



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: May 2, 2023 @ 3:00 PM

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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.

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Commissioners Abodeely, Gillmore, Hearn, and Morin. Commissioner Sampou was absent.

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

I. OLD AND NEW BUSINESS

- A. Commission vote on remote or in person hearings
- This item was tabled to May 9, 2023

- B. Indian Ponds Association – Petition regarding Guidelines for Private Freshwater Docks

Commissioner Bill Hearn – Board Member of Indian Ponds Association - will participate in the discussion but not vote.

- Butch Roberts, President – Indian Ponds Association addressed the Commission members.
- The petition is regarding two concerns: Natural beauty and serenity.
- The majority of residents are in favor of allowing only seasonal piers.
- There should be a definition of what is a seasonal dock.

- There is no justification for a permanent dock.

If this needs to be voted on it would need to be advertised first.

- Burton (Larry) Rhue – owns 365 and 370 Hollidge Hill Lane.
- The current Chapter 703 regulations have not been revised since 2006. The content clearly applies to salt water docks. They do not apply to freshwater docks unless specified by the Commission.
- Mr. Burton would like to see more specific regulations for freshwater docks.
- He is concerned that he would not know what the length of the dock would be. The definitions and regulations can be applied for salt water and fresh water.
- Would like to request modifying the regulations so that they apply to freshwater docks.

Commissioner discussion:

- There are guidelines for freshwater docks.
- There was discussion the regulation could not single out the Indian Ponds from other ponds.
- There are different criteria for seasonal vs. permanent.
- Leaving some portions of a seasonal dock in is common.
- Other Towns on the Cape do not differentiate between fresh water and salt water docks.
- There is a significant difference between salt water and fresh water guidelines.
- A request for a freshwater dock is looked at on a site specific basis.
- Indian Pond Association is comprised of large ponds. They are unusually large. They are all seasonal docks. There is an esthetic element to seasonal docks on these ponds.
- A question was raised if the Conservation Commission can bring in esthetics into consideration.
- Under Con Com jurisdiction it is tough to regulate esthetic or view. There are no performance standards.
- Safety and navigation are criteria that could be considered for the ponds.
- Freshwater piers and docks have always been seasonal.
- It is critical for abutters to come to the hearings when a project comes before the Commission.
- Seasonal docks are made for smaller craft. Wequaquet lake is the only place where a seasonal dock vs. a permanent dock has been a problem because of size of vessel.
- There has been success in using the guidelines in fresh water situations.
- The elements of the Flume Avenue dock could be looked at to see how the current process has allowed it to be a permanent pier, and re-examine how it was approved for learning purposes.
- Fresh water seasonal docks can be put in by homeowners where salt water docks need professional installation.
- It is understandable why the Indian Pond Association is upset.
- The 24 Flume dock is very large and has an L at the end.
- The dock lost the L and is considerably shorter than what was applied for. A provision was allowed for helical piles to be left in the substrate. They are 18” tall. The piles were considered to be a safety issue.
- Commissioner Bill Hearn recused himself from the discussion on that hearing.
- Precedent was set by allowing the helical piles to stay in.
- Helical piles and the safety issues should be considered in the future.
- Esthetics may be a zoning issue, not a Conservation issue.
- A suggestion was made that Indian Pond Association could approach the issue with the Zoning Department.
- There was discussion on zoning restrictions on piers.
- There was discussion on seasonal docks being left on the beach instead of stored in the upland during the off season.
- There is not enough staff to do the enforcement.
- Occasionally they are allowed to be stored on the beach.

Summary:

The Conservation Commission cannot put together regulations for just Indian Ponds.
Some updates to the freshwater guidelines may be appropriate.
Each commissioner could send in suggestions after looking at the guidelines.
Indian Ponds Association could provide some input.

C. Richard Higgins, NEMBA Cape Cod – discuss porta john at West Barnstable Conservation Area.

Commissioner Foster recused herself from the discussion.

