



**Town of Barnstable  
Conservation Commission**  
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**MINUTES – CONSERVATION COMMISSION MEETING**

**DATE: OCTOBER 10, 2017 @ 3:00 PM**

**LOCATION: HEARING ROOM – 367 Main St., 2<sup>nd</sup> Floor, Hyannis, MA 02601**

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.

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, and Commissioners Peter Sampou (arrived at 3:30 p.m.) and Scott Blazis. Commissioners John E. Abodeely and Larry Morin were away.

Conservation Administrator, Darcy Karle, assisted along with Martin Wunderly, Conservation Agent.

**3:00 PM AGENDA**

**I OLD & NEW BUSINESS**

- A. Geological Curiosities of the West Barnstable Conservation Area – A report volunteered by Richard Heeley detailing particular geological interests from LIDAR imagery.

Mr. Heeley gave an overview of the West Barnstable Conservation area, using LIDAR imagery. He recommended that the Commission not create any new trails in West Barnstable Conservation Area to preserve "...[its] unique ancient geologic features."

- B. Joseph R. Jenkins Tr. – 195 Seapuit River Rd., Osterville – Report on vegetation health on coastal bank, and restoration status.

Exhibit – A Report from a certified arborist

Michael Moynihan and John O'Dea were present. The Commission suggested that the owner submit a Notice of Intent application if he would like to seek approval for the current vegetation management practices.

- C. Steven Gould - 24 Old Shore Rd., Cotuit – Revised enforcement restoration plan.

No one attended.

A motion was made to approve the restoration plan subject to the relocation of proposed eastern red cedar further from the road's edge.

Seconded and voted unanimously.

D. Letter of support for additional staff

Ms. Karle said that she will be requesting an additional staff member, another Conservation Assistant, during the FY19 budget process. She was, therefore, requesting a letter of support from the Commission.

A motion was made that the Chair submit a letter of support for the Administrator’s request for additional staff.

Seconded and voted unanimously.

E. Initial discussion on solar panels and their impact on trees in the 50-foot buffer zone.

[This matter was taken up at the end of the meeting]

Issues discussed:

1. No one should be installing panels on their roof in wetlands jurisdiction without first coming to Conservation.
2. The Commission thought they should be hesitant in allowing trees to be removed in the 50-foot buffer for solar panels. Such a project would require a notice of intent application (NOI) with replacement vegetation, e.g., low-growing trees, if possible.
3. If tree removal is proposed between 50 – 100 feet from a wetland, it should require a request for determination of applicability (RDA). The applicant should replace trees with low-growing trees.
4. The Commission stated that the applicant should submit an analysis from the solar contractor, showing a shading impact. This should be included in all applications.
5. Ms. Karle mentioned that she would contact the Building Department and request that all solar panel applications be sent to Conservation staff for review. Counter filing guidelines could be revised to add tree removal for solar panel installation.
6. The possibility of a solar power consultant to come in and discuss the application process and analysis with the Commission.

This matter was tabled for a continued discussion to October 17<sup>th</sup>.

**II REVISED PLANS**

**Project type:**

**Revision:**

A. Markowitz SE3-5331 628 Poponessett Rd., Cotuit	stairs, pier, ramp, float	extend platform
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No one attended the meeting. Therefore, the matter was temporarily tabled in case a representative arrived late.

[The matter was later tabled by the Chair to November 7<sup>th</sup>]

**III EXTENSION REQUESTS**

**Project type:**

**Time requested:**

A. Purdy SE3-5229 34 Tern Ln., Centerville	shed, seasonal dock, etc.	1 <sup>st</sup> Request: 3 years
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Mr. Purdy attended.

A motion was made to approve a three-year extension.

Seconded and voted unanimously.

B. Callas SE3-5233 270 Smoke Valley Rd., Marstons Mills	single-family dwelling	1 <sup>st</sup> Request; 3 years
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The applicant was represented by John C. O’Dea, P.E., of Sullivan Engineering.

A motion was made to approve a three-year extension.

Seconded and voted unanimously.

C. Three Bays Preservation/MA Audubon SE3-5053 dredging; beach nourishment 1<sup>st</sup> Request; 3 years  
0 Sampson's Island, Osterville & Cotuit

Barry Fogel attended, and was represented by John C. O'Dea, P.E.

