



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: July 18, 2023 @ 3:00 PM

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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.

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, Sampou and Tangney.

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

I. OLD & NEW BUSINESS

- A. Public and Commission workshop regarding the Shellfish Area ID Map and the 2022 Shellfish Rating Table. This workshop is for public comments and Commissioners discussion. The final vote for this matter will be scheduled for a later date. The map and rating table are available on the Conservation website and under meeting material.

Public Comment:

Arlene Wilson – A.M. Wilson & Associates

The list is missing North Bay Segment 27. Cotuit Bay Segment NR cannot be found on the map. The color coding on the map on website is different than the original. The map has changed since the last workshop to show the ID rating only.

They will be updated/corrected.

John O'Dea – Would like clarification over what the significance of these maps will be. Would like the initial comments that were made back in April reviewed before a vote. There has been a lot of discussion about the maps being a presumption and would like to talk about what would be needed to be submitted to overcome the presumption

in a specified area. The directions given to participants in the survey included ratings anything within 200', so along the intertidal it could be significant but out by a dock location there could be no shellfish. There should be consideration for modifications of existing docks. There was a pier at the tip of eel river had no habitat but the shellfish rating was a 9 or a 10. There are some flaws in how it is being done.

The initial comments from consultants will be reviewed before a vote is taken. The vote will probably be sometime in September.

Commissioner discussion:

- Discussion on how the maps will be used.
- What makes an area significant and can it be quantified it or is it someone's opinion.
- Consultant comments have been received and appreciated.
- The maps provide rebuttable presumption. Information is received from other sources as well;
- A survey of how other Towns address this issue was suggested.
- There are not a lot of Towns that need to set depth requirements because of a by-law.
- There are several towns that set an average shellfish density and regulate on that basis. There are towns that set maximum lengths on docks. The by-laws could be reviewed.
- Other towns require the applicant to do a study. Barnstable does site a minimum amount to be sampled.
- Most Towns look at the area around the dock rather than the entire shore front of the property.
- Having a map that states high shellfish and low shellfish is not common in other towns. The other towns use the studies from the representatives and MEA, and do not have rating maps.
- The other Towns do not have regulations that mention the shellfish rating maps.
- Some places are good and some places are not good. Maps give some general screening. Data requirements to get a good handle on the number are very difficult to acquire. The shoreline changes. It would take a lot of time and money. The maps allow a general first screening of the area which is rebuttable. More data is provided by the Consultants and MEA.
- The MEA staff is very experienced and the shellfish committee has a lot of input.
- Arlene Wilson was asked to supply what other Towns use to show shellfish density.
- Neighbors on the Cape should be a good resource for information on how they do it. Orleans, and Chatham would be good comparisons.
- Marion, Mattapoisett, and Ipswich could all be looked at as well.

II. REVISED PLANS

Project Type

Revisions

A.	299 Eel River Road Realty Trust SE3-6044 299 Eel River Road, Osterville	Construct SFD, Pool, Cabana	Increase size of pool cabana and add shed
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The applicant was represented by John O'Dea, P.E. from Sullivan Engineering and Consulting.

Issues discussed:

- The shed will be used for chairs, etc., not gas or hazardous materials.
- There was discussion on relocating the shed.
- They could add down spouts and put the shed on sonotubes so it is not dug into the ground.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the proposed shed on sonotubes with a drip edge for the roof runoff and a note on the plan there will be no fuel storage in the shed Seconded and voted by roll call.

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

III. CERTIFICATES OF COMPLIANCE

- | | | | | |
|------------------------------------|----------------------------------|------------------------------------|--|--|
| A. SE3-5800 | Timothy McCullough | (COC, ez) | Garage Addition | 3861 Main Street /
Wooded Swamp / BVW |
| Rt.6A, Barnstable | | | | |
| B. SE3-5584 | Diane L. Currier | (COC, ez) | Bungalow, Pool, Pool Patio, and Pool House | Coastal Beach & Coastal Bank |
| 1071 Old Post Road, Cotuit | | | | |
| C. SE3-5449 | Oyster Harbors Club, Inc. | (COC, ez*) | Demolish & Replace Tennis Cabana & | Coastal Beach & Coastal Bank |
| Resurface Tennis Courts | | 170 Grand Island Drive, Osterville | | |
| D. SE3-5711 | Oyster Harbors Club, Inc. | (COC, ez*) | Re-configure Patio / Add Roof Over Section | Coastal Bank |
| 170 Grand Island Drive, Osterville | | | | |

A motion was made to approve A. and B.
Seconded and voted by roll call.

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

A motion was made to approve C. and D. with ongoing conditions C. SE3-5449 to maintain the meadow mitigation area and SE3-5711 to maintain the split rail fence as demarcation.

Seconded and voted by roll call.

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

IV. ENFORCEMENT ORDERS

- A. William J. & Kathleen M. Fitzgerald - 285 Baxters Neck Rd., Marstons Mills - Map 075 Parcel 010.002). Alteration of the 50' buffer to a wetland resource area - Coastal Bank (Town) - by cutting/clearing vegetation, installing and maintaining lawn AND failure to comply with an on-going condition of the Certificate of Compliance - SE3-2973.

