



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION MEETING

DATE: OCTOBER 3, 2017 @ 6:30 PM

LOCATION: TOWN HALL HEARING ROOM, 367 Main Street 2<sup>ND</sup> FL., Hyannis, MA

Scrivener's note: The following minutes are general in nature. For those wanting specific detail on matters heard on this agenda, additional resources are available to you: video-on-demand (free on the Town website at [town.barnstable.ma.us](http://town.barnstable.ma.us)), and DVD recordings. Please contact the Conservation Division at 508.862.4093 for assistance.

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, and Commissioners John E. Abodeely, Peter Sampou, Scott Blazis, and Larry Morin.

Darcy Karle, Conservation Administrator, assisted.

### I REQUEST FOR DETERMINATION

**F. Wesley Shrum.** Remove three pitch pine trees within 50 feet of Long Pond at 21 Scottsdale Rd., Centerville as shown on Assessor's Map 229 Parcel 064. **DA-17058**

Mr. Shrum attended.

Exhibit A – Revised plan dated 10/2/17

Issues discussed:

- The request to remove three large scrub pines. The pine closest to the water is dying. Two other pines are said to cause shading on the existing solar panels.
- Commission does not have an issue with the request to remove #1
- Mr. Shrum offered a revised plan dated 10/2/17 after a discussion with the administrator on site. The revised plan indicates replanting three small trees and a section of "no mow buffer." Mr. Shrum indicated he would replace the trees with dogwood trees.
- Commission raised a concern about how they would proceed with future requests for tree removal in Conservation jurisdiction for solar panel installation. Could this application be precedent-setting?
- Mr. Shrum said the panels were installed last December and might have come online in January. Question was raised: Is the financial benefit / banking of solar credit a justification to remove large trees within the Commission jurisdiction?
- Question was raised, is tree # 3 really causing shading?
- Clerk Houle mentioned he did see trees #2 and #3 casting a shadow towards the roof.
- The Commission will need to discuss policy / guideline in the near future
- Request for additional information from the solar panel installer regarding the current energy production at this dwelling with the two of the trees remaining vs. the two trees removed.

A motion was made to issue a negative determination based on revised drawing 10/2/17 with three replacement holly trees.

Further discussion ensued regarding the replacement trees.

The motion was revised to state that the three replacement trees could be chosen, in consultation with staff.

Seconded and voted: 3 votes = Aye; 3 votes = Nay; 1 vote abstained. The motion did not carry.

A motion was made to allow Mr. Shrum to remove tree #1, and for a continuance of the project to October 17<sup>th</sup>, so that the applicant may submit a letter from the solar contractor indicating what percent increase in energy production could potentially occur with the removal of the two pines.

Seconded and voted unanimously.

**Jennifer Riley.** Remove trees close to house; light vista pruning along roadside at 54 Lowell Rd., Cotuit as shown on Assessor's Map 016 Parcel 031. **DA-17059**

The applicant was represented by Brian Paradise of Jaxtimer Landscaping.

Exhibit A – Revised vista pruning plan 10/3/17

Issues discussed:

- Mr. Paradise submitted a revised GIS plan dated 10/3/17, indicating the missing vista corridor at the request of the administrator
- Commission recognizes that the trees being requested for removal are very close to the structure.

A motion was made to approve a negative determination based on revised plan 10/3/17 for tree removal, as requested, and vista pruning subject to the Commission's Vista Pruning Guidelines.

Seconded and voted unanimously.

**Henry L., Jr. & Anne R. Murphy.** To install a generator on a 3' x 5' concrete pad adjacent to the driveway at 173 Willow Run Dr., Centerville as shown on Assessor's Map 210 Parcel 065. **DA-17060**

The applicants were represented by Charles Rowland, P.E. of Sullivan Engineering.

Exhibit A – Revised plan 10/3/17

Issues discussed:

- Revised plan submitted 10/3/17, indicating measurement from the resource are, as requested by staff
- Question was raised regarding the easement
- Question was raised regarding the existing deck on the boathouse

A motion was made to approve a negative determination based on revised plan dated 10/3/17.

Seconded and voted unanimously.

**Linda Kaye Linde.** Upgrade a failed Title-V septic system to a new septic system at 42 Route 130, Cotuit as shown on Assessor's Map 010 Parcel 006. **DA-17061**

The applicant was represented by Ken Breivogel, Associate, of J. E Landers-Cauley, P.E.

A motion was made to approve a negative determination.

Seconded and voted unanimously.

