



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

**DATE: June 21, 2022 @ 6:30 PM**

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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.

**Join Zoom Meeting**

<https://townofbarnstable-us.zoom.us/j/87006374001>

**Meeting ID: 870 0637 4001**

**US Toll-free 888 475 4499**

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](mailto: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](mailto: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. Sampou.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant, Kim Cavanaugh.

**I. REQUESTS FOR DETERMINATION**

- A. Mark Schindler & Angela Shen-Hsieh.** Manage invasive plant species at 93 Pheasant Way, Centerville as shown on Assessor's Map 228 Parcel 135. DA-22022

The applicant was represented by Lynne Hamlyn of Hamlyn Consulting.

A revised plan was submitted dated 6/21/2022.

Issues discussed:

- The plan and project were revised to include only removal of Sumac. No other invasives are included in this request.
- It will be done by hand cutting only.
- Staghorn sumac is native but is very aggressive.
- Some of the sumac is very large. The larger tree like plants should not be cut.
- A question was raised if any were going to be replaced.

There was no public comment.

A motion was made to approve the project with the revised plan dated 6/21/22 as a negative determination.

Seconded and voted unanimously by roll call.

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

Nay

## **II. NOTICES OF INTENT**

- A. **David and Mary Mooney.** Raze and rebuild single family dwelling with associated amenities, landscaping, and utilities at 122 Annable Point Road, Centerville as shown on Assessor's Map 211 Parcel 017.

The applicant was represented by Raul Lizardi-Rivera from Cape & Islands Engineering.

Issues discussed:

- There was an Order of Conditions issued in December 2021 for additions to the existing house.
- They were unable to get a building permit as the house is not compliant with the current building codes.
- The foundation that was intended to be kept was substandard.
- There will be a crawl space, not a full basement.
- Normally on a complete tear down the project is moved out of the buffer zone.
- The house will be on the same footprint as what is existing.
- What is being proposed is better than what was there.

There was no public comment.

A continuance is needed in order to receive the DEP number.

A motion was made to approve the project as submitted but continue to July 19, 2022 for issuance of DEP number.

Seconded and voted unanimously by roll call.

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

Nay

- B. **John W. Cuming and Jon E. Steffensen, Trustees.** Construct and maintain a pool, pool patio within the existing house foundation, replace septic, build addition, remove and relocate AC & Generator, remove shed, add rinse station, remove and reset with new Title 5 system, realign crushed stone driveway, convert existing garage into pool house, wall and steps. Add leaching pit for roof, patio and pool draw down, add landscape bed, expand landing at bottom of existing stairs to connect the stairs, mitigation plantings with the associated grading, utilities and landscaping at 150 Hummock Lane, Cotuit as shown on Assessor's Map 053 Parcel 027. **SE3-6003**

The applicant was represented by Raul Lizardi-Rivera of Cape & Islands Engineering.

Issues discussed:

- A revised planting schedule and sketch was reviewed but has not been submitted.
- The location of the proposed mitigation area is already full of vegetation. Commission would like the proposed mitigation area moved toward the bare area.
- They could move half of it to the south east near the beach house.
- A question was raised about wetland flagging. The name of the person that did the wetland flagging should be put on the plan.
- The size of the plantings was discussed. There should be some larger sizes included.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan of the new planting area with revised planting schedule, the wetland flagging information, and annual reports for 3 years.

Seconded and voted unanimously by roll call.

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

Nay

- C. **Angela Y. Hahn.** Proposed construction of a single-family home and associated site improvements at 150 Bay Road, Cotuit as shown on Assessor’s Map 007 Parcel 018.

The applicant was represented by Sean Riley P.E. of Coastal Engineering.

A revised plan dated 6/15/22 was submitted prior to the hearing.

Issues discussed:

- The vista pruning is within the guidelines. There is an extra fee for vista pruning.
- The wall should be able to be built without encroaching into the 50’ buffer.
- There is no DEP number issued for this project. A continuance will be needed.

There was no public comment.

A motion was made to approve the project but with a continuance to July 19, 2022 for the sole purpose of receipt of a DEP number.

Seconded and voted unanimously by roll call.

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

Nay

### **III. CONTINUANCES**

- A. **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 5/24/22. Continuance requested to 7/19/22.**

A continuance was requested to July 19, 2022.

This is the third and final continuance.

A motion was made to approve the continuance request to July 19, 2022.

Seconded and voted unanimously by roll call.

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

Nay

Hearn was not part of the quorum to vote.

- B. **Paul Capasso.** Installation of a new in-ground pool and stone patio at 116 Bay Shore Road, Hyannis as shown on Assessor’s Map 325 Parcel 079. **SE3-6004 Continued from 6/7/22 for issuance of DEP # only.**

The DEP number has been received. There were no comments.

