



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

DATE: May 24, 2022 @ 6:30 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

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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.

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Meeting ID: 823 3082 4847

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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.

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REMINDER TO APPLICANTS:

**FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200
MAIN STREET, HYANNIS, 02601**

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Clerk George Gillmore, Commissioners, Abodeely, Hearn, Morin, and Sampou.

Conservation Administrator, Darcy Karle was present along with Enforcement Agent Edwin Hoopes, and Administrative Assistant Kim Cavanaugh.

I. EXECUTIVE SESSION

- A. Executive Session for the purpose of discussing litigation strategy with respect to the pending appeal by Bog Partners, LLC to MassDEP regarding 1246 Bumps River Road, **DA-21042**.

The Barnstable Conservation Commission may vote to go into Executive Session under G.L. c. 30A §21(a) (3) to discuss litigation strategy with respect to the following: pending appeal by Bog Partners to DEP, if the Chair declares that an open meeting may have a detrimental effect on the litigating position of the Town.

CHAIR: Next on the agenda is an Executive Session to discuss strategy with respect to the pending appeal by Bog Partners, LLC to Mass DEP regarding 1246 Bumps River Road, DA-21042.

DECLARATION OF THE CHAIR: I declare that the discussion of litigation strategy in open session with respect to the pending appeal by Bog Partners, LLC to Mass DEP regarding 1246 Bumps River Road, may have a detrimental effect on the litigating position of the Town.”

“Following the Executive Session, the Commission will re-convene 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)(6) to discuss litigation strategy with respect to the pending appeal by Bog Partners, LLC to Mass DEP regarding 1246 Bumps River Road based on the Chair’s declaration that an open meeting may have a detrimental effect on the litigating position of the Town, and to re-convene in open session following the conclusion of the executive decision.”

CHAIR: “I second the motion.”

ROLL CALL VOTE:

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou
Nay

The Commissioners went in to Executive Session at 6:36 p.m.

The Commissioners returned to open session at 6:52 p.m.

II. OLD AND NEW BUSINESS

- A. Conservation Restriction – Mark Robinson - 830 Wakeby Road, (Village of Marstons Mills), Barnstable, 15.3 acres. Map 013 Parcel 003.

The Town has been awarded a grant for half of the cost.

The Town of Sandwich has closed on a companion piece and will also receive a grant award.

The State is waiting for it to be reviewed.

Town Manager will be the custodian of the land.

Need a recommendation from the Commision to Town Council that this a good way to further preserve this property.

There were no questions

Motion to authorize the chair to send a letter to Town Council to endorse the Conservation Restriction on this parcel at 830 Wakeby Road, Marstons Mills..

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

- B. Park City Wind – Craigville Beach – Article 97 and easements.

Patrick Johnson of Avangrid Renewables addressed the Commissioners requesting approval to approve some easements that the Town Council is considering. This is about the filing of an Article 97 bill that is going to be critical to the project.

Asking the Commission to consider a vote indicating these parcels as surplus properties to . This is separate from the NOI which will be filed in the coming months.

- Town Council Kathleen Connolly is hoping to continue to June 7th as she has not worked on this project and Charlie McLaughlin was unable to attend tonight's meeting.
- A question was raised on the location of the easements, and what jurisdictional issues apply to the Conservation Commission.
- The location is at Craigville Beach parking lot which is in Conservation jurisdiction and the other is Crosby Park, 30 South Main Street which is outside Conservation jurisdiction.
- Both State Representatives are solidly behind this project.

A motion was made to continue to June 7, 2022.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

III. REQUESTS FOR DETERMINATION

- A. **Daniel and Sandra Geller.** Proposed beach nourishment at 44 Johnson Lane, Centerville as shown on Assessor's Map 193 Parcel 043. **DA-22013**

The applicant was represented by John O'Dea, P.E. from Sullivan Engineering and Consulting.

