



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: March 7, 2023 @ 3:00 PM

The Conservation Commission's Public Hearing will be held by remote participation methods.

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://townofbarnstable-us.zoom.us/j/85230820202>

Meeting ID: 852 3082 0202

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.

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.

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Clerk George Gillmore, Commissioners Abodeely, Hearn, Morin and Sampou. Commissioner Sampou arrived at 3:20 pm. Commissioner Foster left the meeting at 4:00 p.m.

Conservation Administrator, Darcy Karle was present along with Conservation Agent, Ed Hoopes, and Administrative Assistant, Kim Cavanaugh.
Sampou arrived late at 3:20 pm

NEW* Conservation Commission meeting materials are available through Laserfiche. Links to application materials can be accessed [HERE](#).

Agenda items were taken out of order. Enforcement Orders were taken first on the agenda.

I. OLD AND NEW BUSINESS

- A. Frank R. & Nancy M. Selldorff – 102 Bluff Point Drive, Cotuit – Map 034 Parcel 071. Results of impacts to shellfish/habitat study conducted summer 2022.

The Selldorff's were represented by John O'Dea, P.E. of Sullivan Engineering and Consulting.

The discussion is regarding the use of amphibious vehicles at this property in Cotuit. The use was originally allowed at this site in 2014. The Commission requested they work with Natural Resources to do some additional studies should there become a growing request for the use of these vehicles.

Issues discussed:

- Liz Lewis Town of Barnstable MEA submitted and reviewed her reports dated February 9, and 10, 2023.
- Between 5 and 10 % of the shell fish were broken because of the drive over test, which is much less than what was expected.
- Liz raised questions about how the reports were produced.
- There were 6 sample plots.
- The area is considered by MEA as loss of habitat to the environment.
- Considered loss of shellfish habitat means no shellfish will be planted in this area.
- These amphibious vessels are very new.
- There are two vessels now berthed at this property. The agreement may need to be reconsidered.
- There is concern that other areas will end up as loss of habitat because of these vehicles.
- In the Town regulations there are only certain areas that vehicles can be driven on the beach. These vessels should be considered vehicles and not allowed to drive on the beach.
- The area at Scudder Lane was discussed. It is also an area of concern.
- John O’Dea was asked what his conclusions are based on the studies.
- When the request for the studies was made it was stated that the results of one season of testing would not be able to include significant evidence to handle these situations in the future.
- He was present during the drive over testing and everyone was pleasantly surprised at the results.
- It is hard to see any significant impact.
- This is a preliminary study and not as in depth as they would like it be.
- There was discussion of if another application should be approved.
- The Commission should be very careful in permitting this again until there is a more in depth study.

Enforcement Order Robert E & Christina R Mendez-Kennedy - 3885 Main Street, Barnstable was taken next on the agenda.

II. ENFORCEMENT ORDERS

- A. Nancy L. Johnson Tr AND Harbor Bluff QPRT - 137 Harbor Bluffs Road, Hyannis – Map 325 Parcel 119.
Failure to request a Certificate of Compliance (SE3-5424).

Exhibits

- A ARC Reader & Aerial Photo showing 137 Harbor Bluff’s Rd., Hyannis
B NOI Signature Page and Narrative for SE3-5424
C Approved Mitigation Plan and Order of Conditions for SE3-5424

Nancy Johnson represented herself .

Issues discussed:

- The mitigation area still needs to be planted, but cannot be done now (because the OOC is expired), will have to be done as part of the COC request.
- Homeowner has developed allergies to certain types of plants. The Commission was agreeable to having the landscape designer change plants in the mitigation plan that would reduce the likelihood for allergy issues.
- Because the original engineer associated with this project passed away, the enforcement order was amended to extend the deadline for receipt of the COC request to June 30, 2023.

A motion was made to approve the amended (for deadline dates) Enforcement Order.

Seconded.
Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster
Nay – none

D. Izabel Marrero & Thays was taken next on the agenda.

- B. Robert E & Christina R Mendez-Kennedy - 3885 Main Street, Barnstable – Map 335 Parcel 052. Alteration of a wetland resource area - vegetated (scrub-shrub) wetland - and it's buffer - by placing fill and extending a rock landscaping wall into the 50' buffer.

Exhibits

- A ARC Reader & Aerial Photo showing 3885 Main St., Barnstable
B Current Site Photos
C Colorized sketch plan (provided by Robert Kennedy)

Mr. Kennedy represented himself.

