



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: September 5, 2023 @ 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

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 live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable's website: <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/89564900140>

Meeting ID: 895 6490 0140

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](mailto: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](mailto:Darcy.Karle@town.barnstable.ma.us). Comments should be submitted at least 8hrs prior to the hearing.

**REMINDER TO APPLICANTS:  
FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 230  
SOUTH STREET, HYANNIS, 02601**

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

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, Hearn, Sampou and Tangney.

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

## **I. NOTICES OF INTENT**

- A. **John and Martha Durcan.** Proposed reconstruction of existing decks and construction of a sunroom addition to the existing single-family residence at 99 Seventh Avenue, Hyannis as shown on Assessor's Map 245 Parcel 057. **SE3-6120**

The applicant was represented by Cameron Larson of Environmental Consulting & Restoration, LLC

Issues discussed:

- There were no questions from Commissioners.

Public comment: None

A motion was made to approve the project as submitted.

Seconded and voted by roll call.

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

Nay -

- B. **Harry C. Hagerty, III, Trustee.** To renovate or reconstruct existing garage and kitchen wing, construct a new detached garage and reconfigure driveway, reconfigure existing patio with a proposed dipping pool, replace in-ground bank steps with elevated stairway, and proposed bank restoration at 291 Bay Lane Centerville as shown on Assessor’s Map 166 Parcel 059. **SE3-6121**

The applicant was represented by Chuck Rowland, P.E. of Sullivan Engineering & Consulting and Ian Peach from Wilkinson Ecological Design.

Issues discussed:

- Three year monitoring reports should be submitted.
- Any change in consultant will have to be a CERP and notify Conservation in writing.

Public comment: None

A motion was made to approve the project subject to Wilkinson Ecological Design will be the CERP. If there is a change, written notification will be given to Conservation staff, and annual reports submitted for three years.

Seconded and voted by roll call.

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

Nay -

- C. **John T. & Elizabeth M. Ganey.** To demolish existing accessory cottage and construct a new cottage at 251 Bay Lane, Centerville as shown on Assessor’s Map 166 Parcel 057. **SE3-6123**

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

Issues discussed:

- There is an increase of hardscape in the 0-50’ buffer.
- A question was raised if the cottage could be moved back toward the street.
- The staked mitigation area seems to include more grass than trees or bushes. Commissioners would like to see additional plants.
- The demarcation line should be moved so the area will not be mowed.
- There is a series of rocks along the coastline which is demarcation for the past project. The mowing is going on beyond the rocks. There should be no mowing in that area.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing the new demarcation line, label the area with the new mitigation area, and the previous mitigation area on the plan as “no mow area”.

Seconded and voted by roll call.

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

Nay -

- D. **Robert Ian & Katherine K. O’Keeffe.** To remove existing tennis court and construct a pool and patio, pool cabana and sports court at 299 Sea View Avenue, Osterville as shown on Assessor’s Map 138 Parcel 021. **SE3-6122**

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

Issues discussed:

- At the site visit it was noted that there is a lot of green fertilized grass all the way to the sea wall.
- There is not one plant along the wall. Would like to see some plants added.
- While not required the addition of plants would be very beneficial and appreciated.
- There is a space between the top of the bank and the revetment which is all grass and is being mowed.
- The grass is beautiful but fertilization is not good for the environment.
- Organic fertilizer could be used.
- There is no buffer.

Public comment: None

A motion was made to approve the project subject to using the organic fertilizer and asking applicants to provide some plantings on top of the bank, either in addition to, or in lieu of, some of the plantings on the plan.

Seconded and voted by roll call.

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

Nay -

- E. **Izabel Evangelista.** After the fact filing for installation of brick walkways and patio within 50 foot buffer to a bordering vegetated wetland at 4 Saint Francis Circle, Hyannis as shown on Assessor’s Map 291 Parcel 225. **SE3-6119**

The applicant was represented by Tyler Gaudreau of Environmental Landscape Solutions, LLC.

Issues discussed:

- The project was reviewed by Ed Hoopes and he is in support.
- Would like to see the meadow area planted for Monarch butterflies. There are some plants in the plan for this already.
- The mowed area is only mowed once annually.
- The large gravel patio area with the chiminea in it will be removed and plantings will be put in.
- There will be a 25’ buffer over existing conditions.
- A stamped plan should be submitted. This plan is not stamped.
- There was no staking done for the site visit.
- There is a lot of invasion into the 0-50’ buffer.
- The double row of plantings on the side of the house should go near the meadow area.
- A double row of shrubs could be added along the edge of the pond.
- Darcy would prefer the meadow pollinated area.
- Annual reports should be submitted for three years.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing one time mowing in the fall, with an engineering stamp, and annual reports for three years.

