



**Town of Barnstable
Conservation Commission
200 Main Street
Hyannis Massachusetts 02601**

Office: 508-862-4093 E-mail: conservation @ town.barnstable.ma.us FAX: 508-778-2412

MINUTES – CONSERVATION COMMISSION HEARING

DATE: APRIL 9, 2019 @ 3:00 PM

LOCATION: Hearing Room – 367 Main St., 2nd Floor, Hyannis, MA 02601

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), and DVD recordings. Please contact the Conservation Division at 508.862.4093 for assistance.

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, and Commissioners Pete Sampou (arrived at 3:25 p.m.), Larry Morin, and George Gillmore. Commissioner John E. Abodeely was away.

Darcy Karle, Conservation Administrator, assisted along with Ed Hoopes, Conservation Agent and Fred Stepanis, Conservation Assistant.

3:00 PM AGENDA

I CERTIFICATES OF COMPLIANCE (coc = Certificate of Compliance) (? = deviations, no staff recommendation) (* = on-going -conditions)

- | | | | | |
|----|-----------------|------------|---------|---------------------------------------|
| A. | Moore | SE3-4254 | (coc ?) | mow phragmites; plant native shrubs * |
| | 220 Bay Street, | Osterville | | North Bay |

The applicant attended, and was represented by John C. O'Dea, P.E. of Sullivan Engineering & Consulting, Inc.

Staff explained that the project was for management of phragmites by repeated mowings and temporary placement of black plastic. This was to be followed-up with the planting of native shrubs. However, few, if any, of the planted shrubs have survived. Mowing continues to the present.

Additional issues: 1) yard waste has been deposited into the 50-foot buffer of an isolated wetland and; 2) a float washed up in the 50 – 100 foot buffer of the salt marsh.

A motion was made to approve the certificate of compliance contingent upon receipt of a plan showing: 1) areas of mowing and notes re: frequency and time of year; 2) location of washed-up float and; 3) verification from applicant that yard waste has been removed from the 50-foot buffer to the isolated wetland.

Seconded and approved unanimously.

II REVISED PLANS

Project type:

Revisions:

- | | | | |
|----|-------------------------------------|---------------|---------------------------|
| A. | Gould/Marsh House Nom. Tr. SE3-5050 | sfd; addition | generator; AC units, etc. |
| | 82 Hummock Ln., Cotuit | | |

(Continued from 3/12)

The applicant was represented by Amy Ball of Horsley Witten.

The Chair recused himself.

A motion was made to approve the revised letter and plan dated April 9, 2019.

Seconded and approved unanimously. Commissioner Sampou abstained.

B.	Packard SE3-5523 204 Long Beach Rd., Centerville	demo portion of sfd	re-locate patio and location
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The applicant was represented by Daniel Ojala, P.E. of Down Cape Engineering, Inc.

Exhibit A – Supplemental plan dated 4/9/19

Issues discussed:

- Adding beach grass instead of wildflower meadow and additional plantings.

A motion was made to approve the revised plan dated 3/18/19, as amended and supplemented by plan dated 4/9/19.

Seconded and approved unanimously.

C.	Mitchell SE3-5603 345 Baxters Neck Rd., M. Mills	bulkhead	vinyl wall design
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The applicant was represented by John C. O’Dea, P.E.

A question was raised as to what color the vinyl wall would be; the answer was “gray.”

A motion was made to approve the revised plan.

Seconded and approved unanimously.

III EXTENSION REQUESTS

Project type:

Time Requested:

A.	Henderson SE3-5388	pier	1 st Request; 3 years
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The applicant was represented by Mark Burgess of Shorefront Consulting.

A motion was made to approve a three-year extension.

Seconded and approved unanimously.

B.	Rooney SE3-5383	construct deck & porch, sfd	1 st Request; 3 years
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Sharon Rooney, applicant, attended.

A motion was made to approve a three-year extension.

Seconded and approved unanimously.

C.	Lowell SE3-5017	stairs down coastal bank	1 st Request; 3 years
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The applicant was represented by John C. O’Dea, P.E.

A motion was made to approve a three-year extension.

Seconded and approved unanimously.

IV OLD & NEW BUSINESS

A. Ward & Waller SE3-5622 – Phase II Revised Planting Plan for 50-foot buffer at 125 Blantyre Ave., Centerville

Applicant Jane Ward attended, and was represented by Michael Talbot.

Ms. Ward explained her desire for the greenhouse location.

A motion was made to approve the revised plan.

Seconded and approved unanimously.

