Kraus, Richard Kraus, Robyn Peterson, Lynn Poyant, Laura Reckford, David Still II, Albert Suprenant, Judy Watts, Rich Watts, Norman White, Jim Wilson

Town Council Liaison:

June Daley

NR Staff present:

Doug Kalweit, Tom Marcotti

Chairman's Report:

Stuart Rapp chaired the September 19, 2012 meeting of the Shellfish Committee.

The Shellfish Committee adopted the amended minutes of the August 15, 2012 meeting of the Shellfish Committee.

Stuart informed the committee and the general public that a membership position (scientific background) is available on the Shellfish Committee for the interested public.

Natural Resources Report:

• **Barnstable Harbor Shellfishing Area Closures:**

The following areas are subject to seasonal water quality closure by the Division of Marine Fisheries from September 15th through December 14th, all dates inclusive.

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| - Barnstable Harbor, North (DMF/CCB:31.1) | Section 2.1, page 26 |
| - Barnstable Harbor (DMF/CCB:31.2) | Section 2.2, page 27 |
| - Barnstable Marshes (DMF/CCB:33.0) | Section 2.3, page 27 |
| - Upper Scorton Creek (DMF/CCB: 34.1) | Section 2.4, page 27 |

The above listed areas shall not automatically reopen to shellfishing on December 15th, 2012 and will remain closed until examined and shellfishing is allowed by DMF.

• **Proposed Scudder Lane Recreational Shellfishing Area Opening**

Effective Saturday, **November 3, 2012**, the Scudder Lane Recreational Shellfishing Area in Barnstable Harbor is open for the **recreational** harvest of shellfish, except for a portion(s) of the area defined and marked by yellow buoys, which will remain closed for shellfish propagation project protection and/or scientific research project protection. (For more details see related notices of shellfish management closure for said projects.)

Effective Monday, **April 1, 2013**, the Scudder Lane Recreational Shellfishing Area in Barnstable Harbor is closed to the harvest of all shellfish unless closed sooner for management or public health purposes.

The Scudder Lane Recreational Shellfishing Area extends from the sign post near the beach house west of the Scudder Lane Landing to the Barnstable Yacht Club pier, and extends to the Huckins Island tidal flat.

Closed portions of the Scudder Lane Recreational Shellfishing Area for shellfish project protection:

Those portions of the Scudder Lane Recreational Shellfishing Area within an area(s) defined by yellow buoys are indefinitely closed to the harvest of all shellfish.

The Natural Resources Program, Aquacultural Research Corporation of Dennis, Ma. And the Southeast Massachusetts Aquaculture Center in a cooperative effort are implementing an experimental shellfish propagation project in Barnstable Harbor. The project entails the remote setting of oysters, the nursery culture of juvenile oysters and the seeding of an oyster habitat within the area defined above. The nursery phase of the project has been successfully completed and juvenile oysters have been seeded in the area. The demarcated area as defined above will remain closed indefinitely to allow for continued protection of the seed oysters. It is the hope of all those involved in this project that any inconvenience to anyone's use of the public lands and resources in the harbor is compensated by the successful enhancement of the natural resources of the harbor for the benefit of all. Thank you for your cooperation. For more information please contact the Natural Resources Office.

Natural Resources has deployed predator exclusion netting to protect quahog seed planted in the area. Please do not disturb the netting or the project quahogs.

• **Proposed Oyster Season Opening**

Effective Saturday, **November 3, 2012**, Town of Barnstable waters currently open to the harvest of soft shell clams and quahogs are open for the recreational harvest of oysters

Effective Monday, **April 1, 2013**, the harvest of oysters is prohibited throughout the Town of Barnstable unless closed sooner for management or public health purposes.

LEGAL SIZE OYSTER: Minimum legal harvest size is three (3) inches longest length.

RECREATIONAL HARVEST LIMIT: Not more than 1/2 peck (5 quarts dry measure) per calendar week.

SHELLFISH MANAGEMENT: The Natural Resources Office reserves the right to prohibit the harvest of shellfish at any time in any area of the Town for management purposes.

Piers, Dredging and Shellfish Habitat Issues:

The Shellfish Committee reviewed the following proposed pier and/or dredging applications (N.O.I.):

Applicant: **Carlo Anthony and Hillary H. Trs.**

Project Location: 28 Windrush Lane, Osterville, MA 02655, Map 093 Parcel 069 & 073

Proposed Project: (N.O.I.) To construct and maintain a timber boardwalk, pier, ramp and float in North Bay.

