



Town of Barnstable Conservation Commission

230 South Street
Hyannis Massachusetts 02601

Office: 508-862-4093E-mail: conservation @ town.barnstable.ma.us

MINUTES – CONSERVATION COMMISSION HEARING

DATE: January 10, 2023 @ 3:00 PM

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Meeting ID: 880 7948 3438

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, 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, 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 at 3:35 p.m.

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

Chair made two announcements:

There will no longer be a 4:30 p.m. session on the afternoon Conservation Commission meetings. The meetings will begin at 3:00 p.m. and continue until all items are completed.

A new procedure requiring Form WC for continuances has been put into place.

I. 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 December 13, 2022.
 - Tabled to February 7, 2023 because the homeowners representative was not available.

II. WARNING LETTERS

- A. Brandon Perry – 105 Sterling Rd., Hyannis – Map 268 Parcel 164. Unpermitted tree cutting in the 50’-100’ buffer to a wetland resource area – Bordering Vegetated Wetland
 - Noted

III. CERTIFICATES OF COMPLIANCE –

(ez = no deviations, staff recommends approval)

(* = on-going conditions)

- A. **Scott & Margaret Clay** **SE3-5847** (COC, ez) Pool / Patio / Mitigation Planting
435 Bridge Street, Osterville Salt Marsh / Land Subject to Coastal Storm Flowage

- B. **Steven Cohen** **SE3-5850** (COC, ez*) Boardwalk, Pier, Ramp and Float
209 Bay Lane, Osterville Marsh / Land Subject to Coastal Storm Flow / Coastal & Barrier Beach

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

Items were taken out of order - TOB DPW Shubael Pond, Marstons Mills Continuance was taken first.

IV. REQUESTS FOR DETERMINATION

- A. **Thomas J. Shields.** To permit a view corridor at 158 Great Bay Road, Osterville as shown on Assessor’s Map 072 Parcel 032 001. **DA-23005**

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

Issues discussed:

- It is very important to get the undulating feature in place.
- At the site visit it was observed that some topping had been done.

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 -

V. NOTICES OF INTENT

- A. **Town of Barnstable – DPW.** The existing wastewater pump station at 720 Main Street will be removed and a new station will be constructed at 725 Main Street as shown on Assessor’s Map 308 Parcels 003 and 143.

The applicant was represented by Griffin Beaudoin, Town Engineer, Kate Roosa, Ziad Kary, and Francesca Barilla of Environmental Partners.

Issues discussed:

- The DEP number has not been issued yet. A continuance will be needed.
- The location of the project relative to the 50 and 100' buffers was reviewed.
- A question was raised if they could move the pump station completely out of the 50' buffer area.
- They will try to move the retaining wall a few feet to get it off the 50' buffer line.
- The location for the erosion control should be adjusted.
- The sequence of work was reviewed. The wall will be the last to be constructed.
- The work limit line needs to be walked after any heavy rain events to check for erosion control issues.
- A construction protocol needs to be submitted and reviewed by staff.
- The drainage report was submitted and has been approved by the chair.

There was no public comment.

A motion was made to approve the project subject submittal of a construction protocol by the contractor, adjust the location of the wall to the best of their ability, walk the work limit line after heavy rain events, and continue to January 17, 2023 for the sole purpose of issuance of the SE3# by DEP.

Seconded and voted unanimously by roll call.

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

Nay -

B. Jonathan Jacobson and Donna Mathias. To repair or replace existing stairs and to construct and maintain a walkway and seasonal pier at 340 Hollidge Hill Lane, Marstons Mills as shown on Assessor's Map 181 Parcel 010. **SE3-6060**

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

Issues discussed:

- The lights along the stairs need to be changed. They are too high.
- There is a canoe stored on the bank that should not be there.
- There was discussion about the lights on the stairs. There are no guidelines or regulations regarding lights on the stairs.
- The homeowner could be asked to lower the lights but it is not required.

Public Comment

Burton Rhue - abutter at 365 Hollidge Hill Lane. He also owns 370 Hollidge Hill Lane.

It appears stairs have been added to the plan. The reason for the stairs is public access along the shoreline is required. He is concerned about how close the stairs are to his property line. The owner and neighbor will work out the location of the stairs. If a revision is made to this approved plan it will be submitted by the representative.

Chapter 703 would have the stairs 73 ft. away from the lot line. These are shown 23 ft. away from the lot line. He is not sure the stairs are necessary.

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 -

- C. **Shawn D. Martin, Trustee.** To convert post supported pier to pile supported pier with no change in footprint at 310 North Bay Road, Osterville as shown on Assessor's Map 072 Parcel 005. **SE3-6058**

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

Letter from DMF dated January 6, 2023 was acknowledged and reviewed.
Shellfish report dated January 6, 2023 was acknowledged and reviewed.

Other items submitted to the Commissioners and file prior to the hearing:

Copy of DMF letter dated September 14, 2009
Copy of the court decision from SE3-5312 Ryan
Copy of DMF letter and SOC for SE3-5984
Email from A.M. Wilson dated January 10, 2023
Two photographs taken by Commissioner Morin

Issues discussed:

- Annual jetting in of the piles relative to putting in a seasonal dock was discussed.
- The turbidity of the area was discussed, seasonal vs. permanent.
- The long term impacts of seasonal vs. permanent were discussed.
- The regulations (State and Local) were reviewed relative to protection of shellfish habitat.
- The letter dated 12/04/2009 from Paul Diodati, Director DMF relative to exotic species was discussed. A question was raised if anything in the science changed since his letter in 2009.
- Natural Resources letter from Liz Lewis was reviewed in depth.
- Materials submitted by Arlene Wilson were reviewed relative to warm and cold water habitat.
- The Martin pier borders a shellfish grant to the south.
- The Ryan pier, 3 houses to the north was requested to be converted from seasonal to permanent three years ago. The denial was upheld by Judge Rufo.
- The sediment at the Ryan dock was investigated by Commissioner Sampou and findings were presented.
- There has been an increase in exotic species in the last 15 years.
- There was discussion about the amount of damage done putting piles in and out seasonally vs. one time for a permanent pier.
- The use of CCA treated piles was discussed relative to growth of exotic/invasive species.
- The dock and pier Chapter 703-5 (b) regulation was read and reviewed relative to using CCA treated materials.
- An increase in artificial surfaces will promote exotic/invasive species.
- A permanent dock is promoting invasive species proliferation.
- Access to fishing and shell fishing is affected by a permanent vs. seasonal pier.
- The Shellfish Committee has not submitted an opinion on the project.
- This area is rated a 10 for shellfish habitat.
- Two photos were submitted by Commissioner Morin showing the location of this pier relative to surrounding piers, and shellfish grants in the area.
- Chapter 703-1(d) wording relative to turbidity was reviewed.
- There are two permanent piers on either side of this pier.
- This is a non-motorized dock and will remain a non-motorized dock.
- There is specific language in the regulations regarding the Commissions preference to seasonal docks.
- The Commission has the right to review shellfish habitat. The amount of shellfish in an area is relevant to the condition of the habitat.
- There was discussion on weather seasonal or permanent piers are more harmful to the habitat.

Public Comment.

Amy Croteau – Town of Barnstable Shellfish Constable – Agrees seasonal piers are preferred to permanent piers. Does not feel a permanent pier is necessary in this location and feels it will set a precedent. Amy will provide the specific location of the grant.

Chris Gargiulo – Cotuit Oyster Company 26 Little River Road - Has the shellfish grant in the area. The area is used commercially and recreationally year round. It is in the highest rating of the shellfish habitat. He thought a permanent pier would not be allowed with this kind of shellfish rating. He is concerned it will set a precedent. The exotic/invasive species that grow on the pilings have been seen by him personally. He feels this will open the door for many new filings. Chris was asked if he noticed an increase in the amount of fouling on his equipment. The reason they converted to floating equipment was because of the amount of fouling organisms.

Continued discussion:

- Arlene Wilson addressed the Commission relative to issues discussed earlier in the meeting.
 - The use of artificial materials
 - The rapid assessment review sites
 - The location of the shellfish grant
 - The use of CCA on pilings
 - Harvesting
 - Impacts of jetting
 - Turbidity
- A question was raised as to the depth needed. A small sailboat is docked at the pier and needs a 2' depth.
- CCA content was discussed. CCA is not a natural material.
- Turbidity time scale was discussed.
- Pier pilings are artificial they are not a natural feature of estuaries. Invasive species colonize on disturbed habitats.
- Copper is very toxic and has incredible effects on salmon migration. The impact of low levels of copper is not known.
- There was further discussion of the effects of turbidity by installing seasonal vs. permanent piers in shellfish populations.
- The Ryan pier is visible from this pier.
- The Ryan pier was denied and the decision upheld.
- There is concern about precedent being set.
- A pier is a barrier to shell fisherman.
- Amy Croteau addressed the Commission again. A motorized vessel has been on this dock for years. It is important to note this area is still good habitat for the recruitment of shellfish and should be preserved.
- Arlene addressed the Commission again regarding;
 - How long it takes for larvae setting in taking piles in and out
 - Alternatives to CCA treated piles
 - Shellfish are not protected under the Wetlands Act. It is the habitat that is protected
 - Consideration should be given to the number of piers that have been approved since the Ryan pier.

There may need to be a finding for this application.

A pool of the Commissioners was taken on the project.

Abodeely - yes State, no under Town ordinance

Foster - yes State, no under Town ordinance

Gilmore – yes for both

Lee – yes State, no Town ordinance

Hearn - yes State, no Town ordinance
Morin – yes for both
Sampou - yes State, no Town ordinance

Unanimous – yes for State and 5 to 2 in favor of no under the local ordinance.

A motion was made to close the hearing and take the matter under advisement for a proposed finding until January 17, 2023.

Seconded and voted by roll call.

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

Nay – Morin

Motion carries

VI. CONTINUANCES Agenda items taken out of order. This project was heard first.

- 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. **Continued from 12/13/22.**

The applicant was represented by Amber Unruh of Barnstable DPW and Ed Eichner of TMDL Solutions, LLC.

A support letter from Paul Kelley and Diane Bair dated December 2, 2022 was acknowledged.

Issues discussed:

- There will need to be a continuance as no DEP number has been issued yet.
- The water quality issue comes from septic systems and sediments that are in the pond.
- Management of phosphorus is important to address the water quality issues.
- The amount of alum needed was discussed.
- Monitoring will be done after the treatment.
- The amount of phosphorus in the sediment and it's source was discussed.
- A question was raised if they are working with Zenas Crocker and the Barnstable Clean Water Coalition on the project.
- The BCWC study was reviewed.
- The direction of groundwater flow in the area was discussed.
- Griffin Beaudoin Town Engineer advised this project is to address phosphorus not nitrogen.
- Cyanobacteria is caused by phosphate not nitrogen.
- There was discussion on I/A septic systems in the area. These systems address nitrogen not phosphorus.

COMMISSIONER Sampou joined the meeting at 3:35 p.m.

There was no public comment.

A continuance was requested to January 17th for the sole purpose of issuance of the DEP number.

A motion was made to approve the project as submitted including the special conditions suggested by Amber Unruh and continued to January 17th for the sole purpose of issuance of the DEP number.

Seconded and voted by roll call.

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

Nay –

Abstain - Sampou

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 6:09 p.m.