- B. Long Beach Conservation Area – Discussion on preparing a land management plan and signage
- a. LBCA is a small area (3.5 acres) and does not have a management plan at this time
 - b. It would be difficult for Conservation staff to devote limited resources to writing a management plan for a very small property without taking away from more pressing duties
 - c. Heavy visitor use is resulting in litter and increased trash left on site
 - d. Split-rail fencing and a handicap accessible boardwalk to beach on Nantucket Sound helps with some visitor use issues. However, other visitor use issues (e.g., illegal parking, people being dropped off) are civil matters, not conservation-related. There is a need to post signs at the far (west) end of LBCA to show where public property ends.
 - e. Trash is picked up by DPW 3 times a week during the summer, trash cans are often over-flowing. Litter throughout the property is a continual problem. It is not likely that more trash pick-ups will occur. The possibility of relying on volunteer groups (in conjunction with the Long Beach Association) assisting with litter patrols was looked on favorably by the Commission.
 - f. Commission would like to know how much a management plan written by a consultant would cost before authorizing use of Hamblin Funds

C. Grant of easements – Article 97 endorsement for Eversource – West Barnstable Conservation Area

Assistant Town Attorney Charles McLaughlin attended, as did Terry Feuersanger of Eversource Energy.

Exhibit A – Information package, Mid-Cape Reliability Project

Issues discussed:

- Eversource is expanding and improving system running down spine of Cape Cod
- Engineering new lines from straight line point A to B which sometimes requires easements or changes in easement language, since they may not own the property, so some swaps will be required (in ft.)
- Area in discussion are the lines that run through West Barnstable Conservation area
- This process has brought up an opportunity/ interface regarding Vineyard Wind project. In 2014, improvements were made to transformer station at Mary Dunn Road to prevent any chance of dielectric fluid leaks, very toxic to water supply in minute amounts. They also retrofitted two other transformers at that location. The Town is using this opportunity to raise the question with Eversource that, as part of the consideration for the swap, they have agreed to retrofit the entire substation in Independent Park to protect part of the Vineyard Wind project for ground water protection and over all protection of bays. A huge environmental win.
- Counsel has negotiated a form of a settlement agreement. This would have still have go to Mark Ells for settlement signature with the easements being discussed hereto included.
- Question was raised regarding Legislative approval of Article 97, if it will come into play. It appears it will with regard to wood lots, #71 and #72. They will have to move through that process.

A motion was made for the approval of the requested easements, subject to final approval “as to form” by the Town Attorney, by increasing width in easements of parcels #71 and #72, and changing the easement language on parcels #92, #94, and #113 from “line” to “lines”.

Seconded and approved unanimously.

V ENFORCEMENT ORDERS

- A. Allen F. and Sylvia M. Pierce, AND Carl Plummer – 105 River Rd., Marstons Mills - Map 078 Parcel 118
Alteration of wetland buffer and riverfront by cutting trees and other vegetation.

Exhibits:

- A. Photos taken in early February and on 3/12/19 showing the extent of cutting along riverfront area and buffer to a wetland.
- B. Aerial photo from Google Earth showing a heavily vegetated bank along the Marstons Mills River as of August 2015.

Mr. Plummer attended.

Issues discussed:

- Extent and timing of the cutting along the bank and buffer. All done during February.
- Concern for erosion of the bank. All of the roots of the cut vegetation remain and some of the cut vegetation is already starting to grow back. The bank should maintain stability as long as there is no more disturbance to the area.
- The importance of leaving overhanging vegetation on the river and on the bank to water chemistry and the health of the herring run was stressed. Mr. Plummer understood.

A motion was made to approve the enforcement order.

Seconded and approved unanimously.

- B. James G. Haidas, Caillouet Nominee Trust AND Ron and Sheila Perry – 52 Caillouet Ln., Osterville – Map 164 Parcel 012
Alteration of wetland buffer by mowing and maintaining a path inconsistent with plan of record and alteration of resource area – salt marsh – by maintaining a portion of unpermitted boardwalk.

None of the interested parties appeared at the hearing.

Exhibits:

- A. Photos of existing conditions at the site showing meadow area, 10’ wide footpath, and unpermitted section of boardwalk in resource area – salt marsh.
- B. Order of Conditions from SE3-3840 with approved landscaping plan of record
- C. Approved plan from SE3-5656 showing meadow location, reconfigured 4’ footpath, single-rail fence showing line between footpath and meadow.

