



# Town of Barnstable Conservation Commission

230 South Street  
Hyannis Massachusetts 02601

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: December 13, 2022 @ 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

The Conservation Commission's Public Hearing will be held by remote participation methods.

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/87343618547>

Meeting ID: 873 4361 8547

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, 230 SOUTH STREET, HYANNIS, 02601**

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, Clerk George Gillmore, Commissioners Abodeely, Hearn, and Morin. Commissioner Sampou arrived to the meeting at 4:42 p.m.

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

## 3:00 PM AGENDA

### I. OLD AND NEW BUSINESS

#### A. Annual Sandy Neck Report

Nina Coleman presented the report to the Commissioners.

- A question was raised about the increase of fees and wetlands restoration.
- Fees go up every other year. Residents normally go up \$5.00, non-residents \$10.00
- Fees are going up to address the upcoming projects.
- Phragmites are under control and requires on-going maintenance every year.
- Americorps helps out with the maintenance.
- A question was raised about Habitat Conservation Plan and pairs. Habitat Conservation Plan is a permit through the government. You can request a take. Deterring plovers is part of the program. This pushes the nesting activities east so part of the ORV beach can remain open.
- Revenue surplus goes into an account for beach sand and other expenses.
- The cottage lease fees were discussed. There are 25 cottages on public land. They are renting the land and pay a lease amount in addition to the taxes. The money goes to the enterprise account to pay for services provided to cottage owners. Administrative costs, escorts, etc..
- A question was raised about the amount of violations written. Usage of the beach has increased significantly. Most citations written were for people going on the beach without permits, and unleashed dogs. There is a police liaison to help.

## **II. EXTENSION REQUESTS**

- A. Yasmine Realty Limited SE3-5650                      Maintenance dredging                      3 years (1<sup>st</sup> request)  
253 Seapuit River Road, Osterville                      maintain existing ramp  
and floats

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

There were no questions from Commissioners.

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

- B. Magnolia Avenue Realty Trust SE3-5118                      Elevate SFD, replace                      2 year (3<sup>rd</sup> request)  
38 Magnolia Ave., W. Hyannisport                      foundation, additions, replace  
patio, landscape

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

Issues discussed:

- The amount of time the extension is needed was discussed.
- There is a minor amount of work to be done.
- It was recommended to grant a three year extension.

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

## **III. REVISED PLANS**

- A. Janet Holian SE3-5858                      Addition, driveway and                      To permit a deck and 3 season  
250 Windswept Way, Osterville                      garage                      room instead of the garage

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

Issues discussed:

- The steps were included in the proposed mitigation. A small portion is in the 0-50’ buffer. Mitigation could be refigured if necessary.
- They are 20 sq. ft. over in mitigation.
- The plan should be revised showing the changes.

A motion was made to approve the revised plan subject to receipt of a revised plan with an arrow showing the correct mitigation area.

Seconded and voted unanimously by roll call.

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

Nay -

<b>B.</b>	Slow Marsh One Nom Trust 1462 Main St., Cotuit SE3-5638	Demolish SFD/Construct new SFD	To construct detached garage
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The applicant was represented by John O’Dea P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- The property line looks like it has been changed.
- The shed is on two properties.
- A question was raised, with the increase in property size is there room to add mitigation instead of the in lieu fee.
- There is no area to add mitigation.
- The date of the revised plan is 11/15/2021. It should be 11/15/2022.
- Everything is complete on the project except the garage.
- This project has a long history which pre-dates Commissioner Hearn’s involvement with the Commission. He will abstain from the vote.
- The owner has done a great deal of work to save the beech tree.

A motion was made to approve the revised plan subject to receipt of a revised plan showing the correct revision date.

Seconded and voted unanimously by roll call.

Aye –Abodeely, Foster, Gillmore, Lee, Morin

Nay –

Abstain - Hearn

<b>C.</b>	Robin Swartz SE3-5871 47 Richard’s Lane, Centerville	Raza and rebuild SFD with appurtenances	Updated proposed house a and revised grading
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The applicant was represented by John O’Dea, P.E. of Sullivan Engineering.

There were no questions from Commissioners.

A motion was made to approve the revised plan as submitted.

Seconded and voted unanimously by roll call.