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

Seconded and voted unanimously by roll call.

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

Nay

- C. **Paul Fitzgerald** – Construction of approximately 102 ft. sloped stone revetment, approximately 67 ft. of vertical plastic bulkhead, and buffer plantings located at 207 Keveney Lane, Cummaquid as shown on Assessors Map 352 Parcel 023. **SE3-5972 Continued from 6/7/22.**

The applicant was represented by Arlene Wilson of AM Wilson Associates.

Issues discussed:

- The continuance was to receive comments from DPW. DPW has no comments on the project.
- Arlene reviewed some special conditions that could be added to the order if approved.
- This property is uninhabited. The protection is for the road.
- If the road gets eroded the house across the street will erode.
- It is a Town owned road. The Town is responsible for maintaining the road.
- The applicant feels he cannot wait for the Town to maintain the road.

Public comment was closed.

There was discussion on taking the matter under advisement.

A poll of Commissioners was taken on the project.

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

A motion was made to approve the project as submitted.

Seconded and voted by roll call.

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

Nay – Lee, Sampou

Motion carries.

The two special conditions offered by Arlene will be included in the order.

**IV. TAKEN UNDER ADVISEMENT**

- D. **Tobias Welo.** Construction of wave break and planting at 25 and 35 Cove Lane, Osterville as shown on Assessor’s Map 052 Parcel 009 and Map 053 Parcel 012 002. **SE3-5976.** Continued from 6/7/22.

The findings and decisions were read into the record.

The Commission finds the following:

1. For 25 Cove Lane, SE3-0643, the Order of Conditions included a special condition #18 – There shall be no structural means of erosion control permitted on the bank at any future time.
2. For 35 Cove Lane, SE3-2865, the Order of Conditions included a finding – The coastal bank is an eroding bank, providing sediment to a downdrift barrier beach. And it included a special condition #9 – 310 CMR 10.30(3) of the Wetlands Regulations promulgated under M.G.L. C. 131 Sec. 40 requires that no coastal engineering structure such as a bulkhead, revetment or seawall shall be permitted on an eroding coastal bank at any time in the future.
3. For 25 Cove Lane, SE3-2332, the Order of Conditions included the following findings:
  - The seaward slope at the parcel is an eroding coastal bank. The bank is found to provide sediment to both coastal beaches and a barrier beach (BA-19).
  - In the Order of Conditions (SE3-0643, October 1, 1980) governing the construction of the single-family residence at the locus, the following special condition (#18) obtained: There shall be no structural means of erosion control permitted on the bank at any future time. This Order was not appealed.
  - The Commission finds that sandbag revetment to look like a coastal engineering structure, function like a coastal engineering structure, and indeed to be a coastal engineering structure.
  - 310 CMR 10.30(3) is found to preclude a revetment or such coastal engineering structure, given that no residence exists predating August 10, 1978, because of adverse effect to the interests of storm damage prevention and flood control.
4. For 25 Cove Lane, SE-2332, the decision – The application is denied under MGL C. 131, Sec. 40 in the interests of storm damage prevention and flood control.
5. For 35 Cove Lane. SE3-2331, the Order of Conditions included the following:
  - The seaward slope at the parcel is an eroding coastal bank. The bank is found to provide sediment to both coastal beaches and a barrier beach (BA-19).
  - The Commission finds that sandbag revetment to look like a coastal engineering structure, function like a coastal engineering structure, and indeed to be a coastal engineering structure.
  - The parcel is not occupied by any residence.
  - 310 CMR 10.30(3) is found to preclude a revetment or such coastal engineering structure, given that no residence exists predating August 10, 1978, because of adverse effect to the interests of storm damage prevention and flood control.
6. For 35 Cove Lane, SE3-2331, the decision – The application is denied under MGL. C. 131, Sec.40 in the interests of storm damage prevention and flood control.
7. Under the Superseding Order of Conditions issued by Massachusetts DEP for SE3-2331 and SE3-3222, dated November 30, 1992, the last sentence in the last paragraph of the first page stated that “It is the opinion of the Department that the use of sandbags to protect these lots would not comply with the regulations at 310 CMR10.30(3).”
8. Under the Superseding Order of Conditions for additional conditions for SE3-2332 (on page 5-5B), it provided three conditions (#5 to #7) deny the proposed use of sandbags to stabilize the coastal bank. The same Superseding Order between conditions #8 to #17 (page 5-6B and 5-7B), DEP allows for the placement of fill with jute netting and revegetation.
9. Aubrey Consulting, Inc. submitted a letter dated July 28, 1993, to Barnstable Conservation Commission regarding developing beach nourishment, project monitoring, and vegetation plans for the Persson (25 Cove Lane) and Mellon (35 Cove Lane) filings, which are new filings submitted in lieu of a pending appeal to the state. Aubrey Consulting worked closely with Mr. Leldon Langley of DEP. The mitigation solution had been discussed with DEP. Aubrey Consulting confirmed that “the bank does contribute a limited amount of sediment during storms. The recommended plan will address this issue and mitigate for any potential loss of sediment. DEP Southeast Region has determined hard solution to be vertical walls and cost engineering structures such as revetments. Conversely, “soft” engineering solutions include beach nourishment and planting. ... DEP was still inclined to view sandbags as a hard solution.”

