



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: May 23, 2023 @ 6:30 PM

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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 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, and Morin, and Sampou.

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

I. REQUESTS FOR DETERMINATION

- A. James H. Robert.** Proposed septic system upgrade and addition in area of existing deck at 2656 Route 6A, Barnstable as shown on Assessor's Map 258 Parcel 007. **DA-23036**

The applicant was represented by Daniel Ojala, P.E. from Down Cape Engineering and Consulting.

Issues discussed:

- The project is adding 112 sq. ft. of hardscape in the 50-100' buffer and there is a disturbed 50' buffer.
- A question was raised if it should be filed as a NOI and require mitigation.
- According to the project guidance document it fits the description for an RDA as it is more than 75 feet away.
- The proposed addition is going on an existing deck.
- Only a portion is in Conservation jurisdiction.
- If it were more than 400 sq. ft. then it would require a NOI.

- The moving of the leaching field is an improvement.
- The deck is existing and will be removed and replaced with the addition.
- The location of the new septic tanks was discussed.

There was no public comment.

A motion was made to approve the project as a negative determination.

Seconded and voted by roll call.

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

Nay - Sampou

B. Luis Xavier. Septic system upgrade at 70 Main Street, Centerville as shown on Assessor’s Map 208 Parcel 061. **DA-23037**

The applicant was represented by Peter McEntee from Engineering Works.

Issues discussed:

- This project was approved by the Board of Health.

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

II. NOTICES OF INTENT

A. Jay H. Goldfarb – Ward Irrevocable GST Trust of 2020. To remove invasive species and revegetate with native plants at 201 Bridge Street, Osterville as shown on Assessor’s Map 093 Parcel 036 004. **SE3-6089**

The applicant was represented by Chuck Rowland, P.E. of Sullivan Engineering and Consulting, and Nick Poppe from E.J. Jaxtimer Landscaping.

Issues discussed:

- The invasives will be removed by hand cutting as well as using small equipment.
- It will be done mostly by hand removal especially on the slope.
- Toward the lawn side there may be some small equipment used.
- Jaxtimer will provide bi-weekly maintenance on the re-vegetation area.
- This is a very narrow vegetated buffer.
- The lawn area is natural grasses.
- The Barberry is not an invasive. It is not part of this project. The project seems to be more of a beautification project rather than invasive removal.
- Any native plants that grow through will remain. Only the invasives will be removed.
- Annual reports would need to be submitted for three years.
- Temporary irrigation will be allowed.
- The contractor will be Nick Poppe of EJ Jaxtimer. There should be a notification to Conservation staff if there is a change in contractor.
- There should also be an ongoing condition to allow ongoing invasive removal without herbicide and to continue on through the COC.
- Temporary mulch should only be around the drip edges of the plants. Naturalization should be allowed to come in between the plants.

There was no public comment.

A motion was made to approve the project subject to annual report submitted for 3 years, written notification to staff if there is a change in landscaping contractor from E.J. Jaxtimer, and ongoing condition for invasive removal without using herbicides with written notification to staff and naturalization of the understory area.

Seconded and voted unanimously by roll call.

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

Nay

- B. Terry L. Simpson, Trustee, TL Simpson Living Trust.** To relocate existing dwelling on new flood compliant foundation, replace detached garage, and all associated appurtenances including driveway relocation and mitigation at 525 South Main Street, Centerville as shown on Assessor’s Map 206 Parcel 068. **SE3-6090**

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

Issues discussed:

- There is not any significant re-grading involved.
- Only ½’ or less of grading will be 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

- C. Oyster Harbors Club, Inc.** To demolish the existing beach cabana and build a new beach cabana, and to permit an existing patio at the tennis area at 170 Grand Island Drive, Osterville as shown on Assessor’s Map 053 Parcel 012001. **SE3-6091**

The applicant was represented by Chuck Rowland, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- There is a revised plan is dated May 23, 2023.
- Staff went to the site. There is a boardwalk that was not shown on the plan.
- The 50’ and 100’ buffer was added to the plan.
- There are a lot of boats all over the place.
- The kayak rack is on the edge of the dune and should be relocated.
- They will work on a resolution to the boat situation.
- There is a post in front of the kayak rack. They are support posts for the buoy system for the swimming area. They should be labeled on the plan.
- The hardscape walks to the cabana do not require mitigation.
- The new cabana will be closer to Tim’s Cove.
- The net hardscape in the resource area will increase 42’ sq. ft.
- The septic system was discussed.
- SE3 5349 was issued a COC.
- This is an after the fact filing.
- There should be demarcation for the meadow area.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the support posts for swimming buoy, and labeling of the play-ground.

Seconded and voted unanimously by roll call.

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

A revised motion was made to approve the project subject to receipt of a revised plan showing the support posts for swimming buoy, labeling of the play-ground, kayak rack and boat locations will be added to the plan and approved by staff.

