



**Town of Barnstable
Conservation Commission**
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MINUTES – CONSERVATION COMMISSION HEARING

DATE: May 5, 2020 @ 3:00 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

In accordance with the Governor’s Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gathering of More Than 10 People issued on March 24, 2020, the May 5th public meeting of the Conservation Commission shall be physically closed to the public to avoid group congregation.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <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://zoom.us/j/95354655932>

Meeting ID: 953 5465 5932

888 475 4499 US Toll-free

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, so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing 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 attending were Vice Chair Louise R. Foster, Clerk Dennis Houle and Commissioners, George Gillmore, Larry Morin, Pete Sampou, and John Abodeely were in attendance.

Conservation Administrator Darcy Karle was present along with Conservation Agent Edwin Hoopes.

3:00 PM AGENDA

I CERTIFICATES OF COMPLIANCE (ez = no deviations, staff recommends approval) on-going conditions.)

- | | | | | |
|----|--------------------|------------|-----------|--|
| A. | Remondi | SE3-5591 | (coc, ez) | construct pier, stairs & dinghy dock * |
| | 150 East Bay Road, | Osterville | - | East Bay |

There was a motion to approve the Certificate of Compliance.
The motion was seconded and voted unanimously.

II EXTENSION REQUESTS

Project type:

Time Requested:

- | | | | | |
|----|----------------------------|----------|-------------------------------|----------------------------------|
| A. | Nancy B. Samiljan, Trustee | SE3-5474 | Reconstruct existing dwelling | 3 yrs. (1 st request) |
|----|----------------------------|----------|-------------------------------|----------------------------------|

8 East Bay Road, Osterville
There was a motion to approve the extension request.
The motion was seconded and voted unanimously.

and site improvements, SFR

- B. Sarah Turano-Flores, Esq. SE3-5480
617 & 633 Main St. & 106 East Bay Rd.

Demolish SFD, site improvements, 3 yrs. (1st request)
SFR

There was a motion to approve the extension request.
The motion was seconded and voted unanimously.

- C. Sarah Turano-Flores, Esq. SE3-5481
25 & 34 Gardiner Ln. & 106 East Bay Rd.

Demo SFD's, Construct swim pool, 3 yrs. (1st request)
pool house, etc. SFR

There was a motion to approve the extension request.
The motion was seconded and voted unanimously.

III ENFORCEMENT ORDERS

- A. William G. Litchfield Tr & Fortuna Nominee Trust – 468 Wianno Avenue, Osterville – Map 163 Parcel 003. Alteration of land subject to flooding by clearing trees and removing fill without a permit.

Exhibits

- A ARC Reader Plan
B Before and After Site Photos

Mike Ball, Marsh Matters Environmental represented William Litchfield Tr & Fortuna Nominee Trust

Issues discussed:

- This violation occurred in AE Floodzone only (NOT Coastal A or Velocity Zones). Chair asked Mike Ball to specify that fact in the plan being submitted under a future NOI.
- Half the lot is in the AE Flood zone the other half (with the house) is completely outside of Conservation jurisdiction.
- The homeowner is attempting to bring in fill and regrade in the floodzone to raise the existing elevation by approximately 4' which will still keep the area within floodzone elevation.
- An after-the-fact Notice of Intent will be filed to cover the work that has already been done as well as proposed fill and regrading.

The Commission voted unanimously to approve the Enforcement Order.

- B. Stephen & Diane D'asti Trs & D'asti Family Irrev Inc Only Trust– 40 Three Ponds Drive, Centerville – Map 193 Parcel 184. Alteration of a wetland resource area buffer by cutting vegetation.

Exhibits

- A ARC Reader Plan with 50' buffer indicated
B Before (2016) and After (2020) Site Photos
C Email from Fred Stepanis to Mr. D'Asti dated 9/26/2017

Mr. D'Asti represented himself.

Issues discussed:

- Homeowner hired Junior's Landscaping and Masonry to prune several trees and remove two trees within 50' buffer to a pond.
- The back of the D'Asti house is 75' from the pond. All of the backyard is therefore in Conservation jurisdiction.
- In September 2017, Mr. D'Asti had a phone conversation and follow-up email from Conservation Staff regarding vista pruning and vegetation management within Conservation Jurisdiction. The email clearly states Mr. D'Asti must get prior approval for any work within 100' of the pond and was given guidance as to where the 50' buffer occurred on his property.

- Commissioners would like the 50' buffer boundary to be marked permanently so there is no confusion in the future.
- Enforcement order amended to add – “By June 5, 2020, the boundary of the 50' buffer should be permanently marked with approved boundary markers.”

The Commission voted unanimously to approve the Amended Enforcement Order.