- Richard Higgins, New England Mountain Bike Association addressed the Commission.
- They do a lot for trail maintenance. They have adopted a parking spot at the West Barnstable Conservation area.
- They have built a picnic area and they have paid for a porta john since 2017.
- He is looking for some help from Conservation to pay for a seasonal porta john.
- Conservation is understaffed and does not have a budget to pay for it.
- There is concern that having one at this location would encourage requests for others.
- A question was raised if permission was granted to put in the picnic area and porta john.
- Conservation does not have the staff to manage it.
- There was discussion on other areas where there is a porta john. They are supported by the Recreation Department.
- It was suggested that DPW could manage it with permission from Conservation.
- If NEMBA continues to pay for it, it should be approved by Conservation.
- A letter should be submitted asking for permission to put a porta john there which includes who the contact person would be for management, and that they are assuming responsibility for payment, management and removal in the off season.

D. Annual Report - 203, 205, and 211 Scudder Lane Projects

- Catherine Ricks from Coastal Engineering addressed the Commissioners.
- The fiber rolls that were put in at 211 Scudder Lane were from a different owner.
- There are a couple that are not doing well, and there should be some nourishment.
- In order to any maintenance/nourishment on a closed OOC, a new NOI would be required.
- The new NOI should request it be maintained in perpetuity.
- The other have not been closed out and an amended order could be requested.
- There is over wash occurring from the upland. There are additional approved drainage structures that are being put in over the next couple of weeks for 203 and 205.
- There was discussion on why the drainage was not put in earlier. The source of the run off was discovered a long time ago. Going forward timelines should be given for getting it done.
- It is disappointing to the Commission that it has taken so long to go in.
- 211 did not have the maintenance included. Staff will check to make sure it is included for 203 and 205.
- There was discussion on equipment needed and if it can be completed from the upland. Covering the fiber rolls at 211 will require equipment on the beach.
- They should keep staff advised of updates and progress.
- Updates should be provided every six months instead of one year.
- A new NOI for 211 should be submitted very soon.
- The cloth on the embankment makes it difficult to tell how much undercutting is happening.
- There should be a methodology submitted prior to continued work at 203 and 205. It could be a revised plan request.
- A work protocol and timeline should be submitted to address the erosion at 203 and 205 and submitted within a month.

II. EXTENSION REQUESTS

Project Type:

Time Requested:

A. John & Gretchen Ciluzzi SE3-5663
444 Bay Lane, Centerville

Pool & patio, relocate shed
mitigation planting

3 years (1st Request)

The representative, Matt Eddy of Baxter Nye was not available.

A motion was made to approve the extension request.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin
Nay -

III. ENFORCEMENT ORDERS

A. Town of Barnstable (LOMB) AND Edmond A Couture - 2415 Meetinghouse Way, West Barnstable – Map 155 Parcel 018.A01. Alteration of the buffer to a wetland resource area - vegetated wetland - by re-grading (scraping the surface grade) without permitting.

Exhibits

- A ARC Reader & Aerial Photo showing 2415 Meetinghouse Way, West Barnstable
- B Current Site Photos

Ross Couture represented Mr. Edmond Couture.

There were no issues discussed.

A motion was made to approve the Enforcement Order as written.
Seconded and voted unanimously by role call
Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster
Nay – none

B. Stephen M. & Beth F. McParland, Trs AND McParland Family 2014 Revocable Trust - 150 Carriage Road, Osterville – Map 071 Parcel 015.003. Alteration of the 50' buffer to a wetland resource area - Coastal Bank (Town & State) - by cutting vegetation.

Exhibits

- A ARC Reader & Aerial Photo showing 150 Carriage Rd., Osterville
- B Current Site Photos

John O’Dea represented the McParlands and Stephen McParland was present.

There were no issues discussed.

A motion was made to approve the Enforcement Order as written.
Seconded and voted unanimously by roll call
Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster
Nay – none

C. Edward M. & Lorraine P. Bennett, Trs. AND AEB Realty Trust - 161 Knowlton Ln., Marstons Mills - Map 102 Parcel 180. Alteration of a wetland resource area – Bordering Vegetated Wetland (BVW) – and 50’ buffer to wetland resource area – BVW – by cutting vegetation.

Exhibits

- A ARC Reader Photo showing 161 Knowlton Ln., Marstons Mills
- B Before and After Aerial Photos
- C Current Site Photos
- D Before Photos Supplied by Edward Bennett

Arlene Wilson represented the Bennetts.