Exhibits

- A ARC Reader & Aerial Photo showing 285 Baxters Neck Rd., Marstons Mills
- B Aerial Site Photos
- C Certificate of Compliance On-going Conditions for SE3-2973

John O’Dea represented the Fitzgerald’s and Mr. Fitzgerald was present.

Issues discussed:

- The Fitzgerald’s were not responsible for the violations on the property. The previous owner twice removed the 50’ buffer vegetation and both times were made to restore by enforcement order. The third clearing was also done by the same previous homeowner, converted to lawn again, and then sold to the Fitzgerald’s.
- The Fitzgerald’s are anticipating an addition and were already putting together a planting plan for this project. The planting plan will be supplemented to restore the 50’ buffer vegetation.

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

Seconded.

Aye –Gillmore, Lee, Hearn, Tangney, Abodeely, Foster, Sampou
Nay – none

- B. Christopher L. Shaw & Timothy G. Johnson - 1504 Main St./Rte. 6A, West Barnstable – Map 197 Parcel 014. Alteration of the buffer to a wetland resource area - vegetated wetland - by cutting and clearing vegetation.

Exhibits

- A ARC Reader & Aerial Photo showing 1504 Main St./Rte. 6A, West Barnstable
- B Before and After Aerial Photos
- C Current Site Photos

Christopher Shaw and Timothy Johnson represented themselves.

Issues discussed:

- The portion of the buffer that was cleared consisted mostly of invasive plants (bittersweet, honeysuckle), wild grape, etc.
- Several trees were cut and will have to be replaced.
- Homeowners were trying to convert the invasive vegetation to a maintained pollinator meadow.
- They will be filing a restoration plan by middle September.

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

Seconded.

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

Nay – none

- C. Amy B. Koff & Karin R. Gilbert - 41 High View Circle, Marstons Mills - Map 030 Parcel 079). Alteration of a wetland resource area - Inland Bank - and its 50' buffer - by cutting/pruning vegetation for view shed without a permit.

Exhibits

A ARC Reader Photo showing 41 High View Circle, Marstons Mills

B Current Site Photos & Letter from Homeowners

There was no representative for this hearing.

Issues discussed:

- Homeowner sent letter agreeing to the conditions of the Enforcement Order without objection or testimony.

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

Seconded.

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

Nay – none

V. NOTICES OF INTENT

- A. **Charles M. & Janet M. Daley.** To repair or replace the existing permitted timber bulkhead at 280 North Bay Road, Osterville as shown on Assessor's Map 072 Parcel 007. **SE3-6108**

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

SE3-5060 has not been closed out.

This application is only for the bulkhead, not for the stairs. The note about the stairs and landing should be taken off the plan.

Issues discussed:

- The amount of sand in the photo from 2013 vs. the erosion shown today is significant.
- Natural Resources suggested four conditions that should be included in the OOC if approved.
- There was discussion on if the owner of Cotuit Oyster Company should not be included in the pre-construction meeting.
- Because of the closeness of Cotuit Oyster to the project they should be allowed to be present.
- The shoreline changes and amount of erosion through the years is significant. There is no known reason.
- At the site visit looking down from above it looks like there was erosion after the recent rain. It seems that there is some urgency in getting the project done.
- There is an area where water is coming down the bank. Two sections of the timber wall at the top may not be joined any longer. There may be a buffer that needs to be planted where the bench is.
- The preconstruction meeting will include the Conservation Agent, the project engineer, the contractor, shellfish biologist, and the owner of Cotuit Oyster Company.
- Work protocol shall be submitted four weeks prior to the meeting.
- A work limit line needs to be added to the revised plan.
- The materials shall not be stockpiled in the intertidal zone.

- Any shellfish will need to be removed and replanted.
- Work performed from the barge shall conform to tide rising and tide falling or as necessary to provide a minimum of 12 inches of clearance of the work barge above the substrate at all times.
- The special conditions were reviewed.
- The work limit line should be staked prior to the preconstruction meeting.
- There was discussion on the design of the wall and how it will help in preventing this from happening again.
- This filing is not to address the erosion it is to repair and replace what is existing.
- The erosion from behind the timber bulkhead is what is being addressed.
- To stop the erosion from the water would be a lot bigger project.
- Construction protocol may include changes and adjustments to the final design.
- The bulk head has been undermined. By repairing it the voids will be filled and will stop the erosion.
- The bulkhead is going deeper. It would include vinyl sheeting going 8 feet deep into the soil.
- There is a lot of erosion coming from the top of the lawn.
- The revised plan could include some plantings at the top of the bank to minimize the run-.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan removing the landing and incorporating the special conditions above about the pre-construction meeting, work limit line to be staked out, the material not to be stockpiled in the inter-tidal area, the work performed from the barge, and the shellfish removal if required.