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

Nay -

<b>D.</b>	AAR Legacy SE3-5825 671 Old Post Road, Cotuit	Dwelling restoration, new foundation, porch, 2 additions,	Tree removal
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pool, patio, shed

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

Issues discussed:

- Staff is in approval of the plan.
- The proposed outdoor shower should be labeled as a rinse station.
- A question was raised about the height of the trees being removed.
- The replacement trees are 7-8’.
- A question was raised if pitch pine should be added to an area that already seems to have a problem with bugs.
- They could switch to a different kind of pine tree in consultation with staff.

A motion was made to approve the revised plan subject to receipt of a revised plan labeling the rinse station and review with staff in regards to the type of pine trees.

Seconded and voted unanimously by roll call.

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

Nay -

#### **IV. ENFORCEMENT ORDERS**

- A. Graham Robert & Lisa C. Walters - 38 Washington Avenue, Osterville – Map 162 Parcel 002. Alteration of the buffer to a wetland resource area - Crystal Lake and Bordering Vegetated Wetland - by maintaining an unpermitted beach. Tabled from November 1, 2022.

##### Exhibits

- A ARC Reader Image of 38 Washington Ave., Osterville
- B Plan of Record for SE3-6001
- C Before and After Aerial Photos
- D Site Photos from 2008 and Current

##### Exhibits Presented by Attorney Schulz

- A1 1968 Aerial Photograph (previously submitted by Sullivan Engineering);
- A2 Affidavit of Michael P. Lally; and
- A3 Affidavit of Edward M. Crosby.

Attorney Michael Schulz represented the Walters.

Issues discussed:

- Main point of discussion centered on whether there was a pre-existing beach present on site that pre-dated the wetlands protection act.
- Historic aerial photos did not support a long-standing beach presence on site.
- Assessor’s photos from 2008 do not show a beach present.
- Homeowner and their representative claim the beach was present but no nourishment of the sand has occurred.
- Attorney Schulz would like to have more time to possibly produce a historic photo showing the beach.
- This hearing was tabled to January 10, 2023.

- B. Patricia J. McCarthy – 70 Eel River Road, Osterville – Map 116 Parcel 092. Failure to comply with an Order of Conditions (SE3-5199).

Commissioner Sampou arrived at the meeting at 4:42 p.m.

##### Exhibits

- A ARC Reader Image of Eel River Rd., Osterville

B Section of Site Plan and Special Conditions #16

John O’Dea, Sullivan Engineering represented Ms McCarthy

Issues discussed:

- Work was performed under an OOC for SE3-5199. Part of the mitigation for the site was invasives control and management.
- OOC required an on-site meeting with Conservation Agent before invasive work was done, however no meeting took place. This enforcement order allows the applicant to move toward issuance of a Certificate of Compliance as it requires a document be produced that details the invasives management completed and the means by which it was done and it sets up the needed information to provide for possible invasives treatment as an ongoing condition of the COC.

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

Seconded.

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

Nay – none

- C. Paul B. Tivnan – 40 Three Ponds Dr., Centerville – Map 193 Parcel 184. Alteration of the buffer to a wetland resource area - unnamed pond and Bordering Vegetated Wetland (BVW) - by cutting vegetation and unpermitted installation of approx. 8 sq. ft of patio within 0'-50' buffer; and unpermitted installation of a patio, firepit and extension of steps in the 50'-100' buffer.

Exhibits

A ARC Reader Image of 40 Three Ponds Dr., Centerville

B Before and After Site Photos

Mr. Tivnan represented himself.

Issues discussed:

- Mr. Tivnan just purchased the property within the past year. He was not aware of any previous wetland violations committed and restored by the previous owner.
- The vegetation in the 50’ buffer that was trimmed should be left alone to regrow naturally. There is a small (8sq. ft.) portion of the unpermitted patio that intrudes in the 50’ buffer. This area should be removed and an RDA filed to permit the patio, fire pit and stair extension. If the 8 ft. section cannot be removed there will have to be additional plantings in the 50’ to mitigate. Subject to working with and approval of Conservation Agent.

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

Seconded.

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

Nay – none

- D. David J & Kathleen S. DeLuca – 44 Manor Way, Osterville – Map 116 Parcel 126. Alteration of a wetland resource area and buffer - vegetated (scrub/shrub)wetland - by cutting vegetation and placing fill.

Exhibits

A ARC Reader Image of 90 Harbor Point Rd., Barnstable

B Before and After Site Photos

C Current Site Photos

The DeLuca’s represented themselves.

Issues discussed:

- The wetland violation that is subject of this enforcement order was committed by the previous homeowner sometime between 2014 and 2015. The DeLuca’s did not commit this violation.
- The DeLuca’s just purchased this property in October 2021.