Public Hearing: September 11, 2012 Time: 6:30 P.M.

Place: Barnstable Town Hall, 367 Main Street, 2nd floor Hearing Room, Hyannis MA

Applicant: **Indian Point Inc.**

Project Location: 8 Indian Trail, Osterville, MA 02655, Map 091, Parcel 001

Proposed Project Request for Determination of Applicability (R.D.A.) To Permit and Maintain Existing Pier² and Relocate 4 Piles.

Public Hearing: September 11, 2012 Time: 6:30 P.M.

Place: Barnstable Town Hall, 367 Main Street, 2nd floor Hearing Room, Hyannis MA

Stuart suggested to the committee that it is appropriate for the committee to send a letter to the Conservation Commission requesting that the order of conditions (for the 8 Indian Trail pier) require that the address of the project be posted on the pier, and that there be egress for shellfishermen.

Applicant: **168 Long Beach Road, LLC**

Project Location: 168 Long Beach Road, Centerville, MA 02632, Map 205, Parcel 008

Proposed Project: Request for Determination of Applicability (R.D.A.) To permit and maintain existing timber walk, deck and floats.

Public Hearing: September 25, 2012 Time: 6:30 P.M.

Place: Barnstable Town Hall, 367 Main Street, 2nd floor Hearing Room, Hyannis MA

Old Business

- **Further discussion and possible vote regarding the request by William Clark on behalf of Barnstable County to have the Town pay the County a fee of \$10.00 per recreational license and \$50.00 per commercial and aquaculture license sold per year which monies would help the County pay for the purchase of the property known as 99 Chapin Beach Rd., Dennis consisting of some 39 acres of land and the buildings located thereon.**

The Shellfish Committee further discussed William Clark's presentation at the committee's August 2012 meeting regarding the proposal of Barnstable County to purchase the Aquacultural Research Corporation (ARC) property at Chapin Beach, Dennis, MA.. The Shellfish Committee and the general public discussed numerous and various issues, details and questions of the plans and proposals. Richard Kraus, the President of ARC, was present to answer many questions of the committee and the public. The Shellfish Committee chose not to vote on any matters regarding the issue, and agreed to formulate more specific written questions about the matter and submit them to Barnstable County and ARC for the next meeting. Stuart informed the committee that the following letters regarding the topic from the public would be included in the minutes of the meeting:

- **From:** attyjrwilson@comcast.net

To: "debbie" <lavoie@town.barnstable.ma.us>

Sent: Monday, August 20, 2012 2:48:28 PM

Subject: County Plan to Buy ARC with Town Shellfish License fees

Hi Debbie,

My wife and I attended the August 15, 2012 Meeting of the Shellfish Advisory Committee. We are very concerned about this extraordinary proposal.

I have attached a Memo that identifies a few of these concerns and request that this be forwarded to the members of the Committee for their consideration.

Thank you for your assistance in this request.

Sincerely,

Jim Wilson

A four million dollar plan for the Barnstable County taxpayer to buy waterfront property with an escalating erosion problem

For many years the owners of, Aquacultural Research Corporation (ARC), formerly known as the Cultured Clam Corporation or simply the clam factory, appear to have been seeking to cash out of their privately owned business. Located at the tip of a rapidly eroding barrier beach - up to ten feet per year, the latest idea is to sell the land and buildings to Barnstable County for \$4,000,000.00. The current town assessed valuation is only \$951,900. It would appear that the three owners would be paid at least a million dollars each and retain their ownership and right to operate and/or sell the business for the next twenty years.

The purchase, as disclosed, would not include any public rights relating to the future

operation or profits of the “shellfish hatchery business” or the large commercial purchase, distribution and sale of market size quahogs and oysters for which the site is presently being used. The purchase would not appear to include any interest to ARC’s Chatham and Wellfleet facilities. In essence, the County is being asked to buy a tract of flooding barrier beach at an inflated and unrelated “highest and best residential use value.”

The owners have refused to publicly disclose any of their financial information about the business other than to claim that they control 90% of the shellfish industry and to threaten that if they do not get an oversized wind turbine and a large financial bail out, the local shellfish industry will collapse and all the diggers, farmers and Cape shellfish programs will go away.