## **II NOTICES OF INTENT**

**Nicholas David Samra & Erica Pearson; Carl Redfield, Tr. of Pine Island Trust; Thomas & Nina Weld, Trs. of Thomas Weld Revocable Trust & Nina Weld Revocable Trust.** Replace existing timber bridge at 265 and 267 Seapuit Rd., Osterville as shown on Assessor's Map 095 Parcels 004 and 005-001. **SE3-5518**

The applicants were represented by Charles Rowland, P.E.

Correspondence: Letter from Division of Marine Fisheries, 9/29/17, was read into the record.

Issues discussed:

- Work is proposed landward side with the exception of possible drilling for utilities
- Question was raised regarding options and construction protocol for water line installation – directional drilling (days) vs. trenching (a day). Directional drilling requires dewatering
- If using trenching method for water line, it would take place at low tide.
- Construction protocol should be submitted once they decide which method.
- Pre-construction meeting on site with staff prior to start of work

A motion was made to approve the project with the following special conditions: 1) A written construction protocol to be submitted in advance of the start of work, in consultation with staff, along with a pre-, on-site meeting with staff.

Seconded and voted unanimously.

**William F. Griffin, Jr., Tr., Rushy Marsh Realty LLC.** Construct a 3,200 sf, 6-stall, wood-frame horse stable and related site work at 1541 Main St., Cotuit as shown on Assessor's Map 017 Parcel 007. **SE3-5516**

The applicant was represented by Atty. Michael Ford and Sean Reardon, P.E. of Tetra Tech.

Exhibit A – Packet of slides

Issues discussed:

- This land is under agricultural use
- Question was raised as to whether compost bins will still be used on site. The answer is yes.
- Horse bedding material will be composted.
- Chairman Lee asked about top elevation of retaining wall. The answer is 17

A motion was made to approve the project, subject to adding elevation to the wall on the engineering plan.

Seconded and voted unanimously.

**Kevin Starr.** Construct pool and patio at 968 Main St., Cotuit as shown on Assessor's Map 035 Parcel 096. **SE3-5517**

Correspondence was received requesting a continuance to 11/28/17

A motion was made to .approve a continuance to 11/28/17.

Seconded and voted unanimously.

No testimony was taken

### **III CONTINUANCES**

**Kenneth & Melissa Fish Crane.** Dredging up to 120 cu. yds. around existing pier at 218 Long Beach Rd., Centerville as shown on Assessor's Map 205 Parcel 003. **SE3-5473**

The applicants were represented by Arlene Wilson, P.W.S. of A. M. Wilson Associates.

Exhibit A – Copy of water quality testing results from Tom Marcotti, Town Shellfish Biologist, sent to Arlene Wilson 8/18/17

Issues discussed:

- Quorum present of everyone except Commissioner Abodeely.
- Ms. Wilson stated that they would have trouble extending the pier, due to navigational issues.

- Question was raised regarding #8 Cape Cod Oyster under Ms. Wilson’s review of the dredging list. She stated there is a separate private pier.
- Ms. Wilson also stated they are willing to deploy siltation curtains during dredging work
- Clerk Houle stated there were only two improvement dredging cases on the list, #15 (a unique case – dredging to remove sand that had accumulated there) and #31 – another unique circumstance for improvement dredging allowed in footprint of old wharf that was going to be removed (once a commercial property)
- Concern was raised again that this would be precedent-setting.
- 310 CMR 10.25 (3) a-d, regarding improvement dredging, was read into the record. The Commission would have to find that there is no adverse impact.
- Question was raised with regard to Tom Marcotti’s survey.
- Concern was raised about improvement dredging proposed in a static equilibrium site – the hydrodynamics change in the immediate area, thus a change in water velocity. Change in water velocity changes the movement of fine sediments. A scalloped area (dredged area) will concentrate fine grains. If you put a boat in this area you will have a “soupier” content due to the dredging causing flock to re-suspend and travel to down-current side. It could impact the feeding shellfish further down current.
- Concern was raised regarding cumulative impacts.
- What stops an “avalanche” of requests from other potential applicants requesting to dredge to get a larger boat, or property owners with permitted dingy docks requesting dredging to allow for a power vessel?
- Concern that evidence presented does not justify improvement dredging at this location
- Commission was very concerned that this would be setting a precedent.

A motion was made to take this matter under advisement.

Seconded and voted unanimously.

The Crane public hearing was closed, and the matter was taken under advisement. On October 17<sup>th</sup> findings and a decision will be voted on, and an Order of Conditions will be issued on or about October 24<sup>th</sup>.

