



# Town of Barnstable Conservation Commission

230 South Street  
Hyannis Massachusetts 02601

Office: 508-862-4093

E-mail: [conservation@town.barnstable.ma.us](mailto:conservation@town.barnstable.ma.us)

## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: August 13, 2024 @ 3:00 PM**

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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/88271526826>

**Meeting ID: 882 7152 6826**

**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.

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice-Chair Louise Foster, Clerk Angela Tangney, and Commissioners Abodeely, and Sampou. Commissioner Sampou joined the meeting at 3:10 p.m.

Also in attendance were Administrator Darcy Karle, Agent Ed Hoopes, and Assistant Katie Pawlak.

## **I. EXECUTIVE SESSION**

- A. Executive Session to ratify or revoke the decision of the Chair and Manager, in consultation with counsel, to assent to the Department's opposition to Petitioners' emergency motion with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break and plantings if the Chair determines that an open session could be detrimental to the Commission's litigation position.

**CHAIR:** Next on the agenda is an Executive Session to ratify or revoke the decision of the Chair and Manager, in consultation with counsel, to assent to the Department's opposition to Petitioners' emergency motion with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002

involving construction of a wave break and plantings if the Chair determines that an open session could be detrimental to the Commission's litigation position. discuss litigation strategy with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break and plantings.

**DECLARATION OF THE CHAIR:** I declare that the discussion to ratify or revoke the decision of the Chair and Manager, in consultation with counsel, to assent to the Department's opposition to Petitioners' emergency motion with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break may have a detrimental effect on the litigating position of the Commission and I, therefore, ask for a motion to go into executive session.

"Following the Executive Session, the Commission will reconvene in Open Session. I recognize the Clerk to make the motion."

- **CLERK:** I move to go into Executive Session under G.L.C. 30A§21(a)(3) for discussion to ratify or revoke the decision of the Chair and Manager, in consultation with counsel, to assent to the Department's opposition to Petitioners' emergency motion with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 based on the Chair's declaration that an open meeting may have a detrimental effect on the litigating position of the Commission and will reconvene in Open Session following the conclusion of the Executive Session.
- **CHAIR:** I second the motion.
- **ROLL CALL VOTE:**  
Aye –Abodeely, Foster, Lee, Sampou, Tangney  
Nay -
- **TIME: 3:09**
- **The Commission adjourned Executive Session and returned to Public Session at 3:19 P.M.**

## **II. OLD & NEW BUSINESS**

A. Discussion on allowing "Invasive Management" to continue as an on-going condition in a Certificate of Compliance.

Issues discussed:

- A discussion was held regarding an ongoing condition for restoration projects that involve plantings and invasive species removal, not as a part of mitigation.
- Issues where after years have passed, the contractor/consultant wants to continue work, after they have received COC with no ongoing condition for doing so.
- Proposed condition read, with authority to add condition under COC given to conservation staff.

A motion was made to approve the language of the proposed condition read:

Seconded.

Aye –Abodeely, Foster, Lee, Sampou, Tangney

Nay – none

- A discussion was also held about an on-going condition for invasive removal for mitigation purposes.
- A discussion of whether to use "may continue invasive removal" versus "must continue invasive removal" in the language of condition.
- The language of using "may" versus "must" would affect property transfers/new property owners.

- Using “Must” could make it difficult to do enforcement down the road.
- Using “Must” could ensure mitigation will be maintained/carried out.
- Concerns over the ongoing condition for invasive removal for one project being used as mitigation for future projects.
- Condition would allow new property owner to continue removal/restoration without filing.
- Condition may force new property owner to use herbicides/pesticides when they don’t want to.
- A discussion was held about the practicality of continuing to allow invasive removal as mitigation in general.
- Invasive removal is beneficial, but potentially only temporarily, whereas hardscape is permanent.

Public comment:

- Consultant Lynn Hamlin said in general attorneys check to see if COC is issued, not necessarily look into the ongoing conditions of that COC.
- May come as a shock to new homeowner to see the expense of the maintenance/invasive removal they have to continue.
- She does feel invasive removal as mitigation is something that should continue to be allowed.
- Engineer/Consultant John O’Dea said it’s hard to control anything in regard to mitigation, even if we do mitigation plantings instead, bittersweet could still take it over in the following years.
- Requirements in square footage of mitigation has increased over the years, invasive removal has made that more practical.

A motion was made to table the discussion to a future meeting:

Seconded.