- C. Sean T. Moloney – 118 Bay Lane, Centerville – Map 186 Parcel 033. Alteration of wetland resource areas - by cutting trees and placing fill on a bank. Alteration of the buffer to a wetland resource area by placing fill and re-grading and by directing roof runoff toward a wetland. Failure to request a Certificate of Compliance for SE3-4843.

Exhibits

- A Screenshot of Conservation database for Parcel 186033
- B Plan of Record for SE3-5536
- C Site Photos

Mike Ball, Marsh Matters Environmental represented Mr. Moloney and Mr. Moloney was present.

Issues discussed:

- There is an expired Order of Conditions (SE3-4843) that never received a Certificate of Compliance.
- There is an open Order of Conditions (SE3-5536), expires on 2/2/2021.
- At the 12/12/2017 hearing for SE3-5536, the Commission clearly stated that Mr. Moloney must request a Certificate of Compliance for SE3-4843 prior to any building permit sign-off or work under SE3-5536 may proceed. There were compliance issues(drain pipe and roof runoff) that need addressing before a COC could be issued. These issues remain and will need to be addressed as part of the enforcement order.
- There 6 trees within the wetland resource area on the east side of the property that were trimmed or cut down.
- There was approximately 70 cu yds of fill brought onto the property and re-grading occurred. Fill was placed in the wetland buffer (50') and there may be some fill that is actually in the east wetland.
- Earthday Landscaping was responsible for the fill and wetland vegetation cutting. A non-criminal citation was issued (see next section, below).
- Wetland delineation flagging had been removed from all three wetland areas.
- There will need to be a 2-phase approach to bring the property into compliance. Phase 1 will concentrate on doing the work that is needed to achieve compliance so a COC may be requested under SE3-4843. Phase 2 focuses on bringing the property back into compliance and mitigates for the wetland violations that occurred in mid-April 2020.
- Enforcement order amended to add – “1) Prior to any restoration or mitigation planting work being done there will be an on-site meeting that will include the homeowners environmental consultant (currently Matthew Eddy, Baxter-Nye Engineering and Michael Ball of Marsh Matters Environmental), the landscape contractor and the Conservation Agent. And 2) Michael Ball will oversee all work being done in relation to compliance for SE3-4843 and mitigation/restoration under this enforcement order.”

The Commission voted unanimously to approve the Amended Enforcement Order.

IV NON-CRIMINAL CITATIONS

- A. Ryan Jones of Earthday Landscaping – Alteration of a wetland by cutting vegetation \$200.00
 - Noted

V OLD AND NEW BUSINESS

- A. Review of the proposed special conditions for revetment related work. **Tabled from 4/7/20**

To be noted only. This is a staff document to assist with special conditions.

- B. Discussion – possible requirement under mitigation, as built plan for Certificate of Compliance.
Tabled from 4/7/20

The item was tabled to July 14, 2020.

4:30 PM AGENDA

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VI REQUESTS FOR DETERMINATION

William J. and Elizabeth B. Allard – Proposed landscaping to include driveway reconfiguration, walkways, fire pit, and plantings at 995 Sea View Avenue, Osterville as shown on Assessor’s Map 090 Parcel 009 002. **DA-20014**

The applicant was represented by John O’Dea P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- There was a comment about if the demarcation was necessary near the fire pit along the 50’.

A motion was made to approve a negative determination with a condition that in the vicinity of the fire pit there be a demarcation of the 50’ buffer.

The motion was seconded and voted unanimously.

New England Development/Cape Cod Hospital – No work is requested at this time, jurisdictional review only. Request for Negative Determination as no wetlands exist at 0 and 35 Wilkens Lane, Hyannis as shown on Assessor’s Map 295 Parcel 004 001 and Assessor’s Map 296 Parcel 039. **DA-20015**

The applicant was represented by Kathryn Barnicle PWS of AECOM.

Issues discussed:

- There was discussion about how the area was once a sand and gravel pit.
- There was a disturbed area, where wash water ponds were once located.
- These areas were never back filled with clean sandy material, but with clay and silt from wash water ponds, causing ponding of water and some wetland vegetation growing.

There was a motion to approve a negative determination.

The motion was second and voted unanimously.

Kyle Condinho. Proposed construction of a garage and a septic system to serve the facility as well as a retaining wall at 34 Hi River Road, Marstons Mills as shown on Assessor’s Map 060 Parcel 012. **DA-20016**

The applicant was represented by Peter T. McEntee P.E. of Engineering Works.

Issues discussed:

- There was a question raised about the proposed location of the lawn, shell walkway, 4’ buffer strip, and what the tent structure is.
- The tent structure will be removed. It is anywhere landscaping materials had been stored for many years.
- A planting plan should be submitted.
- The garage will have a bathroom in it.
- A revised plan should be submitted to show the items in question.

