



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: December 6, 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/87661692064>

**Meeting ID: 876 6169 2064**

**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.

### **REMINDER TO APPLICANTS:**

**FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 230 SOUTH 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 Administrative Assistant, Kim Cavanaugh.

## **I. EXECUTIVE SESSION**

- A.** Executive Session for the purpose of discussing litigation strategy with respect to the following three pending appeals if the Chair determines that an open session could be detrimental to the Commission's litigation position: 1 to the Department of Environmental Protection and 2 to Barnstable Superior Court by Tobias Welo et al., at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002.
1. Construction of wave break and plant (DEP SE3-5976 and Barnstable Superior Court docket 2272CV00354).
  2. Pier project - Barnstable Superior Court docket 2272CV00319).

- **CHAIR:** Next on the agenda is an Executive Session to discuss litigation strategy with respect to the following three pending appeals if the Chair determines that an open session could be detrimental to the Commission's litigation position: 1 to the Department of Environmental Protection and 2 to Barnstable Superior Court by Tobias Welo et al. at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002.
  - 1.** Construction of wave break and plant (DEP SE3-5976 and Barnstable Superior Court docket 2272CV00354)
  - 2.** Pier project – Barnstable Superior Court docket 2272CV00319.
- **DECLARATION OF THE CHAIR:** I declare that the discussion of litigation strategy in open session with respect to the pending appeal by Tobias Welo et al. at 25 and 35 Cove Lane, Osterville to 1) construction of wave break and plant under Massachusetts DEP SE3-597 and Barnstable Superior Court docket 2272CV00354 and 2) Pier project under Barnstable Superior Court docket 2272CV00319, may have a detrimental effect on the litigating position of the Commission and I, therefore, ask for a motion to go into executive session.
- Following the Executive Session, the Commission will reconvene 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)(3) to discuss litigation strategy with respect to the pending appeal by Tobias Welo et al. to MassDEP and Barnstable Superior Court regarding 25 and 35 Cove Lane, Osterville, based on the Chair's declaration that an open meeting may have a detrimental effect on the litigating position of the Commission and will reconvene in Open Session following the conclusion of the Executive Session.
- **CHAIR:** I second the motion.
- **ROLL CALL VOTE:**  
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay -
- **TIME: 6:36 p.m.**

**The Commission adjourned Executive Session at 8:02 p.m. and returned to public session at 8:07 p.m. after a five minute break.**

## **II. REQUESTS FOR DETERMINATION**

- A. Scott Kalmbach & Tjasa Owen.** Proposed 15 x 5' addition to northwest of house at 81 Keveney Lane, Barnstable as shown on Assessor's Map 351 Parcel 012. **DA-22042**

The applicant was represented by Brendan Lowney of Lewis and Weldon.

Issues discussed:

- A question was raised if mitigation is needed.
- The guidelines do not require a NOI to be filed for this project. A Request for Determination does not require mitigation.
- The Commission could require it to come in as a NOI.
- It is a small project.
- The project was not staked for the site review.
- The slope of the land away from the house is not steep. There should be no adverse impact of the project.
- There are two or three pipes coming out of the top of the bank that may be draining water. It should be looked at.
- It may be a pre-existing condition. The owner just bought the property eight months ago.

There was no public comment.

A motion was made to approve the project as a negative determination.  
Seconded and voted unanimously by roll call.  
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay -

**B. James White & Patricia O’Brien.** To install stone riser steps at 50 Fox Island Road, Marstons Mills as shown on Assessor’s Map 096 Parcel 001. **DA-22043**

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

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as a negative determination.  
Seconded and voted unanimously by roll call.  
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay -

**C. David J. & Katherine G. McCabe.** To permit a shed and manage invasive species at 64 and 70 Short Beach Road, Centerville as shown on Assessor’s Map 206 Parcels 037 and 038. **DA-22044**

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

A revised plan dated 12/6/2022 was submitted.

Issues discussed:

- A lot of bittersweet is being removed and replaced with wild grasses. A question was raised if the grasses are going to be mowed.
- The management of the invasive species has been withdrawn from this project. This is only on for the shed tonight.

There was no public comment.

A motion was made to approve the project with the revised plan dated 12/6/2022 as a negative determination.  
Seconded and voted unanimously by roll call.  
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay -

### **III. NOTICES OF INTENT**

**A. Judith G. Allen.** Proposed maintenance/replacement of existing stairs and to modify and expand the existing pier at 322 Wheeler Road, Marstons Mills as shown on Assessor’s Map 082 Parcel 021. **SE3-6048**

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

Issues discussed:

- Address should be 332 Wheeler Road. There is an error on the address on the agenda.