**Town of Barnstable/D.P.W.** Replace existing culvert under Pine Ridge Road; construct catch basins and leaching pits (3 sets) along Pine Ridge Road and at intersection of Pine Ridge & Rushy Marsh Roads; pave Pine Ridge Road and the intersection with Rushy Marsh Road, Cotuit as shown on Assessor’s Maps 018 & 019 Parcels Various. **SE3-5511**

The applicant was represented by Stephen A. Wilson, P.E. and Brian Celia of the DPW.

Issues discussed:

- Quorum of all present; no prior testimony had been given
- Project is now based on revised plan dated 9/27/17 (signed). The culvert replacement has been removed from proposed project at this time
- Road will not be widened
- Tom Lee mentioned they should confirm the infiltration rate test prior to construction, and data to be submitted to staff

Public comment: George Gilmore, property owner of 200 Pine Ridge Road, was very concerned that they are eliminating the culvert replacement from the project, but he does not want to prevent repaving of the road.

A motion was made to approve the project, citing revised plan 9/27/17, with a special condition to confirm the infiltration rate test prior to construction; and, data to be submitted to staff for the file.

Seconded and voted unanimously.

**Jeffrey & Pamela Bishop.** Remodel existing dwelling; construct front and rear dormers; construct deck with stairs. Rear porch to be removed and smaller addition built in its place; proposed front porch at 28 Harrison Rd., Centerville as shown on Assessor’s Map 229 Parcel 071. **SE3-5510** [continued for NHESP comments only]

Issues discussed:

- Quorum present except for Commissioner Blazis.

- Project was approved at a prior hearing, and continued only for review of comments by the Natural Heritage and Endangered Species Program, received 9/25/17
- No additional conditions were required upon review of the letter.

A motion was made to close the public hearing and have staff issue the Order of Conditions.

Seconded and voted unanimously.

**Daniel J. Pozen, Tr. & Heather P. Garni, Tr., 960 Main Street Trust.** Landscaping adjacent to and on coastal bank including minor grading near shed and within 50' of coastal banks, and fill voids behind existing bulkhead at 960 Main St., Cotuit as shown on Assessor's Map 035 Parcel 095. **SE3-5512**

The applicants were represented by Arlene Wilson.

Issues discussed:

- Review of revised plan dated 9/25/17
- Quorum present
- Both crabapple trees will remain.
- Grading was eliminated from the 50-foot buffer to the beach, per request of the Commission
- Notes on plan indicate existing irrigation will be removed from conservation jurisdiction, and the drain pipe that ends at the beach will be capped at both ends.

A motion was made to approve the project, citing revised plan 9/25/17, and adding a special condition for three-year annual monitoring reports for invasive species control.

Seconded and voted unanimously.

**Sarah A. Turano-Flores, Esq.** Elevated boardwalk, dock, ramp and float is proposed to be installed over saltmarsh located between coastal bank 30 Gardiner Lane and water's edge of East Bay. Proposed structure would extend over two separate properties and would be shared by both owners. Existing boardwalk, dock, ramp and float at 110 East Bay Rd., would be removed. Project also includes 45,400 sf of restoration planting and invasives removal at 30 Gardiner Ln., 110 and 120 East Bay Rds. Restoration entails saltmarsh enhancement mitigation using core marsh pillows, wetland mitigation, coastal bank mitigation and native woodland understory mitigation. Planting to include 250 native shrubs, 14 trees and 5,000 native forbs and grasses. Properties as shown on Assessor's Maps 141 & 140 Parcels 123-001 & 123-002, and 163. **SE3-5488**

Atty. Turano-Flores attended along with Seth Wilkinson, Don Munroe, and Dr. Pamela Newburg.

Exhibits:

- A – Power point presentation dated 10/3/17
- B – Project benefits highlights submitted at hearing 10/3/17
- C – Key notes relating to Shah boardwalk/pier in Osterville by Dr. Sampou
- D – Photos of the marsh submitted by Attorney Ford
- E – Letter from Annette Madden dated 9/26/17

Issues discussed:

- Quorum present of everyone except Commissioner Blazis
- Review of revised plan dated 9/26/17 by Coastal Engineering and revised restoration plan and revised land management plan (both dated 8/29/17) by Wilkinson Ecological Design
- Project shortened by 200 feet, taking the most direct route. Piles will now be 10" instead of 12". Project is 687 linear feet, with ground disturbance reduced to 33 square feet. Channel crossing was also increased in elevation
- Proposed pilings are fiberglass mono-piles and decking will be grated material
- Offering a deed restriction stating no dock allowed at 120 East Bay
- Offering a donation to purchase shellfish seed or adult stock in the amount of \$5,000 to Town Department of Natural Resources, to be used in East Bay
- Dr. Sampou addressed four points listed in key notes relating to the Shah boardwalk/pier in Osterville (see Exhibit C). Dr. Sampou asked Dr. Newburg to comment on these points.