A motion was made to approve this negative determination and require the planting plan be submitted to staff.

The motion was seconded and voted unanimously.

VII NOTICES OF INTENT

Town of Barnstable – DPW. Maintenance dredging of Barnstable Harbor Outer and Mid-Entrance Channel as well as the Blish Point Boat Ramp Access Channel with beach nourishment/upland beneficial reuse and/or unconfined offshore disposal of sediments at the Cape Cod Bay Disposal Site (CCBDS), Millway Road, Barnstable as shown on Assessor’s Map 301 Parcels 064, 009, 010, Assessor’s Map 263 Parcel 001, and Assessor’s Map 322 Parcel 001.
SE3-5781

The applicant was represented by Christine Player of Foth Infrastructure and Environmental LLC as well as Griffin Boudoin, Town Engineer, of Town of Barnstable Department of Public Works.

Issues discussed:

- The mid-entrance channel yields clean fine sediments that are not suitable for beach nourishment.
- The outer section entrance channel does yield sediments suitable for nourishment for areas along Millway Beach, pumped over to Sandy Neck cottage colony, and delivered to the dune in front of Sandy Neck parking lot.
- The boat ramp channel has not been dredged since 2013.
- Other areas have been dredged in 2017.
- As a secondary option, they would take the channel material Cape Cod Bay Disposal site.
- There was a question raised on how material would be delivered and dewatered. Material would be dewatered first at Blish Point parking lot and then trucked to Sandy Neck Parking lot.
- It is planned work will include the use of mechanical and hydraulic methods.
- A point was raised with caution about when silty black sediment appeared once at Sandy Neck Beach. The materials should be in kind.
- A question was posed about why the boat ramp needs to be dredged so often. It is not due to people powering up boats. It is an unfortunate location due to littoral drift.
- Natural Heritage of Endangered Species Program letter has not been submitted.
- The Division of Marine Fisheries recommends a no in-water silt producing work be conducted from February 1 through June 30th and a no disposal of dredge material time of year restriction for Millway Beach and Sandy Neck Cottage Area May 1st to July 31st.
- The Town Manager needs to sign the Notice of Intent Application.
- There needs to be updates on the location where material is going.
- Post dredge surveys need to be completed after each event.

Correspondence:

Tom Marcotti email dated May 4, 2020.

Division of Marine Fisheries Letter dated May 4, 2020.

A motion was made to approve the project as submitted with special conditions: Time of year for dredging from February 1 through June 30th, and a time of year for nourishment at Millway Beach and Sandy Neck Cottage area May 1st to July 31st. The sign off page of the Notice of Intent needs to be signed by the Town Manager; applicant shall submit information to staff on method of dredging and where dredge spoils will be deposited, post year bathymetric surveys after each dredging event shall be submitted to staff, with a continuance to May 26th for the sole purpose of receiving Natural Heritage of Endangered Species Program and any conditions they impose. The motion was seconded and voted unanimously.

Douglas B. and Elizabeth D. Evans – Raze dwelling, construct new dwelling; repair/replace access steps to beach; proposed stockade fence along property line at 125 Harbor Bluff Road, Hyannis as shown on Assessor’s Map 325 Parcel 120.

The applicant was represented by Daniel Ojala of Down Cape Engineering.

Issues discussed:

- A question was raised about if the house can be pushed back and keep everything out of the 50’ buffer.
- There was a question posed about if the existing beach grass buffer strip be supplemented?
- A question was posed about if a couple of cedars could be added to one side of the lot and maybe some beach plum.

- SE# has not been issued.
- It was mentioned that the Commissions normal position is that when there is a razing of the structure the Commission likes to see everything pushed out of the 50', unless it is a constrained lot or they determine it is a unique situation and a waiver maybe granted.

A motion was made to approve the project subject to receipt of a revised plan showing a cluster of cedars southeast side, a cluster of beach plum scattered along the front, with a continuance to May 12, 2020 for the SE# and any comments that may be submitted by the Department of Environmental Protection. The motion was seconded and voted unanimously.

Dimitry Herman. After-the-fact permitting of 2 decks, shed addition to existing garage and work within the 50' buffer zone to a bordering vegetated wetland; excavation/construct new foundation under dwelling at 10 Nyes Neck Road East, Centerville as shown on Assessor's Map 233 Parcel 023. **SE3-5783**

The applicant represented by Daniel Ojala of Down Cape Engineering.

Issues discussed:

- The Commission believes this is a net gain for the environment.

A motion was made to approve the project as submitted. The motion was seconded and voted unanimously.

VIII MINUTES

A. April 14, 2020

There was a motion to approve the submitted minutes. The motion was seconded and voted unanimously.

There was a motion to adjourn the meeting. The motion was seconded and voted unanimously.

Meeting adjourned: 5:41 p.m.