Issues discussed:

- The sand will not be deposited into the pond itself.
- The sand erodes and is deposited into the water. A cumulative impact results.
- In protecting the 0-50' buffer. It is stressed in all training sessions to have a vegetated buffer. It filters out the pollution.
- Sand will help wash pollutants into the pond.
- Greater than 50 percent of this shore line will be taken up by beach.
- A little sand could be brought in but not more than 50 percent of this shoreline.
- There is history that there has been an existing beach.
- It merits some sand in this location.
- The shoreline to the north is pebbles, there is no sign of sand.
- Part of the approval should be that part of the shore line be left alone.
- Cobblestones have been placed along the bank.
- A COC will be requested in a couple of months. There is also stacking of wood along the shoreline that should not be there.
- A vegetated area will be removed.
- There are some issues that need to be addressed.
- It will have to be staked before the sand is brought in.
- Would like to see the area of nourishment reduced.
- Just because something has been done for decades does not mean it has to be allowed to continue.
- Prior approvals have been only for existing beaches.
- There needs to be a balance, not just say no nourishment.
- If the beach had been abandoned they could possibly deny nourishment.
- There are multiple concerns as to what is causing water quality issues, not just sand.
- This is not in an area of vegetation and not in the pond.
- The homeowner would not be happy to reduce their beach.
- Because of the herring run it is manipulated by man.

- Under most nourishments you cannot put sand below the mean spring water line. Here the line should be staked prior to the sand being brought in.
- It will be a narrow strip in this location and will not be a lot of sand.

There was no public comment.

A motion to approve a negative determination subject to a condition requiring the staking of the high water elevation for Lake Wequaquet Lake 32.963 ft. (33 ft. NAVD 88) by an engineer prior to sand nourishment.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Lee, Gillmore, Morin,

Nay – Hearn, Sampou

- B. **Michael and Lauren Reddy.** After the fact approval for installation of an aluminum fence in the 50' and 100' buffer to the resource area, proposed installation of a 10 x 12 garden shed in the 100' buffer zone and proposed mitigation at 83 Blantyre Avenue, Centerville as shown on Assessor's Map 020 Parcels 229 109 and 229 010. **DA-22014**

The applicant was represented by Theresa Sprague with Blue Flax Design.

Issues discussed:

- The date on the revised plan is May 23, 2022.
- There is a very small amount of invasive removal to be done.
- Staff is fine with the limited hand pulling treatment for 3 years.
- It also meets the conditions of the enforcement order.
- The filing of the RDA is the last step in completing the requirements of the enforcement order.
- It is a good plan and project.
- Bittersweet should be encouraged to be removed.

There was no public comment.

A motion was made to approve the project as a negative determination based on the revised plan dated May 23, 2022 and annual reports submitted for three years.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

IV. NOTICES OF INTENT

- C. **Richard Koch.** Proposed 70 s.f. addition to existing shed over existing wooden foundation at 148 Inwood Lane, Centerville as shown on Assessor's Map 245 Parcel 007. **SE3-5991**

The applicant was represented by Matthew Eddy of Baxter Nye Engineering and Steve Cook with Cotuit Bay Designs.

Applicant Richard Koch addressed the Commissioners with the history of the shed and his dialog with the Historic Commission.

Letter from NHESP dated May 12, 2022 was reviewed and acknowledged.

Issues discussed:

- The shed is currently being used for storing beach chairs, balls, etc. and will remain the same after the addition.

- There should be a condition there will be no additional outside lighting.
- The Techno posts are 4” diameter. It is a great improvement over using concrete blocks.
- There is a lot of lumber under the deck that should be removed.
- No fencing should be put around foundation of shed.
- There was some cutting on the left hand side being done by the neighbor.
- There is lattice work on the left side of the shed that needs to be removed.
- The wooden steps should be put on the plan.
- The fire pit was there before he bought the property.
- The storage box will be removed and the toys will go inside the shed.
- There should be nothing under the shed.