Seconded and voted by roll call.

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

Nay -

- F. **Quarterra Multifamily Communities.** Proposed construction of multifamily apartment buildings along with a community pool, clubhouse, associated driveway access, parking areas, and storm-water management systems at 35 Scudder Avenue, Hyannis as shown on Assessor's Map 289 Parcel 110. **SE3-6124**

The applicant was represented by Ed Pesce of Pesce Engineering & Associates, along with Kathryn Barnicle of Ilex Environmental, Dan Lee of Quarterra, and Brian Dugdale, project attorney.

Four public comment letters were received from Roberta Mauch, John Ale, Donna Weber, and Anne Salas.

Issues discussed:

- The letter from BETA said there would be more nitrogen loading with the new project than with the golf course. It does not appear there is more nitrogen loading. There is a sewer for this project.
- The subject has been reviewed by the Cape Cod Commission. There is an analysis done by the CC Commission. The conclusion was the existing nitrogen loading is currently higher than what is proposed. The plantings proposed will use less fertilizer.
- The Beta letter is dated today September 5, 2023.
- The last project was in 2021 regarding the pond.
- The proposed plan fills in the pond.
- There was discussion on relocating the turtles and amphibians in the pond.
- A protocol was requested for the process.
- A lot of trees are being removed that are not in Conservation jurisdiction.
- There is only a small portion of the project that is within Conservation jurisdiction.
- A request was made for Ed Pesce to go through the comments that were submitted and answer anything that is within Conservation jurisdiction.
- The entrance driveway tends to flood. A question was raised how this is going to be improved.
- Ed Pesce reviewed Sheet 9 of the plan. The area will be all landscaped to prevent the flooding and new piping infrastructure is being added. It will be a much better situation than what currently exists.
- Mitigation is being provided for areas that are not in Conservation jurisdiction.
- Would like a breakdown of what mitigation is required based on what is in Conservation jurisdiction, and what portion of the mitigation is covering that.
- The project includes a lot of high density building, a large amount of green space, and it is on a sewer system.

Public comment:

Denise Johnson of 38 Greenwood Avenue – Immediate abutter. States she has not received any notice of the project. The project discussion should be revisited at a later meeting. Joshua's Brook is a tidal stream with period algae blooms and other bio hazard and water contamination. This project will further pollute the area. Does not feel the storm water management system is adequate. It will have a negative effect on wildlife and plant life. Requests the area be preserved.

Ed Pesce responded to the public comment. She was on the list of abutters and was sent an abutter letter by certified mail.

Larry Morin – Would like to wait to comment.

Roberta Mauch - 80 Greenwood Avenue – Does not understand why instead of reducing the amount of buildings they are cramming them closer together. This project is in a critical endangered wildlife corridor.

Laura Krause of BETA Group – Submitted letter earlier today. They were engaged by Save Twin Brooks to review the Notice of Intent and the drainage report. She talked about the storm water reports. They disagree with the two areas flagged as isolated wetlands being non-jurisdictional. The emergency access road is, in part within the flood plain. Would like the Commission to consider a peer review of the resource areas as delineated.

Karen McGuire -234 Greenwood Avenue – President of Save Twin Brooks. Spoke about the report sent in from BETA Group. Apologized for late submission. They did not receive notification of the project and only heard about it by word of mouth. Requested the project be continued to review the questions and comments received.

Felicia Penn of Daisy Bluff Lane, Hyannis - Strongly supports Laura Krause and Karen McGuire’s comments. Is concerned with the project being looked at as being better than what was previously disturbed. The wetlands regulations are more strict now than when the golf course went in. She would like to know what a partial waiver is. She questioned the net loss of the trees. Would like clarification on the reduction in water usage. She would like to see a clover lawn which would not require as much water.

Jerome Vigil -142 Bay Lane Centerville Supports the efforts of Laura Krause.

Larry Morin - 1493 Santuit Lane in Cotuit. Supports Felicia and Laura’s input. It needs to be heard more thoroughly. He would like a continuance to review comments received.

End of public comment.