Issues discussed:

- Meadow conditions significantly different from what was approved under SE3-3840.
- There is a 10’ wide footpath that exists west of the meadow. A 4’ wide path was approved under SE3-3840.
- There is an unpermitted section of boardwalk (approx. 4’ x 10’). Pier permitted under SE3-3134.
- Sullivan engineering filed an amended plan under SE3-5656 that shows a 4’ wide footpath where it was originally permitted, a single-rail fence demarcating the line between the footpath and the west edge of the meadow. They will also provide a plan showing three islands of native plantings in the meadow area. Each planting island consists of 1 small tree, 2 shrubs and a groundcover that will provide wildlife habitat.
- The unpermitted section of boardwalk is to be removed by May 31, 2019 or seek approval under an amended order to SE3-5656.

A motion was made to approve the enforcement order.

Seconded and approved unanimously.

- C. Ninety Bay View LLC – 90 Bay View Rd., Barnstable – Map 319 Parcel 031 Alteration of buffer and resource area – isolated wetland – by allowing erosion and drainage issues on property to run into isolated wetland and site conditions not consistent with approved revised plan.

Exhibits

- A. Photos showing existing conditions as of 3/15/19
- B. Photos showing existing conditions after a 0.95" rainfall event
- C. Approved plan of record
- D. Letter dated 9/13/16 from Dan Ojala, P.E. of Down Cape Engineering to Barnstable Conservation Commission discussing drainage conditions of neighborhood and on-site as it relates to the isolated wetland located off site.

Mr. Scott Carette (homeowner’s consultant) attended. Down Cape Engineering was not represented at the hearing.

Issues discussed:

- Extent of runoff and drainage from on-site to isolated wetland.
- Crawl space of newly constructed home is constantly wet and causing sump pumps to run almost continually. Results in increased water and sedimentation to the isolated wetland.
- Three 500-gallon drywells were installed, and sump pump directed into them to control flooding on site.
- Building Department advised contractor to bring to final grade and flare the grade away from foundation.
- Mr. Tam can then install the swale called for on the approved plan that will help with drainage and can also work on mitigation planting that should help both drainage and sedimentation.

A motion was made to approve the enforcement order, as written.

Seconded and approved unanimously.

VI CHAIR’S EXECUTIVE SESSION REVIEW

In consultation with 1st Assistant Town Attorney T. David Houghton, the Chair is taking the following actions: Release the previously approved executive session minutes of January 23, 2018, June 5, 2018, September 4, 2018, December 11, 2018 and January 22, 2019, and approve and release the executive session minutes of March 5, 2019, all that relate to Kenneth & Melissa Fish Crane v Barnstable Conservation Commission Barnstable Superior Court Docket No. 1772CV00609

4:30 PM AGENDA

VII REQUESTS FOR DETERMINATION

Town of Barnstable/DPW. Asphalt repairs to existing boat ramp; repair existing sidewalls which have eroded and decayed from storm run-off at 210 Scudders Lane, Hyannis as shown on Assessor’s Map 259 Parcel 009. **DA-19009**

DPW Highway Supervisor Mike Perry attended and represented the Town.

Issues discussed:

- Will start repairs in May.
- Temporary repair until full engineering proposal comes forward after CIP funding.
- Natural stone and materials, similar in size
- Asphalt paver in existing asphalt.

Public Comment:

1. Leslie Wilker-Manfredonia, of 89 Scudder’s Lane – questioned if footprint will remain, and if existing rocks will remain. She thought it important to keep rocks on left. Concern with increase in traffic on ramp and sides of roads.

2. Mya Patrick of 8 Scudder's Lane – was concerned with box trucks coming down the street and using the ramp, and damaging the area.
3. Antonia Cook of Calves Pasture – was concerned with congestion and parking at Scudder Lane that could cause an issue with emergency vehicles turning onto Calves Pasture. She thought that more improvements to the ramp will invite more traffic.

A motion was made to approve a negative determination

Seconded and approved unanimously.

Hyannis Building & Developing Assoc. Install 3-car charging stations at 1 South St., Hyannis as shown on Assessor's Map 326 Parcel 119. **DA-19013**

Robert Braman of Braman Survey Assoc., LLC and Skip Simpson.

A motion was made to approve a negative determination.

Seconded and voted unanimously.

Frank Raspante. To seek a determination from the Conservation Commission if said property is considered "Land in Agricultural Use." If determined yes, to determine whether the requested activities: roadway maintenance, dike and canal maintenance, water hold and release, mowing and brush clearing, irrigation repair and improvement, and continued harvesting, are considered exempt" at 0, 109, and 131 Brittany Dr., Cotuit as shown on Assessor's Map 026 Parcels 004, 005, 017. **DA-19016**

Mr. Raspante attended and represented himself.