Aye –Abodeely, Foster, Lee, Sampou, Tangney

Nay – none

**III. EXTENSION REQUESTS**

**Project Type**

**Time Requested**

- |  |   |                                   |
|--|---|-----------------------------------|
| A. Laura Beth Trust, Trustee SE3-5900<br>271 East Bay Road, Osterville | Demolish structures<br>construct new structures | 3 years (1 <sup>st</sup> Request) |
|--|---|-----------------------------------|

The applicant was represented by John O’Dea from Sullivan Engineering & Consulting.

Issues discussed:

- The filing’s first extension request.
- Demolishing has occurred, wish to continue the rebuilding of the structures.

Public comment: None.

A motion was made to approve the extension request for three years:

Seconded.

Aye –Abodeely, Foster, Lee, Sampou, Tangney

Nay – none

**IV. REVISED PLANS**

**Project Type**

**Revisions**

- |  |  |                                     |
|--|--|-------------------------------------|
| A. Barbara C. Doherty SE3-5806<br>500 Shootflying Hill Rd, Centerville | Construct & extend stairs<br>and pier, vista pruning | To lengthen the approved<br>pier 6’ |
|--|--|-------------------------------------|

The applicant was represented by John O’Dea from Sullivan Engineering & Consulting.

Issues discussed:

- Added in step/stoop on side landing.
- Installed ramp instead of steps to reach water so that it would not be at water's edge.
- Some of the 12ft sections measured to 12'4", so the pier is ~6' longer.
- Water level of lake has decreased this year, length of pier has helped give freeboard to bow of the boat.
- Commissioners had concerns about additional landing area.
- Representative explained landing area is more of a natural dirt path, not a beach/lawn area.
- Landing area increases accessibility all year.
- Homeowners added gate to top of ramp during winter for safety reasons.

Public comment: None.

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

Aye –Abodeely, Foster, Lee, Sampou, Tangney

Nay – none

## **V. ENFORCEMENT ORDERS**

- A. RF Design Painting Corp. - 146 Saint Francis Circle, Hyannis - Map 291 Parcel 227. Failure to comply with an enforcement order.

### Exhibits

- A ARC Reader image and Aerial Photo Showing Wetland Resource Areas – 30 Belair Lane, Cotuit  
B Site Photo (before violation) – 30 Belair Lane, Cotuit

Lynne Hamlyn, Hamlyn Consulting represented Mr. Batista

Issues discussed:

- Mr. Batista only corrected part of the violations from an enforcement order issued by the Commission in May 2023
- Conservation Agent and Ms. Hamlyn met with homeowner on site August 13, 2024 to resolve outstanding issues and agree to path forward. The BVW was delineated, and a restoration plan agreed to. Planting to be done this fall (before October 31, 2024).

A motion was made to approve the Enforcement Order as written.

Seconded.

Aye –Sampou, Lee, Abodeely, Tangney, Foster

Nay – none

## **VI. WARNING LETTERS**

- A. Helen Karayiannis - 100 Craigville Beach Road, Centerville – Map 267 Parcel 102. Cutting vegetation within a wetland resource area – Bordering Vegetated Wetland (BVW) and Floodzone AND within the 50' buffer to a wetland resource area – BVW.

- Noted

## **VII. CERTIFICATES OF COMPLIANCE**

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

**A. SE3-5424**

**Nancy Johnson, Trustee**

(COC, ez\*)

Addition, alterations,

**Harbor Bluff QPRT**  
137 Harbor Bluffs Road, Hyannis

landscape mitigation,  
aluminum stairway  
approval.

**B. SE3-5752**                      **Hyannis Rotary, LLC**                      (COC, ez\*)  
10 Hyannis Avenue, Hyannis

Demo/replacement/  
repairs of seawall.  
Pool & Patio.

**C. SE3-5759**                      **John Wallace & Nancy Webster, Trustees** (COC, ez\*)  
**391 Webster Nominee Trust**  
391 Sea View Avenue, Osterville

Raze & replace.  
Sewage system  
upgrade. Invasive  
species removal.  
Site improvements.

A motion was made to approve A. – C.  
Seconded.  
Aye – Abodeely, Foster, Lee, Sampou, Tangney  
Nay – none

**VIII. MINUTES**

**A. February 6, 2024**

A motion was made to approve the minutes as submitted.  
Seconded.  
Aye – Abodeely, Foster, Lee, Sampou, Tangney  
Nay – none

A motion was made to adjourn the meeting.  
Seconded.  
Aye – Abodeely, Foster, Lee, Sampou, Tangney  
Nay – none

The time was 4:14 p.m.