



**Town of Barnstable
Conservation Commission**
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Hyannis Massachusetts 02601

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: September 14, 2021 @ 6:30 PM

This meeting of the Barnstable Conservation Commission is being recorded and transmitted by the Information Technology Department of the Town of Barnstable on Channel 18. Under MGL Chapter 30A Section 20, anyone else desiring to make such a recording or transmission must notify the Chair.

Remote Participation Instructions

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Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom link or telephone number and access code for remote access below.

Join Zoom Meeting

<https://zoom.us/j/93110660634>

Meeting ID: 931 1066 0634

US Toll-free 888 475 4499

3. Applicants, their representatives and individuals required or entitled to appear before the Conservation Commission may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to Darcy.Karle@town.barnstable.ma.us, so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing Darcy.Karle@town.barnstable.ma.us. Comments should be submitted at least 8hrs prior to the hearing.

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REMINDER TO APPLICANTS:

FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200 MAIN STREET, HYANNIS, 02601

BY ROLL CALL The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Clerk George Gillmore, Commissioners Abodeely, Morin, Sampou and Hearn.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant Kim Cavanaugh.

I OLD AND NEW BUSINESS

A. Emergency Certifications for storm damage after Ida.

- | | | |
|---------------------|------------------------------|---------------------|
| 1. Cotuit Town Dock | 37 Oyster Place Road, Cotuit | gully/ exposed pipe |
| 2. Ropes Beach | 85 Old Shore Road, Cotuit | gully |

3. Fortes Beach 40 Iyanough Road, Hyannis gully

- Darcy prepared the Emergency Certification form. It met the public hazard issue. They were allowed to proceed with the work.
- Darcy explained the damage and the work to be done.
- No additional filing will need to be necessary.

A motion was made to approve the three emergency certificates of compliance.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou

Nay –

II. REQUESTS FOR DETERMINATION

- A. **Anne B. Pellegrino.** Construct addition and attached garage in the area of the existing pool cottage at 320 Carriage Road, Osterville as shown on Assessor's Map 070 Parcel 017002. DA-21051

The applicant was represented by Charles Rowland, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- The additional hardscape in the 50 to 100' buffer is less than 200 sq. feet.

There was no public comment.

A motion was made to approve the project as a negative determination.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou

Nay –

III. NOTICES OF INTENT

- A. **Edwardo Franco.** To construct a pool, patio, and retaining wall at 46 Captain Lumbert Lane, Centerville as shown on Assessor's Map 147 Parcel 011 007. **SE3-5916**

The applicant was represented by Charles Rowland, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- There will be a fully restored 50' buffer zone upon request of the Certificate of Compliance.
- The existing Koi pond, patio, and fire pit in the 50' buffer was previously approved.
- How can they say there is an undisturbed 50' when there is something other than vegetation.
- If the Koi pond is not moved it is not an undisturbed 50' buffer.
- They only need to vegetate the 50'. The Koi Pond the mitigation was included in the approval of the Koi Pond.
- Pictures were taken by the Administrator showing the mitigation. 21 shrubs were added. Between the plants was supposed to be meadow grass. It appears it is mowed grass.
- Once this is addressed they have filled in the 50' buffer.
- They should not have to pay an in lieu fee for mitigation they already put in.
- The 50' is not intact because of the Koi Pond, etc., so mitigation will be needed for the pool.

- A question was raised if it should be considered a constrained site and accept an in lieu fee.
- There should be some plantings where the meadow grass is. There should be some diversity in the plantings. It should only be mowed at maximum twice per year.
- After the pool is put in there will be no access to the area. They could condition no mowing at all.
- They should come back with a proposal for additional mitigation or an in lieu fee.
- A retaining wall at the edge of the pool would require a work limit line which is not on the plan.
- The OOC for the prior filing states staff was supposed to be contacted with the name of the Contractor who was have at least five years of experience. We did not receive this. Also did not receive the monitoring reports.
- There are lights that go down to the wetland and evidence that the dogs are using the area. It appears to be a violation on the SE3-5624 filing.
- There are no dimensions on the plan for the patio.
- The need for more mitigation as part of this application is a question. May require a finding.
- It was suggested that the applicant request a continuance to provide evidence that this is a constrained property and propose mitigation or an in lieu fee.

A continuance was requested to October 12, 2021.

A motion was made to approve the continuance request to October 12, 2021.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou

Nay –

B. Laurie J. Hall, Trustee, TMT Realty Trust. Proposed dock system to include installation of a pier, ramp and float at 979 Sea View Avenue, Osterville as shown on Assessor’s Map 090 Parcel 008. **Continuance requested to 10/12/21.**

A motion was made to approve the continuance request without testimony to October 12th.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou

Nay –

C. William & Sherry Lawson. Remove existing dwelling and reconstruct a new dwelling with detached garage at 133 Gosnold Street, Hyannis as shown on Assessor’s Map 324 Parcel 007. **SE3-5919**

The applicant was represented by Matt Farrell of J.M. O’Reilly and Associates, and Theresa Sprague from Blue Flax Design.