Public Comment:

Al Holman – 149 Inwood Lane. Mr. Koch has been very cooperative with their concerns and requests. Would like a condition placed in order for the height to remain the same. The light on the outside of the structure was addressed, and a noise issue was addressed.

A motion was made to approve this project subject to receipt of a revised plan indicating box steps on path over dune, drywell for run off, Techno posts for the shed, no additional exterior lighting, building height shall be limited to existing building height.

Motion seconded.

Staff requested side elevation drawing (existing and proposed), indicating height, to be included on stamped engineering plan, along with a condition stating, no storage of items under the shed and deck.

Motion modified to include above.

Modified motion seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

- D. Marshal M. Green, Trustee – 210 Carriage Road Nominee Trust.** To remove existing pool and proposed construction of a new pool in a new location, a house addition with patio replacement, elevated stairs down the coastal bank, relocation of hen enclosure, and landscaping to include bank restoration and associated appurtenances at 210 Carriage Road, Osterville as shown on Assessor’s Map 071 Parcel 016. **SE3-5993**

The applicant was represented by Chuck Rowland, P.E. Sullivan Engineering and Consulting. Christopher Buccino of Land Chop and Caitrin Higgins from Wilkinson Ecological Design.

Issues discussed:

- There are 6 trees proposed to be coppiced. Flush cut them and allow them to re-sprout. It provides more bio mass.
- A question was raised if the chicken coup could be brought back out of the 50’ buffer. The chicken coup has a bigger foot print than existing. Because of the size of the trees in that location it would not fit further back. There would need to be some design reconfiguration but it could be done.
- Coppicing is not just topping a tree, it is actually cutting it down. Could the trees be replaced?
- Coppicing is creating of a bush type of structure from a tree species.
- Keeping chickens on the uphill side of the garden would help the garden.
- The wildlife function of the coppicing. They still produce acorns in a shrub like state.
- There will be a significant bush sooner than would have a significant tree.
- There was further discussion on the location of the hen house.
- Pull the fence to the upland side of the restoration area.
- The existing irrigation will be removed and temporary irrigation for the mitigation area will be used.

- The pruning is being done for both the health of the tree and to maintain the view.
- The view corridor needs to be discussed with the owner.
- The coppicing should not be done for a view corridor.
- The trees that will be coppiced are not in the view corridor.
- The pruning of the largest oaks will provide the view corridor.
- Annual reports for the years and any change in consultant will have to be approved by staff.
- The view corridor needs to added to the plan.

There was no public comment.

A continuance was requested to July 5, 2022.

A motion was made to approve the continuance request to July 5, 2022.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

- E. **J. Paul III & Susan Condrin.** To permit as built landscape features to include relocated shed, gravel drive, garden and rinse station at 270 Smoke Valley Road, Marstons Mills as shown on Assessors' Map 097 Parcel 001 001. **SE3-5994**

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

There were not questions from Commissioners

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

- F. **Thomas & Denise Kracz.** Proposed raze & removal of single-family dwelling and cottage; construction of a single-family dwelling with screen porch, decks; relocation of septic tank, repair of existing garage at 205 Stoney Point Road, Barnstable as shown on Assessor's Map 336 Parcel 029. **SE3-5997**

The applicant was represented by Lynne Hamlyn of Hamlyn Consulting.

Issues discussed:

- There are two trees not on the plan that are coming down. Should be noted on the plan.
- The wetland flagging information should be added to the plan.
- There should a note about the landscape plantings on the plan.
- There will be no changes in the vista corridor.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan indicating the fate of the two trees (off the deck), gravel trenches or drywell note on plan (staff will add condition) and add wetland flagging information on the plan.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

- G. **Kevin McShea.** Construction of pier, ramp and float for non-motorized use at 116 Bay Road, Cotuit as shown on Assessor's Map 007 Parcel 021. **SE3-5996**

The applicant was represented by Arlene Wilson of A.M. Wilson Associates.