Commissioner Sampou asked Ed Pesce to address rainwater outside conservation jurisdiction on page six of the stormwater report. There is a state of the art treatment plan for all storm water on the site.

Katie Barnicle addressed the Commission regarding the number of trees being cut and the restoration plan. She also commented on the isolated vegetated wetlands. She does not feel a peer review is necessary.

Issues discussed: (continued)

- A lot of the issues brought up in public comment are not within Conservation jurisdiction.
- There are two issues that may need further information.
- The figures raised in the BETA letter should be looked at.
- There is a lot of information that was submitted late that needs to be looked at and addressed. The Commission cannot require a continuation. The continuance needs to come from the applicant.

A continuance was requested to 9/12/23.

A motion was made to approve the continuance request to September 12, 2023.

Seconded and voted by roll call.

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

Nay -

There was a five minute break.

## **II. CONTINUANCES**

- A. Park City Wind, LLC.** Proposed installation of two 275-kV submarine electric transmission cables in Nantucket Sound, and onshore duct bank system at Craigville Beach and 2 Short Beach Road, Centerville as shown on Assessor’s Map 206, Parcel 013 and Assessor’s Map 206 Parcel 044. **SE3-5992 Continued from August 8, 2023. Form WC received.**

The applicant was represented by Jack Vaccaro of Epsilon, along with Patrick Johnson Avangrid, Holly Johnson, Epsilon and subject experts available to respond to questions Ken Kimmel, Avangrid, Ken Fitzgerald, and Chris Long of Gradient.

A response to the public comment from the August 8<sup>th</sup> meeting was submitted by Park City Wind and is available to view under the Meeting Materials tab on the website.

The Waterways Committee comment letter received on August 31, 2023 was read into record.

Issues discussed:

- There was a question on the micro tunnel – it will be a concrete encased tunnel. What kind of effect would EMF's have when placed inside the concrete pipe. Chris Long addressed the Commission regarding a question about magnet fields in relation to the micro tunnel. The concrete does not shield magnetic fields. The effects will be negligible because it will be buried a minimum of 10 feet underground.
- Water does not serve to shield magnetic fields.
- There was discussion on maintenance and inspections. No maintenance and no inspections will be needed. The circuits will be inspected at the splice vaults to the north of the river.
- The financial stability of the company was discussed. It is not a Conservation jurisdiction question but it is being asked for public knowledge. Ken Kimmel addressed the question. A host community agreement was entered with the Town. There will be insurance policies and lender agreements.
- The future of East Coast Wind Power submitted for the file was read into record by Commissioner Sampou.
- The MEPA approval should be submitted. The application is on the Wind 1 Connector.
- Ken Fitzgerald explained the recycling of the slurry process.
- A construction sequence of the micro tunnel was reviewed.
- Coordination is being done with DPW on the project. They will get confirmation in writing from DPW that they are in agreement with the methodology and protocol regarding the receiving shaft on the road.
- Griffin Beaudoin has not seen the detailed plan yet.
- The erosion control and work limit line on the Short Beach side needs to be shown on the Engineering plan.
- The 30' shaft going down may need to have additional erosion control.
- A split rail fence at the edge of the marsh is being put in for demarcation. There needs to be erosion controls shown on the plans.
- There will be a split rail fence on the street side of the Short Beach Road to prevent parking in that area.
- There have been 12 comment letters received that are not in support of the project and five in support of the project. The names were read into record.
- June 1, 2022 the NHESP letter was reviewed.
- Town Attorney Charlie McLaughlin focused on the earlier aspects of the presentation. The basic representation for the underground drilling would be at the beach head. He questioned if there is a possibility to avoid the Short Beach Road portion of the project and continue drilling to an exit point north of the river.
- There was discussion of the five options that were presented in April of 2020.
- The plan shows the split rail fence on the front of the property. The erosion control shown will be added to the engineering plan.

Public comment:

Brian Koelbel of Bay Street Osterville – There should be preservation of Craigville and Dowses beaches. Existing industrial sites such as the Sandwich Power Plant should be repurposed for this project. The Commission should work with Town Council on alternative sites.

Larry Morin - The history of the wind farms started with Yarmouth. Yarmouth shot it down. He submitted a detailed response on the comments received by Avangrid. and submitted it to the Commissioners earlier today.

Comment #3 all alternatives to location were discussed behind the scenes. There should be a continued hearing. He is critical and it is vague.