- Two questions of concern were raised: 1) is the area of salt marsh, deemed degraded by the consultant, really in need of restoration? And, 2) is it really degraded? With the potential of shading, even using the grating material allowing 70% light penetration to the Spartina marshes, it may still reduce primary productivity of the salt marsh.
- Atty. Sarah Turano-Flores stated that there was misguided information given in the 10/3/17 letter from Richard Nylén of Lynch, Desimone and Nylén.
- Ms. Turano-Flores stated that they are willing to use what grating material the Commission sees fit for the application, either flow-thru or square grid material as mentioned by Arlene Wilson.
- Commission requested samples of both grating/decking material and a grating report, if possible.

Correspondence read into record: Letter from Division of Marine Fisheries, dated 10/3/17; email dated 10/3/17 from A. Madden with attached photos; letter dated 10/3/17 from Atty. Nylén of Lynch, Desimone and Nylén LLP, representing the Maddens.

Public comment: Steve Madden, of 206 East Bay Road, said the law states that no project should impact a salt marsh. He believes that even the revised plan indicating reduction of the length of the boardwalk creates still a big impact. Mr. Madden raised concern with the potential of vessels hitting the proposed boardwalk in the event of a hurricane, and causing an environmental impact with leaking fuel. He stated that the boat ramp is just down the road and they currently have a dock.

Atty. Ford, representing the Bianchis of 146 East Bay Road, said that they did not get notified regarding earlier hearings. He stated: “You are not allowed to impact the salt marsh,” and the salt marsh will be impacted due to the sheer size of the project. He was concerned about the claim that a section of salt marsh is degraded. The property owner was aware that this was a tidal property, not direct waterfront property on the bay. Mr. Ford said the Commission should not compare this to #531 Main St., the Mykrantz property, as this property already has access to a tidal creek where [the] Mykrantz [property] did not. There was concern for future cumulative impact and that, if this project were approved, there would be many more additional requests for such projects.

There was concern for impacts on aesthetics. Mr. Ford distributed Exhibit D (photos of the salt marsh). The saltmarsh should be considered as “natural conditions,” with “significant... negative, adverse impact” to the “pristine, natural” saltmarsh.

Mr. Ford, on behalf of his clients, asked the Commission to make a finding that the project will have adverse impacts to the salt marsh and its productivity. Therefore, the project should be denied – both under state law and the local bylaw.

Arlene Wilson, representing John Ramanda of 150 East Bay (Kelly on plan), stated that there was some confusion regarding changes in the recent plans and work in the driveway area. She also mentioned square gridded material for decking provides better light penetration than flow-thru decking. According to a study done in the Carolinas (Burdick) where they constructed sample piers at different heights, the ratio of the width of the opening as compared to the height of thru-flow decking does not allow for 70% light penetration, despite that it offers 70% void space. Ms. Wilson stated that she and her client are not, however, ready to oppose or not oppose the project at this time, due to its many revisions.

Annette Madden, opposed to the project, gave an overview of her letter dated 9/26/17 (exhibit E) in which she stated that it should have been attached with her email along with photos in the comments folder.

A motion was made to continue the project to November 28, 2017.

Seconded and voted unanimously.

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

- |    |   |           |  |
|----|---|-----------|--|
| A. | Koleman SE3-5311<br>237 Seapuit Road, Osterville        | (coc, ez) | construct addition; change driveway *<br>Ishem Pond, North Bay   |
| B. | Guarco SE3-5238<br>163 Estey Avenue, Hyannis            | (coc, ez) | raze & construct single family dwelling *<br>Circo Pond, Hyannis Harbor  |
| C. | Laugharn SE3-5363<br>91 Calves Pasture Lane, Barnstable | (coc, ez) | replace retaining wall; vista pruning; miscellaneous as-built conditions<br>Brickyard Creek, Barnstable Harbor |

A motion was made to approve certificates “A – C”

Seconded and voted unanimously.

**V CHAIR’S EXECUTIVE SESSION REVIEW**

A. In consultation with Town Attorney Ruth Weil, the Chair is taking the following action: Continue to retain the minutes for the Executive Session of May 17, 2016 that relates to the Gormally v. Town of Barnstable/Heckscher matter, as litigation in the case of Gormally vs. Town of Barnstable is still on-going.

Noted

**VI MINUTES**

A. 9/5/2017

B. 9/12/2017

A motion was made to approve the minutes (A – B).

Seconded and voted unanimously.

**A motion was made to adjourn.**

**Seconded and voted unanimously.**

**The time was 11:03 p.m.**