



Town of Barnstable Conservation Commission

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CORRECTED MINUTES – CONSERVATION COMMISSION MEETING

DATE: April 10, 2007, 6:30 p.m.

LOCATION: TOWN HALL HEARING ROOM

The meeting was called to order at 6:30 p.m. by Chairman Dennis Houle. Also attending were Commissioners Peter Sampou, Scott Blazis, Larry Morin, and Tom Lee. Vice Chairman John Abodeely and Commissioner Louise Foster were away. Rob Gatewood, Conservation Administrator, assisted.

The meeting was held in the Hearing Room, Barnstable Town Hall, Hyannis, MA

I MINUTES FOR APPROVAL

A. March 13, 2007

A motion was made to approve the minutes of March 13, 2007.

Seconded and voted unanimously.

II REQUESTS FOR DETERMINATION

Fred Duncan. Repair septic system; install new septic tank 76 feet from Bearse Pond at 140 Holly Point Rd., Centerville as shown on Assessors Map 232 Parcel 038. **DA-07026**

The applicant was represented by David Flaherty.

Discussion: No concerns arose.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

III NOTICES OF INTENT

KeySpan Energy Delivery. Replace gas main, a portion of which is within 100 feet of a bordering vegetated wetland and within a riverfront area at River Rd., Marstons Mills as shown on Assessors Map 078, 059, and 060 Parcel (various). **SE3-4624**

The applicant was represented by Brad Malo.

Discussion: Most of the excavation would take place within the existing sidewalk. The width of excavation is 24 inches; depth is 36 inches.

A letter from the Marstons Mills Library was read, expressing a concern for the project's timetable.

The plan to complete construction by June 20th was acceptable to all parties.

(Keyspan, cont'd.)

A motion was made to approve the project with special conditions.

Seconded and voted unanimously.

Hamblin, John. Construct single family home with site preparation, utilities, landscaping and viewshed maintenance at 682 River Rd., Marstons Mills as shown on Assessors Map 044 Parcel 025. **SE3-4622**

The applicant was represented by Arlene Wilson.

Discussion: The 50-foot buffer would not be altered, nor would much of the 50-100 foot buffer.

Commissioner Blazis suggested that a restriction be recorded to preserve the proposed buffers, long-term.

Commissioner Sampou asked about slope stability measures. Ms Wilson elaborated, saying that a double row of strawbales was suggested by Pete Sampou. She said that timing of the slope work might be the better way to go.

A recorded restriction over the regulated portion of the undisturbed buffer zone would be required.

A motion was made to approve the project with special conditions.

Seconded and voted unanimously.

Coombs, Craig and Denise. Regrading and landscaping in association with the construction of a single-family dwelling at Lot 2 as portion of 595 Old Mill Rd., Osterville as shown on Assessors Map 144 Parcel 010. **SE3-4623**

The applicant was represented by Lynne Hamlyn.

Discussion: The stream through the site is intermittent by definition, as it flows underground, once emerging from the culvert.

Commissioner Blazis suggested that MACC finds that the subterranean flow would not negate "river" designation. Pete Sampou said he agreed with Scott on this, although he did not feel the point was a crucial one in this case.

A motion was made to approve the project with special conditions.

Seconded and voted unanimously.

Town of Barnstable/DPW. Demolish existing baseball field and gravel driveway; re-grade and construct a stormwater detention basin and perimeter fence at 141 Bassett Ln., Hyannis as shown on Assessors Map 309 Parcel 264-008. **SE3-4625**

The applicant was represented by David Clark, P.E.

Discussion: In the stormwater management design, a clear attempt was made to minimize project impacts. Mr. Clark said that the models used (TR-55) would tend to overestimate stormwater runoff.

Commissioner Lee felt that, with regard to the drainage calculations, a very high infiltration rate was used. He thought that a perc test should be employed to confirm the rate..

Mr. Clark said that beyond-capacity flows will shift to the south, not west toward the wetland.

A motion was made to approve the project with special conditions.

Seconded and voted unanimously.