Shelly Stirling - 11 Naushon Circle, Centerville - Wind will never replace current forms of power. Asked what happens when the windmills are no longer used. Feels this is an experiment with the Town. New Bedford is already an industrial town. It should be done in an already industrialized town. The electricity will be going to Rhode Island, we are not even getting the energy. There is a lack of mitigation.

Bob Schulte – 50 Fox Run, Centerville - Objects to Commissioner Sampou’s comments. Responded to comment number 8 of Avangrids’ responses to EMF effects. More studies need to be done. Asking for the company to provide additional information and detailed analysis on the impact that the micro tunneling and the EMF’s will have on the river environment. Does not want micro tunneling under the Centerville River. There should be documentation of the discussions on the options. He is concerned about access to the area during construction.

Anne Shulte – 52 Fox Run, Centerville – Asking again for answers to the questions about protecting the Mountain Plover spotted in the area. Considering the protection given to the Piping Plover shouldn’t the Mountain Plover be protected as well? Avangrid should take precautions to protect them. The kids jumping off the bridge could be in danger of the EMF impacts and proposed electrical lines going under the river.

Colleen Cahill 1236 Craigville Beach Road – Not a Conservation issue but is concerned for the families fishing, collecting crabs, and kids jumping off the bridge.

Ellen Nosel - White Oak Trail, Centerville – Without Commission approval Park City Wind cannot move forward. Avangrid’s response that the installation of the micro tunnel will have no effect on the habitat of the Centerville River is only provable if something goes wrong. This project is industrializing Barnstable. Asked what was meant by the statement “not enough egress” at the August 2023 meeting for Commonwealth Wind

Hector Guenther – 45 Deerfield Road, Osterville – The three wind power projects are the biggest thing to happen in Barnstable in the last 100 years. Asking for any decision be deferred until all the questions are answered, including the Army Corps review. If approving the project he would like the OOC to require approval from Army Corps and copies of all documents be provided to the Commission and the public.

Greg Gerdy – Nutmeg Lane in Osterville – There are a number of questions and issues that still need to be addressed and feels there should be a continuance. There should be more discussion on the effects of micro tunneling, what happens if there is a rising sea level, who is responsible if there is damage during a storm, the whale habitats could be adversely effected by the project.

Sandy Jones – 98 Park Avenue Centerville – There are 6,000 wind farms in Europe and seven in the United States. There are three extensive studies and plenty of documentation regarding the effects of EMF’s. She asked the Commission to look at the studies done on EMF’s. In 2019 Edgartown denied Vineyard Wind because they felt there was not enough data on long and short term effects. There is so much at the Centerville River that must be protected. Another option should be considered.

Capt. Jim Kendall - lives in New Bedford – He serves as a fisherman’s representative to several of the off shore wind developers. He pointed out there have been many necropsy’s to marine mammals that have been showing up to prove or disprove the effects of offshore wind. He is a former fisherman and protective of the fishing industry.

Joanne O'Connor - 555 Main Street Centerville - On the issue of dredging. What does "consulted with Harbor Master" mean? Circumstances change and the area may need to be dredged in the future. In a storm the micro tunnel could become exposed or the area may need to be dredged.

Cliff Carroll of 135 Minton Lane, West Barnstable - It is not right that Avangrid did not get their comments back until Thursday before the long holiday weekend. He questions why the well protection areas are not being considered by the Conservation Commission. Many questions asked at the last meeting were not answered. He also questions how the process got so far without open meetings. He would like the Commission to hold off on making a decision tonight. If Commission is not responsible on protecting the well fields what Commission is?

Chuck Tuttle - 8 Wilton Drive, Centerville – He is an advocate of clean energy. The proposed project has no buyers for the energy. There is no bond in place to cover remediation of any damages to the environment and wetlands. 550 hundred million watts of power underneath the Centerville River and the roads is a bad idea. If all of Avingrid's projects are allowed to proceed 2.8 billion watts of electricity will be pulsing through Barnstable. This is the first project of its kind in the U.S. There is a better way to bring the electricity ashore. Bring it ashore at the Canal Power Plant. There is a petition in place to secure the necessary signatures needed to mandate a public hearing which will be done by September 15<sup>th</sup>. He requests no decision be made until after September 15th.

Sean Fitzgerald – Requests the Commision not approve anything until protection agreements are in place. There seems to plenty of other alternatives.

Craig Tamish - 40 Wilton Drive Centerville - There is a lack of power purchase agreements. Should a decision be made without agreements in place?