- A question was raised if boat specs should be submitted for this project.
- There is a limit on the size of the motor that can be used on this pond. Boat specs are not needed.

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, Sampou  
 Nay -

**B. Christian Camp Meeting Association.** Proposed dock and stairway reconstruction at 160 Lake Elizabeth Drive, Centerville as shown on Assessor’s Map 226 Parcel 137. **SE3-6050**

A continuance was requested to December 20, 2022.

A motion was made to approve the continuance without testimony to December 20, 2022.  
 Seconded and voted unanimously by roll call.  
 Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
 Nay -

**C. Thomas N. Hynes Tr. Of Thomas & Joanne Hynes Trst Agmt.** To demolish a portion of existing dwelling located at 22 Great Bay Road, and to construct a pool and patios with all associated appurtenances including grading onto 324 Bridge Street, Osterville as shown on Assessor’s Map 093 Parcels 017 and 018. **SE3-6049**

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

Issues discussed:

- A new innovative Nitro septic system has been installed.
- The mitigation being offered seems to make this a positive impact from an environmental point of view.
- The mitigation is all woody vegetation.
- Vertical complexity in the mitigation was discussed. They could put a cedar tree in.
- Mr. Hynes was thanked for putting in the AI system.
- The mitigation is 3:1 because they are not adding anything to the 50’ buffer. It is a reduction in the 50’ buffer.
- There was discussion about the location of the pool and if it could be moved completely out of the 50’ buffer.
- There are required setbacks between the pool and septic.
- There is no other location for the pool considering the location of the septic system.
- A small grove of cedar trees would add vertical complexity.
- The salt marsh should have been flagged and labeled on the plan.
- There an existing hedge in the mitigation. Some extra plants could be put along the other side.
- The pool fence may be shared with the neighbors rather than having two fences next to each other.
- It will also need to be approved by the Building Department.
- A revised plan should be submitted showing the fence ending at the property line.
- A condition could be added that the neighbor submit written approval before the OOC is released.
- A 6” gap is needed under the fence.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the revised mitigation planting area with some height complexity including three trees and neighbors approval for the fence.

Seconded and voted unanimously by roll call.

Aye –Abodeely, Gillmore, Hearn, Lee, Morin, Sampou REVIEW THIS VOTE

Nay – Foster

**IV. CONTINUANCES**

**A. Helen Hughes.** To construct and maintain fixed pier, ramp and floats at 94 Long Beach Road, Centerville as shown on Assessor’s Map 206 Parcel 007. **SE3-6028 Continued from 11/08/22.**

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

Issues discussed:

- A question was raised if a jet ski is being proposed at this location.
- J2 and J4 and L variances will be needed.
- The boat is a 26’ Regulator.
- The question of personal watercraft needs to be answered. A special condition that no other watercraft are to be at the dock other than the Regulator without permission of the Commission.

There was no public comment.

A motion was made to approve the project with the revised plan dated 11/9 including the three variances under Chapter 703-4, J2, J4 and L, the pier is subject to the 12 inch rule. Approval is for the 26’ Regulator only, no other personal watercraft will be kept at this pier.

Seconded and voted unanimously by roll call.

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

Nay -

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

<b>A. Joseph &amp; Devonia Keller</b>	<b>SE3-5803</b>	(COC, ez*)	Dock / Pier / Float
206 Starboard Lane, Osterville		Coastal Bank / Salt Marsh / Bumps River	
<b>B. Town of Barnstable MEA</b>	<b>SE3-4712</b>	(COC, ez)	Sandy Neck Essential
Off-road Access 425 Sandy Neck Road, West Barnstable		Coastal Dune / Barrier Beach	
<b>C. Town of Barnstable MEA</b>	<b>SE3-4713</b>	(COC, ez)	Sandy Neck Essential
Off-road Access 425 Sandy Neck Road, West Barnstable		Coastal Dune / Barrier Beach	
<b>D. Cape Beach House, LLC</b>	<b>SE3-5468</b>	(COC, ez)	Perched Beach, CES
27 Marchant Ave, Hyannis Port		Coastal Beach, Coastal Bank	

A motion was made to approve A. – D.

Seconded and voted unanimously by roll call.

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

Nay –

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 9:10 p.m.