Correspondence:

- Letter dated 10/6/17 with attachment (81 pages), from Margaret Stolfa of Gordon & Rees, Attorneys
- Commissioners were concerned with the lack of time given to review the 81-page packet
- The Commission allowed Ms. Stolfa to speak on why they are opposed to the project
- Current litigation is at the State level, not the Town.

Public comment: Margaret Stolfa, representing the Barnstable Citizens Group, and Warren Wheelwright, Jr., in opposition to the project.

A motion was made to approve the three-year extension, based on two original findings as stated in the Order of Conditions, as follows:

1) While its own source of sand has been sharply diminished by jetty and groin installation, the DNSI [Dead Neck and Sampson's Island] barrier beach continues to send what sand it can, westward. The result is a chronic narrowing to the point of breaching on the east and extending into the Cotuit cut on the west. Both tendencies hold significant adverse consequences, exacerbated by tidal currents for navigation, safety, water circulation and rare species productivity;

2) Incidents of prior beach nourishment, primarily from the use of sand to fortify the eroding front beach at Dead Neck and elsewhere on DNSI, have been shown to enhance rare species habitat.

The motion was seconded and voted unanimously.

Further discussion and questions/answers took place regarding other sources of nourishment.

A motion was made to approve the findings.

Seconded and voted: 4 votes = Aye; 1 vote = Nay. The motion carried for a three-year extension.

#### **IV ENFORCEMENT ORDERS**

A. **Thomas F. Ryan Jr. – 260 North Bay Rd., Osterville** – Penalty and restoration assessment for alteration of a coastal bank and resource area buffer.

Exhibits:

- A. Form A signature sheet for permit # SE3-4186
- B. Aerial images of wetland buffer zone and coastal bank 2007-2017
- C. Photos of trees submitted by the property owner.

Attorney Bernard Kilroy, John O'Dea, Michael Neath, and Mr. and Mrs. Ryan were present.

The Commission adopted the findings of the civil penalty.

A motion was made to approve the enforcement order as written.

Seconded and voted unanimously.

**B. David Gannon and Claudette Vickery – 133 Estey Ave., Hyannis -** Alteration of a resource area, 50 ft. buffer to Circo Pond, by building a paver patio and chicken coop.

Exhibit:

- A. Report from a certified arborist
- B. Minor activity form and plan for shed, 2002

No one attended.

The matter was tabled to November 7<sup>th</sup>.

**C. Mark Hennessy- 167 Breakwater Shores Dr., Hyannis –** Violation of an order of conditions: cutting of vegetation and clearing in wetland buffer zone to Circo Pond. Failure to handle roof runoff with drywell(s).

Exhibits:

- A. Photos and aerial image map
- B. Order of Conditions and plans for permit SE3-1761

No one attended.

A motion was made to approve the enforcement order, as written.

Seconded and voted unanimously.

## **V EXECUTIVE SESSION**

A. Pending litigation, Jill F. G. Mitchell vs. Barnstable Conservation Commission, Barnstable Superior Court Docket # 1672CV00146

The Chair declared that the discussion of litigation strategy in open session with respect to the case of “Jill F. G. Mitchell v. Barnstable Conservation Commission,” Docket #1672CV00146, may have a detrimental effect on the litigating position of the Town.

The Chair stated that, following the Executive Session, the Commission will re-convene in Open Session. He recognized the Clerk to make the motion.

The Clerk moved enter into Executive Session under G. L. c. 30A§21(a)(6) to discuss litigation strategy with respect to the case of “Jill F. G. Mitchell v. Barnstable Conservation Commission,” Docket #1672CV00146, based on the Chair’s declaration that an open meeting may have a detrimental effect on the litigating position of the Town.” He stated that the Commission would re-convene in Open Session following the conclusion of the Executive Decision.

The motion was seconded by the Chair, and voted by roll call:

Lee	- Aye
Foster	- Aye
Houle	- Aye
Sampou	- Aye
Blazis	- Aye

[The Commission left for Executive Session at 4:28 p.m.

The Commission returned to public session at 4:53 p.m.