Natural Resources Elizabeth Lewis memo dated May 22, 2002 was acknowledged and reviewed. DMF Letter dated May 23, 2022 was acknowledged.

Issues discussed:

- This needs to be a permanent timber pier because of the condition of the bottom.
- It will be in the Order of Conditions that it will be for non-motorized vessels.
- The approval should be pending an occupancy permit.
- With all the mud in the area a seasonal pier would not work.
- The plan revision date should match all the pages.

There was no public comment.

A motion was made to approve the project, subject to receipt of a revised plan, indicating the revision date on all sheets, float stops 18" above substrate and condition for non-motorized vessel.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

A five minute break was requested at 9:25 p.m.

V. CONTINUANCES

- A. Tobias Welo.** Modifications to existing pier by extending its total length 41', relocating it 3' north and substituting piles for supports at 25 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009. **SE3-5984** Continuance from April 26, 2022.

Commissioner Hearn has completed the evidentiary review for the project under the Mullin Rule.

The applicant was represented by Arlene Wilson of A.M. Wilson Associates.

Issues discussed:

- Arlene reviewed the changes made to the plan.
- A question was raised the exotic species need a source to start growing. They have to have an activity to bring them in to the site possibly from bilge pumps or attached to the hull of a boat.
- The vast majority of exotic species have stages that means a portion of their life is free floating in the water.
- There is exotic colonization throughout the cape. It is a justifiable concern to keep seasonal docks over permanent docks.
- The shellfish rating is an 8.
- This is proposed to be a permanent dock.
- The fixed section has a water depth of 1' at mean low.
- The rest of the structure is designed to come out in the winter.
- Some soft bodied exotics have been found in the local marina's in Town.
- Sampling was done in 2018 at Sandwich Marina and in Bourne. They have found them at all the marina's. In 2018 no new species were found since 2014.
- The population has not grown.
- A permanent pier is minimizing the disruption to the shellfish.
- The installation and removal of seasonal piers results in soft spots around the pier. The installers tend to move them a little bit year to year.
- Tom Marcotti was in favor of seasonal vs. permanent piers.

- There is an email in the Ryan file that addresses Tom Marcotti's preference.
- There is no date on the revised plan.
- The reason for the extension is to put a small boat with a motor on the dock. The historic absence of shellfish would help with the waiver to use only the 12" rule.
- There was discussion about a stamped plan

Public comment:

Tyler Hagenstein - Commercial Shellfisherman. Permanent pilings interfere with water flow and leads to lack of recruitment for seed shellfish. Hydraulic pumps to put them in an out every season does not have a serious effect on the bottom. The boat is of concern more than the pier. This is a sensitive marine environment. He would like to know what boat is being proposed to go on this pier.

Stuart Rapp – Shellfish Committee. The concern of the Shellfish Committee if there is going to be a pier they would like it to only be a seasonal pier. The prop dredge will eliminate shellfish. It is rated at an 8 and the waiver should not be granted. The boat and engine size should be limited. There should be consequences put in the OOC for prop dredging. There is a winter fishery which a permanent dock would hinder

John Townes President of BARS. He is opposed to the project. Requested the project be denied.

Patricia Farinha – Is surprised they are not required to submit the boat specs. The applicant will propose the boat once the project has been approved.

Arlene Wilson responded to some of the public comment.

There was discussion on taking the matter under advisement. The reason for doing it under advisement is the poll gives a chance to develop findings. The findings are proposed at the findings hearing.

A poll of Commissioners was taken on the project

Abodeely - Abstain
 Foster - Nay
 Gillmore - Abstain
 Hearn - Nay
 Lee - Nay
 Morin - Nay
 Sampou - Nay

A motion was made to take the matter under advisement and come back on June 7, 2022 with findings. Seconded and voted by roll call:
 Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou
 Nay – None

- B. Gail A. Canzano.** Proposed addition with all associated appurtenances including relocating a walkway and a new innovative septic system at 483 Eel River Road, Osterville as shown on Assessor's Map 114 Parcel 018. **SE3-5983 Continued from 5/3/2022.**

Commissioner Hearn is unable to vote on this.