Issues discussed:

- Commission felt this was a major violation but recognized it was done as a result of not knowing the regulations.
- Homeowner can allow the vegetation between the 50’ buffer and the backyard fence to grow back mostly through natural re-growth.
- Commission wanted to make sure the trees that were cut down would be replaced.
- Some, limited natural regrowth can be incorporated into the restoration of the BVW, but additional plantings of native material will be required.

A motion was made to approve the Enforcement Order as written.

Seconded and voted unanimously by roll call.

Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster

Nay – none

- D. RF Design Painting Corp. - 146 Saint Francis Circle, Hyannis - Map 291 Parcel 227. Alteration of a wetland resource area – Bordering Vegetated Wetland (BVW) – by cutting vegetation and alteration of the 50’ buffer to 2 wetland resource areas – BVW and unnamed pond – by installing an unpermitted BBQ/Fire Pit and expanding a shed without permit.

Exhibits

- A ARC Reader & Aerial Photo showing 146 Saint Francis Circle, Hyannis
- B Before and After Photos
- C Current Site Photos
- D Before Photos Supplied by Marcelo Batista

Marcelo Batista represented himself.

Issues discussed:

- Shed was expanded and BBQ pit installation started without permitting.
- The Town of Barnstable Building Department required the new, expanded 18’x13’ shed be reduced in size to under 200 sq. ft (18’ x 10’ proposed by homeowner).
- Homeowner asked to increase planting in the 50’ buffer to BVW. If they choose to try and permit the shed expansion and BBQ pit, they will have to provide 4:1 mitigation.
- Dock to either be removed or pushed out into deeper water and moored with a minimum of 18’ between bottom of float and pond bottom.

A motion was made to approve the Enforcement Order as written.

Seconded and voted unanimously by roll call.

Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster

Nay – none

- E. Barry C. Cosgrove, Tr. & Barry C. Cosgrove Trust – 71 Sand Point, Osterville – Map 073 Parcel 014. Alteration of a wetland resource area and 50’ buffer – Coastal Bank (State) – by unpermitted addition of hardscape (change in size and shape) of a previously permitted patio.

Exhibits

- A ARC Reader & Aerial Photo showing 71 Sand Point
- B Before and After Aerial Photos
- C Before and After Site Photos supplied by A.M. Wilson

Arlene Wilson represented the Cosgroves.

Issues discussed:

- No significant movement toward resource boundary but the footprint of the circular patio has increased.
- Approximately 150 sq. ft. of mitigation planting.

A motion was made to approve the Enforcement Order as written.

Seconded and voted by roll call.

Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster

Nay – none

- F. Karl Huovinen – 23 Garretts Lane, West Barnstable – Map 195 Parcel 013. Alteration of the buffer to 2 wetland resource areas – Garretts Pond and Inland Bank – by cutting and removing vegetation.

Exhibits

- A ARC Reader & Aerial Photo showing 23 Garrett’s Lane, West Barnstable
- B Current Site Photos

Karla Holmes (owners daughter) represented herself.

Issues discussed:

- Homeowner was not aware of the wetland protection act jurisdiction, will comply with restoration.

A motion was made to approve the Enforcement Order as written.

Seconded and voted by roll call.

Aye –Gilmore, Lee, Hearn, Morin, Abodeely, Foster

Nay – none

IV. VIOLATION WARNING LETTERS

- A. John Sarkis & Barbara m. Felegian AND 26 Cedar Point Revocable Trust – 26 Cedar Point Circle, Centerville – Map 228 Parcel 113.002. Alteration of a wetland resource area – vegetated marsh and Riverfront Area – by placing 0.5 cu yds. fill.

- Noted

- B. Mian Saeed – 50 Wayside Lane, West Barnstable – Map 110 Parcel 007. Failure to maintain proper erosion control fencing.

- Noted

V. REQUESTS FOR DETERMINATION

- A. **John V. Hurley.** To remove ten (10) trees and stumps at the back property line, re-grade hill, and add fence at 190 Horseshoe Lane, Centerville as show on Assessor’s Map 207 Parcel 132. **DA-23033**

The applicant represented by himself.

Issues discussed:

- The re-grading is for a steep mound 25’ wide with trees on top. Would like to bring it down to 4’.