Issues discussed:

- The split rail fence in the 50’ buffer is being used as demarcation of the vegetated buffer.
- There is an extensive amount of mitigation being proposed.
- The trees being planted are Tupelo and Service Berry. Tupelo are going to be 2-3 inch caliper, Service Berry are 10 gallon size.
- Everything in the middle of the mitigation plan will be very small for a long time. The mid area will not have any trees for 20 years. There was concern that most of mitigation is being pushed to the sides.
- There should be some diversity in the height in the mid-section.

- A question was raised on work protocol.
- Dimensions should be submitted for the patio and the deck.
- The drawing should be a proposed rinse station instead of wash station.
- Need to add a note regarding flagging of the salt marsh on the plan.
- A special condition should be included for annual monitoring reports.
- Mark tree number 16 on the plan to be removed.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing dimensions of the building, deck, patio, garage and rinse station, provide note on flagging of salt marsh, and mark oak trees slated for removal. Special condition for annual monitoring reports for 3 years.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin

Nay – Sampou

Motion carries 6-1

- D. Steve Mojo and Shell Lane Pond Owners.** Aquatic pesticide application to control nuisance aquatic vegetation in Shell Lane Pond, Steven Mojo, 1179 Main Street, Cotuit as shown on Assessor’s Map 019 Parcel 130002, Ronald Cavallon, 121 Shell Lane Map, 109 Parcel 159, Mary Manning, 119 Shell Lane, Map 019 Parcel 101002, Dave O’Rourke, 35 Hull Lane, Map 019 Parcel 162, Christine Scanlon, 127 Shell Lane, Map 019 Parcel 158.

A continuance was requested to 9/28/21 without testimony.

A motion was made to approve the continuance to September 28, 2021 without testimony.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou

Nay –

III. CONTINUANCES

- A. Stephen P. Ahern, Trustee – Alta Vista 2020 Realty Trust.** Proposed replacement of existing float with new 8’ x 25’ float and proposed land management to eradicate phragmites within an area of 3,500 +/- square feet at 421 Main Street, Osterville as shown on Assessor’s Map 164 Parcel 004. **SE3-5897 Continued from 8/3/2021.**

The applicant was represented by Raul Lizardi-Rivera P.E. of Cape and Islands Engineering.

Issues discussed:

- The ecological limited restoration project was published in the Monitor.
- Phragmites removal will require monitoring reports.
- A 19’ Boston Whaler was previously permitted. The 26’ Regulator will have a 12” clearance. The engine will be 300 hp.
- There was concern for sediment displacement.
- The area is rated very high for shellfish habitat.

Commissioner Sampou signed off at 7:52 p.m.

- There is concern there will be a need for continuous dredging.
- This project would not be approved under the new regulations.
- The dredging footprint has already been established and cannot exceed what is currently approved.

- The shellfish habitat was discussed. There are definitely oysters in the area. You cannot shellfish there because of the pollution.
- Barnstable shellfish map shows it as a 9 out 10 rating. No dock would be allowed in this location currently.
- No comments have been received from Natural Resources on this project.
- The dock was approved with the 12” rule. A question was raised if this constitutes a substantial expansion that would kick in the new regulation.
- The main walkway will be the same size. The pilings will be the same. Just the floats are being enlarged.
- The motor should be specified in the Order of Conditions.
- Float expansion has been allowed with just an RDA if under 200’. This is not a substantial expansion.

Public Comment:

Kris Clark – MEA should be notified. Asked if there is a percentage that determines a substantial expansion. It is subject to the Commission on a case by case basis. Asked if pilings are being added going further out. The Centerville river has a high bacteria load but does have shellfish which is extracted for relay areas. The shellfish are not harvestable due to public health but they do exist in this area.

MEA did receive the project. No response was received and no response was received from the Harbor Master. This issue was not discussed at the Shellfish Committee.

A motion was made for a finding that the expansion of the float to 8’ x 25’ is not a substantial expansion.

Seconded and voted by roll call.

Aye – Abodeely, Foster, Gillmore, , Lee, Morin

Nay – Hearn,

A motion was made to approve the float expansion to 8x25’ and treatment of phragmites with annual monitoring reports for 3 years and treatment supervised by CERP.

Seconded and voted by roll call.