- A portion of the mapped wetland and buffer vegetation was cut by the previous homeowner and fill placed in 2015.
- The impacted area will need to be scraped of all lawn and underlying loam. A restoration planting plan will be submitted to the Conservation Agent and, once approved, followed to restore wetland buffer.

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

Seconded.

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

Nay – none

- E. Jeffery D. Stavitsky & Pamela E. Scheel – 661 Route 149, Marstons Mills – Map 101 Parcel 001. Alteration of a wetland resource area - Hamblin Pond - by placing unpermitted fill (sand) in and on the pond shore.

Exhibits

- A ARC Reader Image of 90 Harbor Point Rd., Barnstable
- B Before and After Site Photos
- C Current Site Photos

Pamela Scheel represented herself.

Issues discussed:

- Approximately 4-5 cubic yards of sand was dumped on the pond shore without permit. The pond shore is within Priority Habitat of the Massachusetts Natural Heritage and Endangered Species Program (NHESP).
- NHESP review of the incident agreed with the Conservation Agents opinion to have the sand removed by hand to prevent a taking of endangered plant species within the impacted area.
- The homeowner had their agent remove the sand to original grade and appearance and the removal was completed by December 14, 2022.

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

Seconded.

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

Nay – none

**V. NON-CRIMINAL TICKETS**

- A. Pamela E. Scheel Alteration of a wetland resource area – Hamblin Pond (pond shore)- by \$200.00  
661 Route 149 depositing sand without a permit.  
Marstons Mills

- Noted

**VI. CERTIFICATES OF COMPLIANCE –**

(ez = no deviations, staff recommends approval)

(\* = on-going conditions)

- A. **Cape Beach House, LLC.** SE3-5573 (COC, ez) Retment Extension, CES  
27 Marchant Ave., Hyannisport Coastal Bank / Coastal Beach / Coastal Dune
- B. **Mark Klamann** SE3-4989 (COC,ez) Raze & Rebuild Garage / Add  
2<sup>nd</sup> Story Deck / Patio Reduction 25 Cross Way, Hyannisport Coastal Bank / Salt Marsh
- C. **Michael & Elizabeth Fish Revocable Trust** SE3-5855 (COC, ez) Pool, Patio,  
Pool Cabana, & Firepit 434 Sea View Ave, Osterville Wooded Swamp / Shub Swamp

A motion was made to approve A. – C.

Seconded and voted unanimously by roll call.

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

Nay -

#### **4:30 PM AGENDA**

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**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 4:30 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.

#### **VII. REQUESTS FOR DETERMINATION**

- A. **Kathleen M. Buckley.** Proposed driveway entrance to 235 Smoke Valley Road from 0 Smoke Valley Road, Marstons Mills as shown on Assessor's Map 096 Parcel 004-006. **DA-22045**

The applicant was represented by John O'Dea, P.E. from 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 -

- B. **Robert Croy.** Enclose existing porch, adding 14' x 6' frost wall at 117 Lake Elizabeth Drive, Centerville as shown on Assessor's Map 226 Parcel 053. **DA-22046**

The applicant was represented by Bill O'Brien of Thomas DeMayo Builders.

- 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 -

#### **VIII. NOTICES OF INTENT**

- A. **Town of Barnstable – DPW.** Phosphorus inactivation using Alum applied at a not to exceed dosage of 13.5 G/M2 to depths greater than 8 meters in Shubael Pond, Marstons Mills. **Continuance requested to 1/10/2023.**

A continuance was requested to January 10, 2023.

A motion was made to approve the continuance request to January 10, 2023 without testimony.

Seconded and voted unanimously by roll call.

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

- B. Town of Barnstable – DPW.** Proposed construction of a new 0.72 bicycle and pedestrian shared use path on the west side of Bearses Way from 450 feet north of Falmouth Road (Route 28) to Pitcher’s Way. **BCC-0200**

The applicant was represented by Paul Graves, Town of Barnstable DPW, Dan Cannata and Steve Rhoads from VHB.

Issues discussed:

- There was discussion about vernal pools in the area. They are over 1,000 feet away from where the work is being done. They are not an issue.
- The construction schedule/timeline was discussed. It should begin August 2023 and be completed 2024 winter to 2025 spring.

There was no public comment.

A motion was made to approve the project subject to the storm water report review by the Chair. Seconded and voted unanimously by roll call.

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

## **IX. MINUTES**

- A.** November 1, 2022  
**B.** November 22, 2022

A motion was made to accept the minutes as written. 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 5:41 p.m.