Seconded and voted by roll call.

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

Nay -

B. Linda Zarifi and Ali Aziz-Sultan – The Linda Zarifi Revocable Trust of 2018. Proposed construction of a single-family house at 326 Vineyard Road, Cotuit as shown on Assessor’s Map 016 Parcel 028-002. **SE3-6110 Continuance requested to 08/01/23 WC Form received.**

A continuance was requested to 08/01/23 without testimony.

A motion was made to approve the continuance request to 08/01/23 without testimony.

Seconded and voted by roll call.

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

Nay -

C. Town of Barnstable – DPW. To deploy approximately 500 sq. ft. of Floating Treatment Wetlands in Long Pond for the purposes of removing phosphorus from the pond to reduce the occurrence of cyanobacteria blooms in Long Pond, Marstons Mills as shown on Assessor’s Map 029 Parcel 008. **SE3-6109**

The applicant was represented by Amber Unruh from Town of Barnstable DPW.

Issues discussed:

- There was discussion on permitting the project for three years or one year.
- This is a good pilot testing project.
- It should be permitted for three years.
- They are hoping to see some reduction, but do not expect to get the maximum reduction in phosphorus.
- The sources of the phosphorus were discussed as found in the sediments evaluated in the study.
- The process for the evaluation of the sediments was reviewed.
- The proposed location of the floating wetlands (2) was reviewed.
- They will provide beauty and habitat for insects.

- Other methods for reducing phosphorus were discussed. In Maryland they put hay bales into the pond. The bacteria that colonized them contained the phosphorus. The hay bales containing the phosphorus were then removed.
- The sediment is not a source of phosphorus. The phosphorus is from the leach fields coming in.
- They are trying to suck up the phosphorus as it is coming in.
- They do not know how much of an impact there will be. This is the reason for this study.
- Because they are starting small there will be an evaluation to determine how big the floating pond would have to be to be significant.
- It is a great project but we are trying to resolve the problem instead of eliminating the problem. We are not attacking the source of the problem.
- It should be approved with a condition that after the end of the second year they come back and report the results to the Commission.

Public comment:

David Abelman - President of Friends of Long Pond and property owner at the northern end of Long Pond. They are fully supportive of the project. He thanked Amber and the other members of the Town who helped put this together. They have done a lot of research for alternatives to help remove phosphorus. Hay Bales work best if there is water running through them. It would take a lot of bales to make a difference.

David will forward any materials he has to Darcy.

Richard Jorgensen - 35 Eastview Terrace, Marstons Mills - He is on the opposite end of the pond. There has been a lot of effort put into this project. It is important to get the data.

Continued discussion:

- Access will be the beach area at #90 Lake Shore Drive. Map 29 Parcel 9. A written statement from the Lake Association group allowing them to access from there will be sent to Conservation for the file.

A motion was made to approve the project subject to annual report at the end of pilot testing and come back to the Commission to report the results.

Seconded and voted by roll call.

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

Nay -

D. Gloria Gilbert. Proposed house renovations including new deck and landing at 190 Plum Street, West Barnstable as shown on Assessor’s Map 196 Parcel 022-002. **SE3-6111 \$19.38**

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

Issues discussed:

- A revised plan dated July 18th was submitted earlier in the day.
- There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted by roll call.

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

Nay -

VI. CONTINUANCES

- A. **Steven Klemenz** – Hyannisport Club, Inc. To increase base elevation of existing six (6) tennis courts, install underground drain infiltration area under tennis courts, install four (4) new pickleball courts in the existing gravel parking lot, install new Title V septic system, and install new parking lot at 2 Irving Avenue, Hyannisport as shown on Assessor’s Map 266 Parcel 031. **Continued from 7/11 Sole purpose DEP #**

The DEP number has not been issued.

A continuance was requested to July 25, 2023 for the sole purpose of issuance of the DEP number.

A motion was made to approve the continuance request to July 25, 2023 for the sole purpose of issuance of the DEP number.

Seconded and voted by roll call.

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

Nay -

- B. **Jeff Ingram** - Pinquickset Cove LLC. Construction of a new single family home including mitigation planting for work within the 100-foot buffer zone at 98 Pinquickset Cove Circle, Cotuit as shown on Assessor’s Map 005 Parcel 066. SE3-6105 **WC Form Received. Continued from 7/11**

The applicant was represented by Sean Reardon of Tetra Tech.

John Abodeely left the meeting.

Issues discussed:

- A revised plan dated June 20, 2023 was submitted.
- The revisions to the plan were reviewed.
- The entire building and the wall structure is now outside the 50 foot buffer.
- The path was revised.
- The representative was thanked for making the changes.
- All changes requested by the Commission were made.

There was no public comment.

A motion was made to approve the project subject to receipt of annual reports for three years.

Seconded and voted by roll call.

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

Nay –

Tangney was unable to vote on the project.

A motion was made to adjourn.

Seconded and voted by roll call.

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

Nay –

The time was 5:14 p.m.