Under what has been disclosed of the plan, the three owners would sell to Barnstable County their flood threatened 39.7 acres which consists of 17.8 acres of upland, 15.2 acres of marshland and 6.7 acres of tidal lagoons and lease it back for twenty (20) years to operate the shellfish hatchery and continue to dominate the Cape’s purchase and distribution business for market size oysters and quahogs. The lease would be at no out of pocket cost to the three owners, as they would agree in lieu of rent, to spend a million dollars from the four million dollar proceeds on structural improvements to the facilities, such as their proposed taxpayer subsidized \$2.2 million dollar industrial wind turbine. This assumes that they are successful in their on going lawsuit with their neighbors and can get a quick sale to the County before the property is wiped out by the next big coastal storm.

The owners have been engaged in a two-year court battle with their residential neighbors and the Old King’s Highway Regional Historic District Commission over a rejected industrial sized wind turbine. The lawsuit has yet to go to trial or gain any legal support for ARC’s 600kw wind turbine project. Pursuing the spending of public money to support a costly financial rescue of ARC while it continues to consume its time and money in costly litigation against its neighbors and an important local Regional Historic Commission is a wrongful use of taxpayer money and will lead Barnstable County to the purchase of an inter-county agency lawsuit and a conflict with its Cape Cod Regional Policy Plan.

Being located on an eroding coastal sand spit in a “velocity zone” as identified on the National Flood Insurance Maps, might give one concern about their financial future. Adding a “super-sized” multi-million dollar wind turbine to the site might be viewed as a risky financial investment. That is unless you have a lot of public money to help pay for the project and people in the government that wish to pay you a few million dollars so that the taxpayers can take over all the ownership risks of your site before the next storm surge takes it all away.

In early June of this year, vehicle access to site was cut off by a major storm surge that flooded and blocked the only road to the facility. Tidal surges washed away the ramp for off-road vehicles making the outer beach off limits to vehicle travel.

An Erosion Management Plan prepared for the Town of Dennis by the Woods Hole Group, Inc. dated March 2012 describes with aerial photographs, charts, and other material the accelerated erosion forces at work on the barrier beach. It shows the dramatic retreat of the barrier beach. Coastal processes, coastal resources, geomorphic change, and the high cost of possible management activities are described in the Plan that is posted on the Town of Dennis website.

The projected costs and expenses to try and manage the erosion, with little or no hope of a long term permanent fix, has got to be troubling to the owners. The addition of a multimillion dollar wind turbine and a large public ownership investment in the site might just be enough to obligate the Barnstable County taxpayers to pay what ever it may cost to try and stop the erosion of the barrier beach and save, for the private owners, their financial investment.

The study of the area indicates that armoring the barrier beach is not possible and that “a costly” on going beach nourishment program is recommended. Under this plan, the taxpayer will be asked to set reasonable expectations on what can be done. As stated in the report, beach replenishment is a unique engineering application because it is one of the few engineering endeavors essentially “designed to fail.” Replenished beaches help to manage coastal erosion, but do not prevent coastal erosion. Damage to landward

properties, such as ARC, may be postponed, but periodic renourishment will be required and permanent storm protection will not be the result.

In the fall, Dennis taxpayers will be asked to set priorities on what aspects of Chapin Beach are worth trying to protect from the erosion and the risk of rising flood waters. A question of how much of the taxpayer's dollars to invest in the project will need to be addressed. Adding an oversized wind turbine and county ownership to the mix will add to the future public cost of the project. As the owners of ARC discovered when they tried to sell their property to residential condominium developers, owning property at the end of a barrier beach that is identified as being in an extreme coastal flood hazard zone and is subject to the effects of rapid sand migration, storm surges, flooding and limited access is not a financially rewarding investment.

Presently ARC sits on a tract of land that is 5 ft above sea level and is located at the end of Transect 2 on Figure 2-5 & 2-10 in the Woods Hole Group, Inc. study report. This places the facility behind the lower "tapered down" western end of the barrier beach. The southwestern end, in proximity to Chase Garden Creek and ARC, is identified as the location of the most severe erosion and large overwash zones. The dune crest protecting ARC from a direct storm surge overwash is only 16.5 ft high or approximately one-half the height of the dunes located at the center and eastern end of the barrier beach. The estimated ten (10) year flood level in the area is set at approximately 10 ft. or 5 ft. above ARC's property elevation.

Investing public money to own property in a high risk "velocity flood zone" is not a financially wise use of public resources. There are much safer locations with better access and far less future risk to the hatchery facility and its workers.