- The trees on the mound and trees by the shed would be removed for safety issue.
- There is erosion occurring from the neighbors' property.
- The landward side trees are dropping braches.
- There have been no claims filed with his insurance company.
- Would like to hire a tree company to do the work.
- The bank is very steep. The trees to be removed should have been marked for the site visit. Some of the trees appear to be at the top of the coastal bank.
- There is concern for re-grading as there is not a lot of detail given on the project.
- Staff is concerned about this coming in as an RDA with the grading so close to the coastal bank. Removal of some trees for a safety issue could be approved with an RDA but re-grading should come in as a NOI.
- A NOI would require an engineering plan.
- Need to know what the existing grade is and what the proposed grade would be.
- Could the top off the bank be leveled off but not change the grade.
- He had not considered that option.
- The fence could come closer to the house.
- There is not time to submit a revised plan because of the 21 day rule.
- A continuance cannot be granted on an RDA.
- He could withdraw this and re-submit a new RDA for the revised plan.
- The trees to be removed should be marked for the site visit if the project is re-filed.

Mr. Hurley withdrew the RDA. He will submit a letter.

B. Town of Barnstable. Improvements to the Keyes Beach parking lot including new storm water collection systems, replacement of existing pavement, and new striping at 465 Sea Street, Hyannis as shown on Assessor's Map 306 Parcel 191. **DA-23034**

The applicant was represented by Tunde Baker from the Town of Barnstable - DPW

Issues discussed:

- They will be repaving the entire parking lot.
- A green trap will be used to prevent the leaching of the oil from the new pavement.
- During construction the ground water level should be checked.
- The access to the parking lot shown in C.2 parking spaces will go on the existing surface.
- The green trap is periodically maintained.
- The green trap should be added to the engineering plan. The revised plan must come in before work starts.
- This can be simply added to the current plan.
- The difference on this project vs. the previous project is that this is a procedural or graphic change not a substantive change to the current plan.

There was no public comment.

A motion was made to approve the project as a negative determination subject to receipt of a revised plan, before the work begins, with an engineering stamp with detail on the green trap and checking on the groundwater elevations.

Seconded and voted unanimously by roll call.

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

Nay -

VI. NOTICES OF INTENT

- A. Robert C. Hower, Trustee – 129 Salten Point Road Realty Trust.** Repair to an existing stone revetment that was allowed under an emergency repair order at 129 Salten Point Road, Barnstable as shown on Assessor’s Map 280 Parcel 022. **SE3-6088**

The applicant was represented by Robert Perry of Cape Cod Engineering.

Issues discussed:

- There was last minute change to the repair. Instead of rock at the top of the revetment they put sand.
- A 20’ length of the upper portion of the revetment was reassembled.
- The work has been completed.
- There was a large hole in the revetment that needed to be repaired.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted unanimously by roll call.

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

Nay -

VII. AMENDED ORDERS

- A. Cape Cod Property Trust.** Amended Order to update invasive species management protocol at 1025 Old Post Road, Barnstable as shown on Assessor’s Map 074 Parcel 003-003. **SE3-5931**

The applicant was represented by Lauren Cronin of Gregory Lombardi Design.

Issues discussed:

- A special condition should be added that any herbicide will be applied by a licensed applicator, and an ongoing condition should be added for invasive plant management and annual monitoring reports should be submitted for three years.
- A question was raised asking what “mechanical removal” means. Matt Lautenberger from Wilkinson Ecological Design advised mechanical removal will not be done with a large machine, it is just physically cutting and removing a plant.

There was no public comment.

A motion was made to approve the amended order subject to herbicide will be applied by a licensed applicator, annual reports will be required for three years, and allowing maintenance for invasive species as an ongoing condition.

Seconded and voted unanimously by roll call.

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

Nay -

VIII. MINUTES

A. April 4, 2023

B. April 11, 2023

A motion was made to accept the minutes as submitted.

Seconded and voted unanimously by roll call.

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

Nay –

A motion was made to adjourn.

Seconded and voted unanimously by roll call.

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

Nay –

The time was 5:51 p.m.

Upcoming Meetings:

Month	6:30 P. M.	3:00 PM
May	9, 23	
June	6, 20	13
July	11, 25	18