Issues discussed:

- Homeowner allowed landscaper to place fill.
- Homeowner checked with Building Department about the wall. Because the height of the wall is less than 4' tall no building permit was required but he did not know he had to file with Conservation.
- The homeowner would like to move forward with the RDA option and will remove the portion of the unpermitted wall back to the 50' buffer line.
- Commissioner Foster had to leave the meeting at the start of this hearing.

A motion was made to approve the amended Enforcement Order.

Seconded.
Aye –Gilmore, Lee, Hearn, Morin, Sampou, Abodeely
Nay – none

Commissioner Foster left the meeting at 4:00 p.m.

- C. John P. & Karen E. Guarco – 141 Estey Avenue, Hyannis – Map 306 Parcel 198. Alteration of a wetland resource area - floodzone - and the 0'-100' buffer to a wetland resource area - Bordering Vegetated Wetland (BVW) - by placing fill (stones), and alteration of the 50'-100' buffer to a wetland resource area - BVW - by the unpermitted construction of a patio and unpermitted expansion of a slate patio.

Exhibits

- A ARC Reader Aerial Photo showing 141 Estey Ave., Hyannis
B Aerial Photos Before and After

Lynne Hamlyn, Hamlyn Consulting represented the Guarco's.

There were no issues discussed.

A motion was made to approve the amended Enforcement Order.

Seconded.
Aye –Gilmore, Lee, Hearn, Morin, Sampou, Abodeely
Nay – none

- D. Izabel Marrero & Thays Fernandes – 4 Saint Francis Circle, Hyannis – Map 291 Parcel 225. Alteration of the buffer to a wetland resource area -Bordering Vegetated Wetland - by unpermitted construction of patios and walkways and depositing construction debris.

Taken up earlier on the agenda.

Exhibits

- A ARC Reader Aerial Photo showing 4 Saint Francis Circle, Hyannis

- B Aerial Photos Before and After
- C Current Site Photos

Thays Fernandes represented Ms. Marrero.

Issues discussed:

- Clarification was made as to what patio area had to be removed.
- The homeowner will hire a wetland consultant to do the delineation.
- Commissioner Sampou joined the meeting at 3:20 p.m., but abstained as he arrived at the end of this hearing.

A motion was made to approve the Enforcement Order.

Seconded.

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

Abstain – Sampou (joined the meeting at the end of the hearing)

Nay – none

Commissioner Sampou arrived at 3:20 p.m.

Old and New Business was taken next on the agenda.

- E. Alan A. Fuierer & Renee A. Nichols – 87 Marston Avenue, Hyannis – Map 288 Parcel 126. Alteration of the 0'-50' buffer to a wetland resource area - Bordering Vegetated Wetland - by placing fill and cutting vegetation and 2 trees.

Exhibits

- A ARC Reader Aerial Photo showing 87 Marston Ave., Hyannis
- B Aerial Photos Before and After
- C Aerial Photos Before and After Cut and Fill

Alan A. Fuierer & Renee Nichols represented themselves.

Issues discussed:

- Homeowners did not know they had to get permission to remove the trees. At least one of the trees was damaged in a storm.
- The enforcement order will be amended for the replacement of the two trees.
- The restoration planting area will have a groundcover of native meadow mix but other native plants will be placed throughout the restoration area. There will be sufficient variation in composition and vegetative height diversity.

A motion was made to approve the amended Enforcement Order.

Seconded.

Aye –Gilmore, Lee, Hearn, Morin, Sampou, Abodeely

Nay – none

III. REQUESTS FOR DETERMINATION

- A. **Tales of Cape Cod, Inc.** To create a 4 foot wide trail connecting Mass Audubon's Long Pasture Wildlife Sanctuary to Tales of Cape Cod's property with benches for hikers and signage at 4044 Main Street, Barnstable as shown on Assessor's Map 336 Parcel 046. **DA-23018**

The applicant was represented by Gene Guill and Ian Ives of Mass Audubon and David Wheaton of the Mashpee Wampanoag Tribe.

Brad Hall flagged the wetland area.

Issues discussed:

- There were no questions from Commissioners.
- Staff supports the project.
- The value the project brings to the community more than outweighs a trail.

Public comment:

Kelly Schofield 79 Stoney Point Road – Abutter. Kelly asked when the project will begin. They would like to start before the warm weather. Kelly asked if there are any plans for the existing path. It will be maintained as it is currently.

Karl Schofield 79 Stoney Point Road – Karl asked how many people are expected to be using the path. It is 5’ from his property line. There would be approximately 200 people per year.