Issues discussed:

- Clarification that the Commission must determine first whether the land is still considered "land in agricultural use," prior to discussion of desired activities.
- The question was raised as to how an applicant can claim land in agricultural use when the two parcels, 004 and 017, were owned by the Town of Barnstable from 2005 to 2018, a 13-year period.
- Mr. Raspante stated that he had been working the area for twenty years with the prior owner and prior town management.
- A question was raised as to whether Mr. Raspante had obtained written permission from the Town. His answer was "no." Did he have verbal permission? He responded "Yes," – verbal and via emails. He said he had permission from John Klimm (prior Town Manager) who wanted to place a solar farm on the property. He reiterated that he had been working with the Town for the past 20 years.
- Mr. Raspante was then asked whether he had evidence to support that claim. Mr. Raspante stated he had a sales receipt for the sale of cranberries over the years. [This information had not been included in the RDA package]
- Mr. Raspante was asked if he could produce any communications, e.g. emails or affidavits to support the arrangement with the Town. Mr. Raspante stated that he has copies of emails from John Klimm, Mark Ells, David Anthony, Robert Gatewood, Chief Sonabend, Chief McDonald, and Chief Olsen. When asked whether he brought the emails with him, Mr. Raspant said "no." When asked if he could supply the Commission with copies of the emails at a later date, Mr. Raspante had no response.
- The Commission expressed the opinion that they would find said emails important.
- Darcy Karle, Conservation Administrator, added that she had attended one meeting at the Town Manager's office regarding a request for gates at the end of Brittany Drive. She was aware of conversations regarding DPW assistance with trash clean up and pumphouse removal. However, at that time there was no indication that this [cranberry farming] was being done because, the next thing she heard was that Mr. Raspante expressed the desire to convert the lot into a cranberry bog. The only thing being done at that time was the cleanup of the property. There was no understanding that the cleanup was being done in order to maintain the property as land under agricultural use. This was something that only recently had come up. The land was municipal property, and not under Conservation control. Ms. Karle then questioned why said emails from Mark Ells were not made part of the RDA application.

- It was noted that there was an email from David Anthony regarding the bid. The bid was for open space and water protection, only.
- David Anthony, Director of Property and Risk Management spoke, and said that he has known of Mr. Raspante since the Town acquired the property back in 2005, and that the bulk of their interaction was issues concerning people trespassing, partying, and a long list of BPD responses to calls pertaining to disturbances. There is an ongoing file with correspondence between Mr. Anthony and Mr. Raspante in regard to issues as stated above. In 2017, there were good communications with Mr. Raspante regarding a gate request to address safety issues, along with emails regarding disposal of illegal dumping, e.g., a couple of truckloads of shingles. The bulk of what was found was on private property that surrounds the bog. Mr. Anthony stated that he had gone through all of his files and communications and was unable to find anything indicating any direct approval for Mr. Raspante to farm at that location. He said he couldn't speak for Mark ELLS, as prior DPW Director and as prior Assistant Town Manager, or as now Town Manager. Mr. Anthony did not believe that Mark ELLS had anything in his possession, either, and said it would be prudent for Mr. Raspante to produce those emails and lend credibility to his position. Mr. Anthony pointed out that if one were to review a GIS aerial photo and compare it to active bogs to the northeast, one can see a difference.
- The question raised was whether Mr. Raspante had done any exempt activities along with normal maintenance activities. He stated that, because it was never his property, "no." He said he tried to do small-scale maintenance of waterways and maintenance of areas so he could harvest.
- He was then asked whether these activities were ever done in consultation with the Town. His answer was "No, not always."
- One Commissioner stated that Mr. Raspante does not get an agricultural exemption when trespassing on Town property, even if it were a benefit to the Town.
- The applicant said he was interested in creating an organic bog, with proper irrigation and clean ditches.
- Ms. Karle clarified how this matter first came to Conservation as a violation brought to the Commission's attention by the Town's Marine & Environmental Affairs (M.E.A.) having to do with cutting and holding-back water. She had spoken to the applicant with regard to the proper steps for permitting when he was first interested in starting the bog up. There was a meeting held between Mr. Raspante, Ian Ward, Elizabeth Jenkins, and herself. Gary Makuch, at MA DEP, determined that the first course of action should be to resolve the question of whether this is still "land in agricultural use," through the RDA process, and let the Commission decide.
- The applicant was told that he would still have the opportunity to file a notice of intent (NOI) application. However, there was no guarantee that the NOI would be approved.
- It appeared that the bog was currently in transition to shrub/tree wetland.
- Staff was concerned with the lack of information, the possible impact to fisheries from the withholding of water, and the inability to condition a determination.
- The area currently falls within Natural Heritage and Endangered Species (NHESP) habitat.
- The Commission directed the Conservation Agent to issue an enforcement order for alteration of a wetland resource area by holding back water, causing the resource area to flood (unpermitted activity).
- The Commission discussed approving the issuance of the enforcement order for alteration of a wetland resource area by holding back water causing the resource area to flood (unpermitted activity).