Aye – Abodeely, Foster, Gillmore, Lee, Morin

Nay – Hearn,

Motion carries 5-1

- B. Damon and Natalie Fieldgate.** To permit seasonal float, dock, and ramp at 67 Lakeside Drive, Centerville as shown on Assessor’s Map 252 Parcel 096. **Continued from 9/7 for the sole purpose of DEP#, comments and NHESP. SE3-5918 Request to continue to 9/28/21.**

A motion was made to approve a continuance to September 28, 2021 for the sole purpose of receipt and review of the NHESP letter.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin

Nay –

- C. Mark Klamman.** Addition to single-family residence at 25 Cross Way, West Hyannisport as shown on Assessors Map 245 Parcel 043. **SE3-5907 Continued from 8/10, Continuance request to 9/28.**

A motion was made to approve continuance to September 28, 2021 without testimony.

Seconded and voted unanimously by roll call.

Aye – Foster, Gillmore, Hearn, Lee, Morin

Nay –

Abodeely could not vote.

- D. AAR Legacy, LLC.** Proposed shoreline improvements to include replacement of existing failing timber bulkhead with a stone revetment, and the replacement of the beach house, deck and stairs at 671 Old Post Road, Cotuit as shown on Assessor's Map 054 Parcel 013001. **SE3-5905 Continued from 8/10**

The applicant was represented by John O'Dea, P.E. of Sullivan Engineering and Consulting.

Comment letter dated August 9, 2021 from Natural Resources was reviewed and addressed.

Issues discussed:

- The bulkhead will be raised an additional 20". The regrade will meet the additional 20" height. Fill will be brought in. A small excavator and small bobcat will be used.
- If the access is from land they do not need a construction protocol.

There was no public comment

A motion was made to approve the project as submitted under the revised plan.

Seconded and voted unanimously by roll call.

Aye – Foster, Gillmore, Hearn, Lee, Morin,

Nay –

- E. Bog Partners, LLC – c/o A.M. Wilson Associates, Inc.** Installation of security fencing along southerly and westerly portions of property lines at 1246 Bumps River Road and 0 Marie-Ann Terrace, Centerville as shown on Assessor's Map 188 Parcels 045 and 012. **DA-21042 Continued from 8/10**

Nineteen comment letters received. The names of the people that submitted letters were read into record.

The applicant was represented by Arlene Wilson of A.M. Wilson Associates.

Staff has contacted DEP on the type of filing needed for this project. DEP stated it could be approved under a minor activity. An RDA is required under Town Regulation.

The proposed fence is in the buffer area, not the resource area.

Date of revised plan is 8/18/2021.

There are 21 people in the waiting room for public comment.

Issues discussed:

- Arlene Wilson addressed some of the public comments that were received.
- Arlene Wilson summarized her additional comments submitted on 9/13 and 9/14.
- The total fence length and distance between the sections of fence was reviewed.
- Commissioner made a statement from the MACC handbook regarding the definition of habitat.
- There was concern for species trying to find shelter from predators.
- A question was raised if a wildlife survey is needed for this area. The question is what other means are needed to help wildlife and the number of openings in the fence that are needed.
- There was a question on the Agricultural Exemption. The RDA application form asks to list all the reasons why the project might be entitled to a negative determination for a

fencing project. An agricultural exemption is entitled to an Agricultural exemption because it meets the standard.

PUBLIC COMMENT

Lynn Hamlyn representing at least 50 abutters addressed the Commission. The zoom format minimizes the number of people who are being represented vs. an in person hearing.

1,855 ft fence is 1/3 of mile.

The new plan is not much more informative.

Lynn reviewed her comments submitted on 9/13.

Looks like the fence extends over the property line.

There are no construction setbacks on the fence.

The applicant is claiming agriculture exemption. The assessor's office has this property listed as a single family dwelling property. It is not classified as agricultural use.

Other exemption is impediment to wildlife. The Commission has to determine if this is an impediment to wildlife.

The purpose of the fence was questioned. The project purpose is important.

Aesthetics and historical values are important to the determination of the project.

Wildlife management was addressed.

Mary St. George – 87 Overlook Drive, Centerville. Read comment letter opposing the project from Dr. Eric G. Strauss into record.

Deb Bullock, Fairhaven – Read letter opposing the project from Jonathan Way PHD into record.

Ellen LaBurge - 1257 Bumps River Road. Read a statement opposing the project into record. Request to deny the RDA application

Terry Heard 23 Longfellow Drive Centerville. Opposed project. A fence 1/3 mile long seems to be a wildlife barrier. Asked who will be responsible when the vines grow on the fence and close up the openings. The openings as proposed will direct the wildlife right through his yard. Referenced Sampsons Island and the owners, the Mellons donated the Island to the Audubon Society instead of putting a fence around it all. Requesting owner donate the land to Audubon or Barnstable Land trust instead of putting up a fence. Owner is Sam Slater.