Jerome Vigil – 142 Bay Lane, Centerville - Agrees with Shelly Stirling, Brian Koelbel, Ellen Nosel, Capt. Kendall, and Chuck Tuttle. Biggest problem with the project is common sense and greed. Avangrid could go to an industrial site where there is already infrastructure. The amount of power they are proposing could lead to big electro-magnetic fields. There are a lot of issues. The cables are too big to go under the bridge. The discussion should be about a better path to do it. It will cost them a lot more to go to other sites.

End of public comment.

Issues discussed (continued).

- There are some outstanding questions that need to be addressed.
- The alternate site locations in regards to micro-tunneling as brought up by Town Attorney Charlie McLaughlin.
- There needs to be documentation from DPW that the location is agreed on.
- Waterways to confirm no more dredging will be needed in the area of the Centerville River.
- Army Corps review will come late in the process.
- There was discussion on the DPW agreement and Army Corps review about being required before Conservation Commission approval. Those are independent reviews and could be conditioned.
- Jack Vaccaro would like to submit additional information about the micro-tunneling. He spoke with the Harbor Master personally about dredging. The Harbor Master confirmed that there will never be dredging proposed in this area.
- There was continued discussion about the alternative analysis between the tunneling and some other location for landing the cable.
- Commissioner Sampou asked about the experience they have. Is this a new technology or well proven?
- Micro tunneling has been around for decades. A list of projects where micro tunneling was used has been submitted.
- The engineers are experts in the field. Avangrid is only talking with construction companies with experience.



- Comments and questions regarding kids swimming and effects of EMF's was answered by Chris Long. Even at the river bottom magnetic fields will be below human health exposure guidelines.
- Regarding well fields and PFAS and contamination of ground water. The Conservation Commission does not have jurisdiction.
- Natural Heritage provided a letter for endangered wildlife that includes conditions for the project which will be incorporated into the Order of Conditions if approved.
- Contracts or business issues are not part of Conservation jurisdiction.
- This is a complex project which will require time to prepare special conditions if approved. The matter should be taken under advisement to draft special conditions.
- A motion could be made to close the public hearing and come back on 9/19 with the final decision.
- Charlie McLaughlin suggested they do not close the hearing. It will take a lot of staff work and legal review. As soon as it is closed the clock starts ticking on issuing the final decision and order.
- The only one who can ask for a continuance is the applicant.
- If the hearing is closed no additional information can be submitted.
- A question was raised if the applicant can grant extra time for issuing the Order of Conditions beyond the 21 days.
- The applicant agreed to submit in writing permission to extend beyond the 21 days to issue a decision and the Order of Conditions.
- Applicant is proposing to close the hearing, and start drafting the decision. If more time is needed the Conservation Commission will request additional time, within reason, and the applicant will agree to it.

A motion was made to close the public hearing, take the matter under advisement, and come back on September 19, 2023 with the draft finding. If more time is needed there is an agreement with the applicants to extend the time for issuance longer than 21 days for a reasonable period.

Seconded and voted by roll call.

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

Nay -

### **III. CERTIFICATES OF COMPLIANCE**

(ez = no deviations, staff recommends approval) (\* = on-going conditions)

<b>A. Town of Barnstable</b>	<b>SE3-6080</b>	(COC, ez)	To Permit and Maintain a Mountain
Bike Boardwalk at the Trayser Museum Trail		0 Maraspin Road, Barnstable	BVW
<b>B. Lawrence Feinberg</b>	<b>SE3-6041</b>	(COC, ez)	To reconstruct wood retaining wall
100 Harbor Road, Hyannis		Coastal Dune / Coastal Bank	
<b>C. Pericles Ambulos</b>	<b>SE3-5920</b>	(COC, ez*)	Addition, deck expansion, and
mitigation plantings	1058 Craigville	Beach Road, Centerville	Salt Marsh
<b>D. Philip &amp; Mary Nelson</b>	<b>SE3-6098</b>	(COC, ez*)	To permit construction of boardwalk
90 Harbor Point Road, Cummaquid			Salt Marsh

A motion was made to approve A. – D.

Seconded and voted by roll call.

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

Nay -

### **IV. MINUTES**

A. August 8, 2023

B. August 22, 2023

A motion was made to accept the minutes as submitted.

Seconded and voted by roll call.

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

Nay –

A motion was made to adjourn.

Seconded and voted by roll call.

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

Nay -

The time was 10:59 pm