Kerry McNamara. Reopening of public hearing on proposed project to construct single-family home to be connected to a new Title 5 septic system (existing); disconnect existing garage/dwelling from existing septic system, and use [building] as a garage and for storage at 18 Bay Lane, Centerville as shown on Assessors Map 186 Parcel 082. **SE3-4564**

The applicant was represented by Ed Pesce, P.E. and Norman Hayes.

Discussion: A staff-issued enforcement order was discussed for replacing the pipe to Main Street, which was removed some time ago. Mr. Pesce said they have discovered that when the lot is surcharged, water flows away from the lot toward the river.

Mr. McNamara would like to finish the final five-feet of piping and bury it.

Norm Hayes reviewed the wetlands on the site, and said they are subject to regulation under the State and under the Town, but too small to be “regulatable” by either one. He proposed transplanting wetland species to the low elevations, thereby greatly improving the wildlife habitat.

Public Comment:

From Claire Morash: that the drainage pipe reconnection should be allowed in order to determine if this pipe does affect the water table on the subject property as well as abutting lots, and to determine whether the proposed dwelling would lie on top of or otherwise block the path of this pipe.

From Susan Nelligan (700 Main Street), that a new sump pump has been installed draining from 716 Main Street onto a different location on the property; that water used to drain into the wetland behind the chauffeur’s garage at 18 Bay Lane [subject property], that part of this pipe was removed in preparation for installation of the new septic system; that since the septic system has been installed, standing water has increased significantly. Also, questions have been raised regarding soils composition, specifically the removal of peat which was replaced with soils customarily used for and with septic systems.

Mr. Pesce responded verifying that, in fact, unsuitable soils were removed and replaced by more “porous” soils that were thought would be beneficial to drainage in this area, but that the opposite has occurred.

The Chairman noted several new letters, all of which were against the project.

Commissioner Sampou repeated his request for a list of wetland species tolerant of mowing. He expressed a concern that the reconnected drainage would not replicate the former conditions. Mr. Pesce further explained.

Staff suggested that a continuance of at least three months be considered, and that the pipe, having been removed by the property owner in good faith, be reconnected in response to the enforcement order.

Further discussions raised the ideas of compensatory storage of storm water in upland areas as well as alternative methods of construction of the residence, all of which may be considered at subsequent hearings.

A motion was made to continue the hearing until July 24, 2007, during which interval the pipe would be reconnected and closely monitored as to impact on drainage and accumulation, if any, of standing water. The Motion was offered with the following conditions: that,

1. results of the investigation as to the origins of the pipe be reported
2. the effects on groundwater of reconnecting the pipe would be monitored and reported;
3. possible alternative construction techniques (eg. raised foundation or construction on pilings to avoid groundwater flooding), and
4. identify alternate areas of flood zone replication.

The Motion was seconded and passed unanimously.

IV AMENDED ORDER OF CONDITIONS

Arthur Gelb. Amend permit SE3- 4340 (demolish existing house/garage and deck, construct new house/garage, decks, porches, patio stonewalls, septic system, etc.) to enable fence to remain in present position at 16 Cove Point Lane, Cotuit as shown on Assessors Map 76 Parcel 70. **SE3-4340**

The applicant was represented by John Slovinski.

Discussion: The purpose of retaining the fence in its present location is for the safety of the grandchildren.

The bottom 4-inches would be taken off the fence, although Commissioner Blazis had requested that 6-inches be removed.

Staff suggested that no lawn improvements (e.g., sodding, fertilizing) ensue below the retaining wall. It shall remain rough lawn.

A motion was made to approve the amended order with special conditions.

Seconded and voted unanimously.

Frank & Nancy Selldorff. Amend permit ART-0166 to expand project footprint as follows: demolish and rebuild single-family dwelling; upgrade utilities, construct pool and pool house and all associated appurtenances at 102 Bluff Point Dr., Cotuit as shown on Assessors Map 034 Parcel 071. **ART-0166 (continuance)**

A motion was made to continue the hearing to May 8th.

Seconded and voted unanimously.

No testimony was taken.