The applicant was represented by John Odea. P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- Revised plan is being stamped by Architect and an updated engineered set will be submitted.

Public comment:

Zenus Crocker - The Commission has the opportunity to clean up the bays by utilizing the new septic technology. This is a critical opportunity to change things. It is the nutrient load from septic systems that is causing so many problems. He would like to have some time with the Commission to explain.

- Using this system will be the equivalent of removing an acre of lawn.
- There was a discussion on how much hardscape increase are they asking for in the 0-50' buffer and how much are they offering in return.
- The plantings are going on the north side in an area where there are some stepping stones.
- A question of double dipping for mitigation was raised.
- The mitigation calculations were reviewed. If 44 sq. ft. is being added to the 0-50. Four times that much needs to be added to the 0-50.
- There are currently no calculations/regulations in place for mitigation using a nitro system.
- The new nitro systems are not official but it should be considered.
- Alternative locations for mitigation was discussed.
- They have added as much hardscape as they possibly can in following the guidelines.
- The proposal was to consider this a constrained site and pay an in lieu fee.

Public comment:

Dan Ojala – Is in support of the application. Addressed the issue of double dipping. Instead of putting in lawn they are putting in native plantings which has a benefit.

A motion was made to approve the project subject to receipt of stamped revised engineering plan and architect plan. The Commission has determined this to be a constrained site and has accepted the mitigation as proposed.

Seconded and voted by roll call:

Aye – Gillmore, Lee, Morin, Sampou

Nay – Abodeely, Foster,

Motion carries 4-2

C. Amended Order - Stanley Davitoria – SE3-5739 Proposed changes to the original Order of Conditions include the relocated wall, along with a proposed pool, patio, shed, and deck at 55 & 61 Beechwood Road, Centerville as shown on Assessor's Map 252 Parcel's 182 and 008. **Continued from 5/3/22**

The applicant was represented by Dan Ojala P.E. of Down Cape Engineering.

Hearn did not Mullin in on this project.

A revised plan dated May 24, 2022 was submitted earlier in the day.

Issues discussed:

- They do not have an undisturbed 50' buffer.
- Mitigation calculations were reviewed.
- The interpretation of the guidelines was explained.
- The property is loaded up with hardscape and no more hardscape should be added.
- A question was raised on where to draw the line on what can be disturbed.
- There is additional hardscape that has already been put in that was not approved.
- There should be more emphasis on putting in plantings by the wing walls and some of the proposed hardscape that could be removed.

- Some of the hardscape should be removed.

There was no public comment.

A continuance was requested to June 21, 2022.

A motion was made to continue the project to June 21, 2022.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

VI. TAKEN UNDER ADVISEMENT

- A. Mark Klamann.** Proposed 728 square foot addition to existing single-family dwelling within buffer zone to salt marsh at 25 Cross Way, Hyannisport as shown on Assessor’s Map 245 Parcel 043. **SE3-5989 Under advisement from 5/10/22 Withdrawn 5/23/22.**

A letter dated May 23, 2022 was received requesting to withdraw without prejudice.

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

- A. Nicholas D. Samra & Erica Peirson SE3-5323** (COC, ez) Raze & Rebuild Dwelling and
Outbuildings 265 Seapuit Road, Osterville Marsh / Salt Marsh / Coastal Bank

A motion was made to approve A.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

VIII. MINUTES

- A. April 26, 2022

A motion was made to accept the minutes as submitted.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Lee, Gillmore, Morin, Sampou

Nay – none

Hearn - Abstain

A motion was made to adjourn.

Seconded and voted by roll call:

Aye – Abodeely, Foster, Hearn, Lee, Gillmore, Morin, Sampou

Nay – none

The time was 11:37 p.m.