Seconded and voted unanimously by roll call.

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

D. Brian and Anne Guarco. Proposed second story deck and associated stairs at 163 Estey Avenue, Hyannis as shown on Assessor’s Map 306 Parcel 197. **SE3-6092**

The applicant was represented by Kieran Healey of BSC Group.

Issues discussed:

- A revised plan dated 5/23/23 will be submitted.

There was no public comment.

A motion was made to approve the project with the revised plan dated 5/23/23.

Seconded and voted unanimously by roll call.

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

E. Steven A. Mojo. Reinstatement of an Aquatic Plant Management Program to control nuisance vegetation while maintaining indigenous species at 119 Shell Lane, 35 Hull Lane, 1179 Main Street, 127 Shell Lane, and 121 Shell Lane, Cotuit as shown on Assessor’s Map 019 Parcel’s 101-002, 162, 130-002, 158, and 159. **SE3-6096**

The applicant was represented by Carl Nielsen of TRC Companies.

Issues discussed:

- The questions from the DEP letter dated May 19, 2023 were reviewed.
- They are asking for a variance of mitigation for the path to access the pond.
- They will cut it back to a 4 ½ to 5’ path to reduce the impact.
- The goal is to maintain balance in the pond. It will control overgrowth. If a treatment is not needed every year, it will not be done.
- The work will be done in early June.
- There is access off of Shell Lane to the pond which is where the path will be created.
- Jean Mojo addressed the Commission. The access path is on the Mojo property.
- There is a stone pillar at the bottom of Shell Lane which is where the access is.
- Staff needs to have access if needed.
- There was discussion on the reason for the project.
- This project is to maintain open water and habitat.
- There are a lot of invasive dense weeds.
- It was suggested to let the pond do its natural thing and fill in.

- After treatment, the plants will take 3 months to die.
- The use of Diquat, if needed will be a faster kill to the plants.
- There will be year-end reports submitted.
- A shallow body of water will naturally evolve into a swamp.
- There is a potential for it to be a vernal pool.
- There are no fish in the pond.
- A question was raised what species are going to benefit from this project.
- Insects, plants, snails, frogs, amphibian eggs, would benefit.
- The vegetation provides an abundance of habitat for aquatic insects and amphibians.
- The addition of herbicides to change the look of it is not appropriate.
- There was discussion about the natural succession of ponds filling in.
- Slowing the pace of the pond evolving into a swamp is part of the allowance that is given by the Wetlands Protection Act for management of open water habitat because allowing it to fill in is a detriment to aquatic species.
- The owner wants to maintain it and keep it as an open water system.
- There are no fish because the pond dries up periodically.
- Access vegetation is not typical of vernal pools.
- There are 6 property owners that border the pond. All of them signed consent to have the project done.
- The plants are nuisance plants not invasive plants.
- The plants they are going after would choke out the other plants.
- They are excessive in this pond.
- There was discussion about the length of time of the permit in order to keep treating it.
- The Diquat can be taken out of the project if necessary.
- The permit could be amended at a later date if it is found to be necessary.
- The work is done by a contractor, not by this company. They will be monitoring the results and submitting the reports.
- The testing will be done by the contractor as well.
- If approved there should be something in writing that the area of the access will be allowed to grow back in after the order expires or is not renewed.
- They will monitor the testing to recommend whether the dose needs to be adjusted.
- If Diquat is needed, staff will be notified and make the decision on approval.
- Under the Wetlands Protection Act it is the responsibility of the Commission to approve the project if it can be conditioned to have deleterious negative impact on environmental concerns. It is not the Commission's decision on whether or not to let it fill in and become a swamp.

There was no public comment.

A motion was made to approve the project subject to reducing the access path to 4/1/2 ' (approximately 378 sq. ft.), the contractor will be The Pond and Lake Connection, the management consultant will be TRC, a written notification will be submitted to staff if there is a change in contractor or consultant. The sonar dosage should be kept at 20 ppb, a written notification will be submitted prior to any follow-up treatment after the initial treatment, annual reports will be submitted for three years prepared by TRC, and written directions will be submitted to staff to the access path. Diquat was removed from the application and they can come back for approval if it is needed.

Seconded and voted by roll call.

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

Nay - Sampou, Hearn

F. Christopher Sanford – Thomas W Sanford Jr., Irrevocable Trust. Proposed elevated deck expansion at 528 Craigville Beach Road, Centerville as shown on Assessor’s Map 246 Parcel 071. **SE3-6093**

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

Issues discussed:

- Demarcation should be put in for the mitigation.
- There was discussion on there being 752 sq. ft. of mitigation, but only 28 plants. The plants are spaced out. That would be 27 sq. ft. of space per plant. The plants will fill in.
- Staff supports the project.
- Natural vegetation will be allowed to grow in between the plants.
- The existing vegetation may need to have some hand clipping done so it does not over take the mitigation.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the demarcation.