If the County wishes to own a shellfish hatchery as the means to guarantee the future public supply of oyster and quahog seed there are better ownership plans. Simply owning the site without the business is like buying a McDonalds without the ability or right to operate the restaurant. The public value, to those who are being asked to pay for the purchase, is not in the land and structures; but in the continued operation of the seed hatchery and the proper distribution of its products at a reasonable price. If the County wishes to address the public's future need for shellfish seed, the successful Duke's County model of the Martha's Vineyard Shellfish Group, Inc., which services all the Island towns with an adequate annual supply of oyster, quahog and bay scallop seed, provides a less expensive and better regional model.

Subsidizing and perpetuating private control over the Cape's shell fishing industry will do little to advance the economic security of the commercial shellfish farmers, diggers and the County's Shellfish Propagation Programs. The plan will keep the industry paying through the proposed increase in license fees for the next twenty years and cause the small farmer to continue to be solely dependent on a monopolistic for profit private company to supply his or her essential needs. The owners of ARC have said that they are reaching their retirement age and will not be operating business much longer. If the County only buys the Dennis site, with all the above identified limitations, risks and future financial problems, who or what entity will buy and operate the seed hatchery business?

- **Letter sent to Town Hall Mailbox**

From: Donna Wald [mailto:waldsonthecape@comcast.net]

Sent: Wednesday, August 29, 2012 3:54 PM

Subject: Fwd: County Purchase of ARC Property

To: Stuart Rapp, Les Hemmila, Gerard Ganey, Richard Haskell, Andre Sampou, Linda Romano, Robert Lancaster

Congratulations to the Shellfish Committee and Barnstable citizens for asking some tough questions concerning the County Purchase of ARC.

I respectfully submit a letter that I wrote earlier on in this process that addresses some other concerns that were not brought up.

I have been involved with facets of this issue for two years and frankly some of the backroom politics that have taken place are disappointing.

Two issues you will see in my letter below that are very important are the stability of the land itself and the legal, environmental, property devaluation and possible health issues that could ensue.

Thank you for your consideration of the document below. It brings to light other issues that haven't even surfaced yet. The County is responsible for their business decisions and many citizens think this is a precarious one.

Dear Barnstable Shellfish Committee:

Recently the Cape Cod Cooperative Extension proposed a plan to “save the shellfish industry” by purchasing the property in the Chapin Beach area on which the Aquacultural Research Corporation resides. This proposal was presented to the Assembly of Delegates on July 18th and left most of us astounded at the lack of detail and depth. It will be funded by raising recreational and commercial licenses and tax/use money from other “unknown” sources. The purchase price is \$4,000,000 dollars.

The very least we would ask is that the County of Barnstable do proper due diligence on this purchase. Valuing the land is relatively straightforward, but if “saving the shellfish industry” is truly the motivation, evaluating a business opportunity is much more complex, requiring proper attention to the market, the assets of the company, the valuation of the proposed opportunity and the payback period.

The County has a fiduciary responsibility to the taxpayers of Barnstable County in this matter. They need to evaluate the market and its growth prospects, examine the company's financial statements, perform a detailed competitive analysis, determine if there are any patents or trade secrets that provide value, examine the company's legal circumstances and provide a valuation based on the health of the market and company.

Most importantly, if the intent is to lease back the land to the current management, a thorough analysis of how it has executed in the past and its plans for the future need to be evaluated thoroughly. The company should present a detailed business plan with goals and objectives that are to be met as a condition of its lease. An independent off Cape review Board of Directors should be established to approve and monitor the business plan.

And what about this property on which ARC sits? Recently there was a study done by the Woods Hole Group which appears on the Town of Dennis website

(http://www.town.dennis.ma.us/Pages/DennisMA_WebDocs/waterwaysassets.pdf). The study states that the ARC location and the Chapin Beach area is self-eroding and can only be maintained successfully (if at all) with millions of dollars. Why should the taxpayers fund a project that could be lost to the sea in any sizeable storm or be charged to maintain the passage to the facility.

Lastly, there is a lawsuit pending concerning a wind turbine ARC wants on their property. This turbine will affect property values, endanger environmental area sand cause the problems seen in Falmouth.

In summary, why should the taxpayers be asked for \$4,000,000 to fund a proposal that relies on an unstable piece of land, a corporation which will be run by the same management that, by its own admission, is failing and is highly unlikely to be profitable without a complete overhaul and management change? In these times, could we truly not find a better use for \$4,000,000?

Donna Wald – Yarmouthport

- Also a letter from Sheila Lyons to Janet Gilito on the ARC topic (not included here).