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

Seconded and voted unanimously by roll call.

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

Nay -

IV. NOTICES OF INTENT

A. Michael Braunstein. To demolish single family dwelling and construct a new single family dwelling with all associated appurtenances at 132 Point of Pines Avenue, Centerville as shown on Assessor’s Map 230 Parcel 064. **SE3-6073**

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

Issues discussed:

- An I/A septic system will not be installed as this area is designated as Phase I in the Town sewer project.
- Staff would like to see some larger size plants in the mitigation area. At least five gallon sizes.

Public comment:

Mary E. Anderson - Abutter across the street from the property. Mary is concerned about the sewer going in the front. She is afraid it will be above ground and an eyesore. It will be many years before town sewer goes in. The system will be underground. It is outside Conservation jurisdiction. It will not be visible above ground.

Chuck Murphy 122 Point of Pines. He is concerned that the structure will obstruct his view. His house should be high enough to not have his view obstructed. Asked if there will be any separation between the property. There will be plantings. The new structure will extend further toward water in some areas but not in others. The work will commence in the fall.

Leigh Needleman of 148 Point of Pines - Leigh is in support of the project.

A motion was made to approve the project subject to receipt of a revised plan to include the SE3 number for the existing pier and larger plantings in the mitigation area.

Seconded and voted unanimously by roll call.

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

Nay

B. Lori Sidman, Trustee - Bonnybrook Realty Trust. Proposed repairs and maintenance necessitated by accreted shoreline consisting in part of relocation of pier head and boat lifts at 185 Ocean View Avenue, Cotuit as shown on Assessor’s Map 033 Parcel 016 **SE3-6074.**

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

A continuance was requested to April 4, 2023.

A motion was made to approve the continuance request to April 4, 2023 without testimony.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Gillmore, Hearn, Lee, Morin, Sampou
Nay

V. CONTINUANCES

- A. Wianno Club.** To permit seasonal tent, timber walkway & ADA access and grading at 107 Sea View Avenue, Osterville as shown on Assessor’s Map 162 Parcel 024. **SE3-6066 Continued from 2/14/23. Form WC received.**

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

A revised plan dated March 6, 2023 was submitted.

Issues discussed:

- The size of the walkway was reduced, mostly outside of the 50’ buffer.
- Mitigation was added near the snack bar area, to the east, and the west side to cover the walkway.
- A drainage plan was added.
- Staff has concerns that mitigation plantings for SE3-4546 are missing. It is a violation, and a written warning will be issued.
- Staff would like to be present when they stake the mitigation.
- Staff is unable to determine if proposed mitigation is not being added to an area that should already have mitigation.
- Would like demarcation for mitigation.
- A question was raised if the tent should be included in the mitigation calculations.
- Mitigation has been provided to cover the walkway, not for the tent.
- When the tent is removed for the season the area will be re-vegetated with grass seed or sod.
- Prior mitigation requirements were reviewed.
- The sloping area will remain grass. There is not a need for better rooting or larger size plantings in the area.
- There should be a label put on the plan for natural vegetation area.
- The demarcation near the tent area will be discussed with staff. There is a lot of foot traffic and mowing in the area. It will need to be at least two feet high and keep foot traffic out.
- The mitigation area should be staked before the order is issued.
- Given the history of the site. Mitigation should not be required for the tent.
- A start and end date of the tent being up should be put in the order.
- Re-sodding the area should be put in the order as a condition.
- There should be an ongoing condition that the tent can continue to go up and down.
- A report of the state of the mitigation and demarcation with pictures should be submitted annually for three years, and every three years as an on-going condition.
- Mark Krebs, Manager addressed the Commissioners. He was not aware any prior required mitigation was not in.

There was no public comment.

A motion was made to approve the project with conditions: There shall be verification of previous mitigation area and proposed mitigation areas, if different a revised plan shall be submitted. Demarcation of previous and new mitigation area approval by staff is required. When temporary tent is removed each year, the disturbed area should be re-sodded. The labeling of the area (white area on plan) between building #61 and #71, shall indicate that area to be “naturalized” and

submitted as a revised plan. Annual monitoring reports for three years with photographs of all mitigation areas shall be required. The seasonal tent installation is an “ongoing condition” with the requirement of a monitoring report to be submitted with photographs every three years. The tent maybe used from May 1 to October 31.

Seconded and voted unanimously by roll call.

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

Nay

A motion was made to adjourn.

Seconded and voted unanimously by roll call.

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

Nay

The time was 5:15 p.m.