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

#### **VI REQUESTS FOR DETERMINATION**

**C. Anthony & Hillary Von Schroeter.** Replace and re-shape pool and patio at 28 Windrush Ln., Osterville as shown on Assessor's Map 093 Parcel 069. **DA-17062**

The applicants were represented by John C. O'Dea, P.E. of Sullivan Engineering.

Issues discussed:

- There is currently an undisturbed 50-foot buffer at this location

A motion was made to approve a negative determination.

Seconded and voted unanimously.

#### **VII NOTICES OF INTENT**

**Richard & Mary Ellen Gravina.** Replace stairs down to lake and permit and construct a seasonal pier at 11 Heath Row, Marstons Mills as shown on Assessor's Map 063 Parcel 075. **SE3-5519**

Mr. Gravina attended, and was represented by John C. O'Dea, P.E.

Issues discussed:

- Located in Natural Heritage & Endangered Species Program (NHESP) habitat; a letter has not yet been received
- Mr. O'Dea said that the property owner is now interested in a "T"- shaped configuration at the end of the dock
- A question was raised about the square landing 10' x10' halfway down the stairs
- Mr. Gravina said that he checked with Conservation staff to see if a permit exists for the stairs, and there was not. That is why they are requesting it under this NOI.
- Commission mentioned that, unless they can show this was permitted or that it predated regulations (1973), they should revise the plan, reducing the larger landing.
- The bare area on the bank, to the right of the stairs, was noted; the property owner stated he would be willing to plant something there. Ms. Karle had given him a planting list.
- A continuance was requested to allow time to revise the plan to a "T" configuration, and time to check into the 10' x10' landing and remove it, if necessary, in order to bring the stairs into compliance. Also, with regard to plantings on the bank, Mr. Gravina would like time to check to see if the bare area is on his property.
- The Commission would need time to review any comments received from NHESP before issuing a permit.

A motion was made to approve a continuance to November 14<sup>th</sup>.

Seconded and voted unanimously.

#### **VIII AMENDED ORDERS**

**Michael Prentiss.** Amend Order of Conditions **SE3-5427** to construct new single-family dwelling (guest house) with site preparation, utilities and landscape appurtenances, vista pruning, and poison-ivy control. Amendments include modifying patio, relocating stairs, adding spa at existing pool, modifying pool mechanicals, adding mitigation plantings at 18 Sand Pt. & 136 North Bay Rd., Osterville as shown on Assessor's Map 073 Parcels 019-001 & 019-002.

The applicant was represented by Arlene Wilson, P.W.S. of A. M. Wilson Associates.

Exhibit A – Color mark-up dated 10/10/17 of a section of the original plan, and two additional plans – L1 dated 11/22/16 and L2, revised 9/20/17, for the Commission’s review.

Issues discussed:

- Revised plans dated (Exhibit A), sheets L1 and L2
- Concern was raised about the proposed two varieties of plants in an additional mitigation area
- The resource area is a bordering vegetated wetland (BVW), with some work to take place within the 100-foot buffer from the State Coastal Bank.
- The property is already heavily treed, and mitigation offered in the 50-foot buffer under the original order was sufficient
- Mulch is proposed to define the edge of the 50-foot buffer, instead of a fence.
- The applicant will refrain from mowing within the additional mitigation area.
- The original mitigation area under the order will continue to be mowed once per year.

A motion was made to approve the amended order based on the revised plan (Sheet L2) dated 9/20/17, along with the color-rendered plan dated 10/10/17.

Further discussion ensued about the desire for greater variety of species.

The motion was seconded and voted: 4 votes = Aye; 1 vote = Nay. The motion carried.

## **IX MINUTES**

A. 9/12/2017

A motion was made to correct the scrivener error date of 9/12/17 to 9/19/17.

Seconded and voted unanimously.

A motion was made to approve the minutes of 9/19/17.

Seconded and voted unanimously.

## **X CHAIR’S EXECUTIVE SESSION REVIEW**

A. In consultation with Assistant Town Attorney Charles McLaughlin, the Chair is taking the following action: approve and retain the minutes for the Executive Session of May 30, 2017 that relates to the Whistleberry Subdivision (DA-15049), as litigation is still on-going.

Noted

**A motion was made to adjourn.**

**Seconded and voted unanimously.**

**The time was 5:52 p.m.**