V CONTINUANCES

Jim Fox. Demolish existing single-family residence; construct new single-family residence within 100 feet of coastal bank. Proposed work limits will extend to top of coastal bank in one area of site at 22 Clamshell Cove Rd., Cotuit as shown on Assessors Map 006 Parcel 009-003. **SE3-4594**

A motion was made to continue the hearing to June 12th.

Seconded and voted unanimously.

No testimony was taken.

VI ADVISEMENT

Herbert S. & Pamela R. Pheeny, Matthew J. Mitchell. Construct a 4-foot-wide timber, pile-supported pier for recreational boating. Pier to be shared by abutting waterfront properties at Sand Point, Osterville as shown on Assessors Map 073 Parcels 014-001 and 014-002. **SE3-4597**

Proposed Findings had been prepared by Rob Gatewood to be read into the record. As a preliminary matter, Commissioner Houle advised that following the discussion by the Commission on March 27, 2007, after which the record was closed, additional information and letter reports were offered and discussed regarding the reports as to impact on shellfish habitat from the Tilton and Rogers hearings. On advice of Assistant Town Counsel, Commissioner Houle reported that he was advised that it was not proper to have allowed such reports to be used or considered during the advisement portion of the deliberations by the Commission as they had not been introduced during the public hearing. Accordingly, any conclusions from those reports that were based on comparisons made were not proper.

The proposed findings were read verbatim into the record as drafted, without containing any reference to the Tilton and/or Rogers reports. Further discussion ensued by and amongst the Commissioners including:

1. the “30 inch versus the 12 inch rule”
2. whether the findings should state that this is a “significant shellfish area”, and
3. whether the findings should state with more specificity that this is a
 - a. “high value shellfish habitat” as defined under the Commission’s regulations dealing with private docks.

Following said discussion, it was moved that the findings as read be modified to state that the Commission finds the location which is the subject of this application be found to be a high shellfish value habitat and that accordingly said application is denied. Subject motion was seconded and passed by a 4:1 vote, with Commissioner Houle casting the dissenting vote.

Chairman Houle explained that, according to the Town Attorneys Office, the discussion on the comparison of several site’s shellfish reports was not appropriately on the record, since it occurred after the close of the public hearing.

A motion was made to deny the project with findings as proposed by the Commission.

Chairman Houle spoke against the proposed findings and denial, especially, as he believed that he made an error by allowing certain new material into the record after the close of the hearing.

Seconded and voted: 4 votes “Aye;” – 1 vote “Nay.”

The project was denied.

VII ENFORCEMENT ORDERS

- A. Kerry McNamara – 18 Bay Lane, Centerville
Violation of a cease and desist order.

This matter was discussed in conjunction with the McNamara Notice of Intent hearing (above).

A motion was made to amend and approve the enforcement order, allowing Mr. McNamara to reconnect the drainage pipe at his parcel. The applicant’s engineer will attempt to locate remnant portions of the pipe.

Seconded and approved: “3 votes “Aye;” – 2 votes “Nay.”

VIII EMERGENCY ORDERS

- A. Sumner Kaufman 471 Old Post Rd., Cotuit undermining of vertical wood bulkhead

A motion was made to approve the staff-issued emergency order.

Seconded and voted unanimously.

IX OLD & NEW BUSINESS

- A. DEP appeal onsite DPW Entrance Channel dredging project, 4/11, 2.00 pm at the Millway

Noted.

Pete Sampou clarified for the record that, following his on-site analysis, he believes the unsuitable sulfidic fine material on the beach originated from the dredging, and not from on-site salt marsh deposits.

B. Next Commission meeting 4/17, 8:30 a.m.

Noted.

C. Other

Staff read the Amended Order of Conditions for the Rodgers' pier (SE3-4585) which they had drafted. Several corrections/clarifications were made by the Commission.

Commissioner Sampou reported on the successful relocation of the Nickerson Cottage to the Moquin site on Sandy Neck.

X CERTIFICATES OF COMPLIANCE (ez = staff recommends approval) (* = on-going conditions)

A. Walters SE3-4184 (coc,ez) construct deck & retaining wall *

A motion was made to issue the certificate of compliance.

Seconded and voted unanimously.

A motion was made to adjourn.

Seconded and voted unanimously.

The time was 9:37 p.m.