Rob Boone - 32 Rainbow Drive, Centerville. Supports requirement of NOI. Hopes Commissioners visit the bog before a determination is made. Stakes should be put up at the beginning and end of fence. Asked a question on Coyotes and wildlife corridor. Asked the Commission to require an expert wildlife study
Read statement into record regarding the purpose of the fence. Asked if the Commission will establish the purpose of the fence before making a determination

Nick Atsalis - 290 Elliot Road - Town Councilor - Supports the abutters. Read a statement into record regarding more information being needed.

Claire Indresano - 47 Longfellow Drive. Read a statement into record. Requested Commission to visit the bog and walk Longfellow Drive to see where the openings are and wildlife going onto their property.

Mary McCarthy - 42 Longfellow Drive. Lived here 60 years. Donating the habitat is the best option. Raised question on what is going to be done with the property in the future. Raised questions about septic.

Juliette Romagnano - 258 Huckins Neck Road. Wildlife is what brought her to Cape Cod. She is opposed to the project. This fence will destroy what is Cape Cod. Chain link fence will be dangerous for the wildlife and will create a hazard. Applicant must state the purpose of the fence. Concerned about the plan for the land in the future.

Thomas Rodman - 61 Emerson Way, Centerville. He is opposed to the project. Questioned if the fence cost effective for the owner and asked what purpose it is serving. The area needs to be protected as wetland.

Donna Norton - 44 Hamilton Ave., Dedham. Born and raised on the Cape. She was interested in purchasing but was assured the past owners wanted it maintained as a bog. Her understanding was that it would be difficult to have any construction on the site because of the wetland. Saddened that the bog may disappear. Feels she should have purchased it. The wetlands are a treasure and should be protected.

Virginia Murphy - 111 Wild Goose Way, Centerville. She has always enjoyed this area. Is very sad the Town did not purchase this property to preserve it. Questioned the purpose of the fence. Stated it is important. Vines can mound over the fence and block the vista.

Joel Martinez - Formerly 51 Emerson Lane now lives at 61 Wittmeyer Road, Cotuit. Met his wife here, married in the back yard. He is saddened by the fence going up. Mr. Jenkins former owner did not want a bench never mind a fence. This will lead to another problem. Requests due diligence be done on this project.

Sue Roareback - 432 Main Street, Centerville. Has spent a lot of time utilizing the bog area and enjoying the view. She questions the reason for the fence. There has been mutual respect between owners and abutters over the years. It is an iconic view, a wildlife habitat. To know the project purpose is important. Requests the Commission require a NOI and not approve.

Public comment closed.

Issues discussed:

- The openings being grown over could be a concern. Three openings is not sufficient.
- Wildlife fence 18" up from bottom in a couple of other places should be considered.
- Coyote home range is 6-7 square miles. They are ranging a much larger radius than the length of the fence.
- This is not a simple filing. This needs to be looked at thoroughly. Open space is part of the regulations.
- Purpose issues raised are relevant.
- Openings in fence directing animals into private properties at a higher rate than usual is a concern.
- Commission is bound by the law. Sufficient issues have been raised to see the property. The Commission should take a deeper look at it.
- Under jurisdiction Commission can only look at what the application is for. Cannot ask the purpose of the fence.
- A positive determination would require an NOI so they could look more closely at the fence.

Arlene Wilson addressed the Commission. There could be more wildlife openings. An opening could be put in near the house. The concerns of the community are valid. A wildlife assessment cannot be requested unless it is more than 5,000 sq. ft. or a percentage of the property. A wildlife assessment cannot be requested even with an NOI. The fence is staked.

A motion was made to issue a positive determination

Seconded and voted by roll call.

Aye – Abodeely, Gillmore, Hearn, Lee, Morin,

Nay – Foster

Motion carries 5-1

IV. CERTIFICATES OF COMPLIANCE (ez = no deviations, staff recommends approval)
(* = on-going conditions)

- | | | | | |
|----|------------------------------------|----------|-----------|-----------------------------|
| A. | Von Schroeter | SE3-5455 | (coc, ez) | modify pier; dredging * |
| | 0 & 28 Windrush Lane, Osterville | | - | North Bay |
| B. | Boyle | SE3-5630 | (coc, ez) | Pool, New Deck & Patio * |
| | 292 Grand Island Drive, Osterville | | - | bordering vegetated wetland |

A motion was made to approve A. and B.

Seconded and voted unanimously by roll call.

Aye – Abodeeley, Foster, Gillmore, Hearn, Lee, Morin,

Nay –

A motion was made to adjourn.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin,

Nay –

The time was 10:33 pm