The recommended plan will use degradable sandbags which will naturally degrade over a period of 3 to 8 years. They will be placed at the lower toe of the slopes. It was noted that this was not a permanent solution and will require maintenance after large storms. Beach Nourishment and planting are part of the recommend plan.

10. Under SE3-2678 (dated September 30, 1993, for 25 Cove Lane), the Order of Conditions included the following:
  - #9. Sandbag fiber shall be natural (jute). Typar 3341 or equivalent fiber may be used as a lining material. Sandbag size shall be a minimum of two cu. Yd.
  - #10. All sand for the project shall be clean and of a grain size compatible with (no finer than) existing on-site sediment. No loam shall be used.
  - #12. Within three months of any storm event during which sandbags are exposed, the sand veneer (and plantings) shall be reconstituted consistent with special conditions #9 and #10 above. This maintenance requirement shall continue over time.
  - #16. Incremental replacement of breached bags may ensure over time with consultation with the Conservation Department.
11. Under SE3-2677 (35 Cove Lane), the Order of Conditions had the same special conditions as mentioned in #10 above.
12. Under SE3-3787 (25 Cove Lane), the Order of Conditions approved a wave attenuator (or wave breaker) as a temporary structure only, to assist in establishing the saltmarsh. The wave attenuator was removed after the saltmarsh was established.
13. On a COC request letter dated February 26, 2010, John O’Dea of Sullivan Engineering Inc. stated that the bank is in need of maintenance, which has been requested under the previous bank stabilization file (SE3-2678).
14. Based on our record, the Commission could not find any beach nourishment activities were conducted at these two locations after 2010. It was understood that maintenance would be necessary after storms.
15. The definition of a coastal engineering structure (MassDEP) – Coastal engineering structure means, but is not limited to, a breakwater, bulkhead, groin, jetty, revetment, seawall, weir, riprap or any other structure that is designed to alter waves, tidal or sedimental transport processes in order to protect inland or upland structures from the effects of such processes. This definition is on page A-A-4, Appendix A of the Commonwealth of Massachusetts Applying the Massachusetts Coastal Wetland Regulations.
16. Our Conservation Administrator confirmed with Ms. Maissoun Reda, Environmental Analyst of MassDEP, Southeast Region office, that the proposed wave breaker structure under this NOI is considered as a coastal structure.
17. Our Conservation Administrator also asked Ms. Maissoun Reda for her opinion on the special condition from SE3-0643 (#1 above), that is “There shall be no structural means of erosion control permitted on the bank at any future time.” and SE3-2685 (#2 above), that is “310 CMR 10.30(3) of the Wetlands Regulations promulgated under MGL Chapter 131 Sec 40, require that no coastal engineering structure such as a bulkhead, revetment or seawall shall be permitted on an eroding coastal bank at any time in the future.” Ms. Reda stated that under her opinion this proposed project would not be allowed.

An objection to the finding was made by Commissioner Morin.

A motion was made to approve the above finding for this project.

Seconded and voted by roll call.

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

Nay – Morin

Motion carries.

A motion was made to approve the construction of the wave break and planting at 25 and 35 Cove Lane as submitted.

Seconded and voted by roll call.

Aye – Morin  
Nay – Abodeely, Foster, Hearn, Gillmore, Lee, Sampou  
Motion does not carry.

The application is denied under MGL Ch. 131, Section 40, and Chapter 237, Wetlands Protection, of the code of the Town of Barnstable as the application does not meet performance standards for the protection of Land Under the Ocean; Coastal Beach, Land Containing Shellfish; Coastal Bank, and Land Subject to Coastal Storm Flowage.

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

- A. **Margaret & Micheal Kerr, Trustees SE3-5719** (COC, ez) Raze / Rebuild SFD w/  
Associated Appurtenances & Restoration 25 Maywood Ave, Hyannis Coastal Beach,  
Coastal Dune, Shrub Swamp

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

**VI. MINUTES**

A. May 24, 2022

A motion was made to accept the minutes as submitted.  
Seconded and voted unanimously by roll call.  
Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay

B. June 7, 2022 – tabled to July 5, 2022.

A motion was made to adjourn.  
Seconded and voted unanimously by roll call.  
Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay

The time was 8:02 P.M.