Seconded and voted unanimously by roll call.

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

Nay

G. Assembly Required LLC. Proposed site improvements including a stairway, landing, and walkway reconfiguration, and an after-the-fact approval for a shed installation, deck expansion, and proposed mitigation plantings at 120 East Bay Road, Osterville as shown on Assessors Map 140 Parcel 163. **SE3-6094**

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

Issues discussed:

- There should be demarcation for the mitigation and put on a revised plan.
- The existing demarcation can be moved for the plan.
- A question was raised if the shed which is in the 0-50’ buffer could be moved.
- The only available spot is in the middle of the front yard.
- It could be moved 3’ or 4’.
- The shed should be moved outside the 50’ buffer.
- There is a septic tank that they don’t want to cover.
- A continuance could be requested to look into moving the shed.
- The guidelines state a shed between the 50’ and 100’ are allowed under an RDA with no mitigation.
- This is filed as an NOI and provides mitigation. To move it 3 feet out of the 50’ buffer an RDA could have been filed and there would be no required mitigation.
- Under an RDA there will be lawn in the area that the shed is moved from and no mitigation.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the demarcation.

Seconded and voted by roll call.

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

Nay - Hearn

H. George Torbay. Proposed in-ground pool, garage, landscaping, & on-site sewage disposal system replacement at 70 Ocean Avenue, Hyannisport as shown on Assessors Map 288 Parcels 182-004 & 182-005. **SE3-6095**

The applicant was represented by Mike Ball from Marsh Matters Environmental.

A revised plan was submitted today 5/23/23.

Issues discussed:

- The project represents an improvement over existing conditions.
- The pool could be moved south to get it out of the 50' buffer.
- There is not an undisturbed 50' buffer.
- Moving the pool south puts it in the front yard and closer to the gas line.
- Plantings could be put it so it is not visible from the road.
- Given existing conditions this is the best location for the pool.
- It will not have any impact on the costal bank. The bank is fully vegetated.
- Pools have consistently been turned down within the 0'-50' buffer.
- Pool mechanicals have been added to the plan.
- There is no draw down pit for the pool.
- Because it is fiberglass the pool will never be completely drained.
- If some water was taken out it will be trucked out.
- A draw down pit should be included.
- The pool is very close to Stewart's Creek which desperately needs protection.
- There is a lot of mitigation proposed but the pool needs to be moved out of the 50' buffer.
- There was extensive discussion about moving the pool out of the 50' buffer.
- Pete McEntee addressed the Commissioners.
- The owner wanted the continuity between the pool and the house.
- A 1,000 gallon leach pit can be put in.
- Consideration should be made that the state and coastal bank rise well above the flood elevation.
- There is an auto cover which meets the legal requirements for a pool and does not require a full locked perimeter fence.
- Owner George Torbay addressed the Commissioners.
- The house was built in 1960. His concern about moving the pool forward would not give any privacy.
- He could reduce the size of the patio by 1/3rd.
- A recommendation was made to move the pool 5 to 10 feet and put it some plantings for privacy.
- 439 sq. ft. of the pool is in the 0-50' buffer.

There was no public comment.

A continuance was requested to June 6, 2023.

A motion was made to approve the continuance request to June 6, 2023. A waiver form will be submitted.

Seconded and voted unanimously by roll call.

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

Nay

III. AMENDED ORDERS

- A. **Sydney Horton.** To amend Order of Conditions to permit and upgrade an existing boardwalk and do some vista pruning at 417 Scudder Avenue, Hyannis as shown on Assessor's Map 288 Parcel 222. **SE3-6057**

The applicant was represented by Gregory Drake from Outback Engineering.

Issues discussed:

- There were no questions from Commissioners.
- The amount of vista pruning is within the guidelines

Public comment:

Vicki Vezina - 421 Scudder Avenue - Abutter asked what the impact would be to their property. The flags go behind their garage. It is for standard vista pruning and there should be no impact to their property.

There is a shared driveway. Questioning what the flags behind her garage are. The flags are just showing her property line.

Paola Rossi – 411 Scudder Avenue - Abutter asked why she received the abutter letter. The work is not being done on her property. It is all on the other property.

Vicki Vezina asked if there will be an increase in traffic to the area. There should be no increase.

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

IV. OLD/NEW BUSINESS

- A. New England Mountain Bike Association (Cape Cod Branch) to formally request Commission permission for the continued installation and maintenance of a port-o-potty at the Farmersville Parking lot at West Barnstable Conservation Area.

Commissioner Foster recused herself.

A motion was made to allow NEMBA to place a port-o-potty in the parking lot and it is their responsibility to pay for and maintain it.

Seconded and voted unanimously by roll call.

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

Nay

V. MINUTES

- A. March 28, 2023

- B. May 2, 2023

A motion was made to approve the minutes as submitted.

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 9:42 p.m.