A motion was made to propose a finding that these parcels were owned by the Town from 2005-2018, and they were not maintained by the Town for agricultural use; therefore, these parcels do not qualify for an agricultural exemption.

Seconded and approved unanimously.

Based on the (above) finding, a motion was made to issue a positive determination. The Commission denied the request for a negative determination. The Commission keeps jurisdiction over these parcels, so if the applicant wishes to proceed he will have to file a notice of intent, in consultation with staff.

Seconded and approved unanimously.

Thirdly, the Commission recommended that staff issue an enforcement order for flooding a wetland without permission from the Commission, and gave Mr. Raspante 14 – 30 days of days to remove all restrictions (any boards/boom device) holding back water so it can return to a natural state. Regardless of whether the applicant files an NOI, this is to have no impact on the enforcement order.

The motion was amended to state that the applicant is to work with Mosquito Control on water management prior to flooding the bog.

Seconded and voted: 5 votes = Aye; 1 vote Nay. The motion carried.

VIII NOTICES OF INTENT

Philip Scudder/Hyannis Harbor Tours, Inc. Reface entire length of existing steel bulkhead with steel sheeting and reinstall/replace associated utilities at 120, 134 & 138 Ocean St., Hyannis as shown on Assessor's Map 326 Parcels 065, 066, 067. **SE3-5664**

Mr. Philip Scudder attended, and was represented by Robert Braman of Braman Survey, and Richard Fitzgerald.

Issues discussed:

- A letter dated 4/8/19 from Mr. Braman, answering questions (4) raised by the Harbormaster's office.

Correspondence: Letter from the MA Division of Marine Fisheries dated 3/19/19; emails from Brian Taylor.

A motion was made to approve the project, including the four items listed in Mr. Braman's letter of 4/8/19.

Seconded and approved unanimously.

Barbara & Randolph Noelle. Construct, license, maintain and retain a 4' wide x 104' long (pier) with 10' x 20' "T" end pier; boat and water access ladder and kayak rack; remove or cut flush existing piles; abandon existing path over wetlands to the water and allow to naturally revegetate at 35 Short Beach Rd., Centerville as shown on Assessor's Map 206 Parcel 030. **SE3-5677**

The applicant was represented by Raul Lizardi-Rivera, P.E., of Cape and Islands Engineering.

Issues discussed:

- Shellfish rating of "2"
- Draft being requested is 32'-34' which would not meet the 12" requirement
- The Commission raised concerns with picking one elevation spot to calculate depth requirement
- Old pilings, where the new structure is going, should be pulled out and others, to the sides, should be cut flush, so as to not damage salt marsh.
- The requested vessel must meet the 12" Rule, with motor in full downward position, at a fixed dock including the fairway into the Channel of the river.
- The applicant is still requesting a fixed pier and bench, due to medical handicap-access reasons.
- 3.6 should be the elevation to calculate depth, with the boat berthed bow-in at east end of the float.
- A vessel drawing only a maximum of 31"
- Whether they could reduce the size (width) of the fixed end
- Request for more soundings around the structure, around the north edge of the pier, and with another set at the western end.

Correspondence: Letter from the MA Division of Marine Fisheries dated 4/4/19; Email from Tom Marcotti dated 4/9/19.

A motion was made to continue the project to April 30th.

Seconded and approved unanimously.

Christopher McNary. Construct and maintain a seasonal 4' wide x 18' long walkway; 4' wide x 38' long timber access stairs/landing with 4" x 6" support posts; 4' x 40' long seasonal pier with pipe posts and 3' x 16' long elevated gangway/ramp at 755 Route 149, Marstons Mills as shown on Assessor's Map 101 Parcel 004-001. **SE3-5670**

The applicant was represented by Raul Lizardi-Rivera, P.E.

Exhibit A – Photos indicating desire to shift center line of stairs to avoid tree removal

Issues discussed:

- Project in NHESP habitat
- Consultant will revise the plan to shift the stairs to prevent need for tree removal, and will be adding side stairs to comply with Chapter 91, as this is a Great Pond.
- The only portion to be seasonal are the structures over the water. The legal ad was incorrect.
- The only waiver is that the proposed deck will not be centered.

Correspondence: Letter from NHESP dated 3/1/19.

A motion was made to approve this project subject to receipt of a revised plan to change stair design, as discussed.

Seconded and approved unanimously.

A motion was made to adjourn.

Seconded and approved unanimously.

The time was 6:22 p.m.