



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: October 29, 2019 @ 6:30 PM

LOCATION: Hearing Room, 367 Main Street 2nd Fl., Hyannis, MA

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The meeting was called to order at 6:30pm. By Chair F. P. (Tom) Lee. Also attending were Loise R. Foster, Vice-Chair, Dennis R. Houle, Clerk and Commissioners: Larry Morin, George Gillmore, and Pete Sampou. Commissioner John Abodeely was absent.

Darcy Karle, Conservation Administrator was present along with Grayce Rogers, Administrative Assistant.

I OLD AND NEW BUSINESS

- A. Reopen hearing for the sole purpose of review of NHESP comments -Town of Barnstable DPW- Water Supply Division. Demolition of existing Mary Dunn 4 well and installation of new well at 0 & 789 Mary Dunn Road, Barnstable as shown on Assessor's Map 331 Parcels 003-003 and 005. **SE3-5722.**

Correspondence was received and read into record:

October 18, 2019 Letter from Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife.

October 18, 2019 Letter from Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife.

A motion was made to close the hearing and incorporate the Natural Heritage & Endangered Species Program conditions into the order of conditions.

Seconded and voted unanimously.

- B. Three Bays Preservation Inc. and Mass. Audubon Society Inc. **SE3-5053.**

The presentation was presented by: Barry Fogel on behalf of Keegan Werlin LLP representing Three Bays Preservation, Inc. and Massachusetts Audubon Society. Along with Zenas Crocker the executive director of the Barnstable Clean Water Coalition and Morgan Simms, Coastal Geologist, of Applied Coastal Research and Engineering.

Issues discussed:

- A presentation on the Cotuit Shoreline Monitoring and Data Analysis Annual Report. A copy of the report has been submitted to the Town of Barnstable Conservation Commission, Massachusetts Department of Environmental Protection, Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife, and the Army Corps of Engineers.

- The report summarizes data collected in the last year. Project commenced last November for dredging at the western end of Sampson's Island and Dead Neck with materials being back passed to the eastern end of Dead Neck to reestablish bird habitat
- It was noted that a group of land owners at the Cotuit shoreline, transects 1-6, on the western shoreline, approached Three Bays Preservation, Inc. through their attorneys requesting to enter into agreement to monitor their shorelines to determine changes over the course of the project or afterwards. It was also requested that Three Bays Preservation, Inc. distinguish between whether changes are due to the project or due to the naturally changing shoreline.
- It was reported that it was found, through the applications of these 6 transects, that the shoreline was naturally eroding. It was found in submitted applications that the properties, transects 1-6, had been eroding all ready from the increasing current flow due to the narrowing of the channel.
- There was a comment based on the submitted revision that property owners approached Three Bay Preservation, Inc. in 2014 with their attorney to enter into the agreement thus adding a 7th transect.
- There was a comment based on the dredging completed in January 2019, the first year of a three year project, in which the plan had four quarters of monitoring proposed in the first year, two in second year, and one in the third year.
- There was discussion about the 7 transects of which a plan was proposed that Three Bays Preservation, Inc. worked with their consultant in placing nourishment sand above mean high water as a proactive step in possible erosion due to future storms. During the negotiation of such an agreement about how Three Bays Preservation Inc. would fund such a project, there was an oversight and the first 2 quarters of monitoring were not conducted. The winter and spring of 2019 was not conducted. The first monitoring quarter was supposed to go to minus 15 feet out into the channel and the other three were supposed to go to minus 5 feet. The survey in July of 2019 was done to 15 feet. The survey in October was the wading survey at 5 feet.
- The Cotuit Shoreline Monitoring and Data Analysis Annual Report contains the results of three monitoring events: October 2018 (before the dredging began), July of 2019, and October of 2019. The conclusion from Applied Coastal Research and Engineering, the project engineers, a natural variation occurred from natural erosion and accretion from the shoreline to out into the water. It reflects summer accretion and due to the past mild winter, from a storm wave and wind standpoint, there was not one event that could found responsible for significant variation. The shoreline has been stable and the project has not been found responsible for triggering mitigation requirements that have been agreed upon with the transect owners. Three Bays Preservation Inc. agreed to perform required mitigation as agreed upon regarding the draft needed for sea vessels.
- A question was raised from the Commission about how a significant difference would be defined in terms of feet. In response, the language in the agreement made with the transect owners, there was no agreed upon number(s) to trigger mitigation. There are two methods of measurement used in the report which are: +/- 3 feet in shoreline change and the accuracy of elevation for the perpendicular measurements of transects is in terms of centimeters.
- There was a question posed by the Commission about whether or not the location of the current had changed. There has been no data collected in this current report about the location of the current. The Commission proposed that such information be collected to see how the dredging stabilizes and works in conjunction with the Osterville cut.
- It was noted that the Barnstable Clean Water Coalition has increased the monitoring of water quality.
- The Massachusetts Audubon Society is pleased with the 400% increase of Plover nests and fledglings. 15 chicks fledged from 9 nests in comparison to the previous year when 3 chicks fledged from 8 nests.
- A question was posed by the Commission regarding the results from the water quality tests. The results are not in because it is a part of a long term project. The Department of Environmental Protection through their water quality certification and Chapter 91 combined permit is interested in the water quality results as well.
- Additional questions were asked about the expectation of variation. There was low expectation for short term variation. The data was collected in reference to long term which would be based upon 40 – 100 years.

- Another question was proposed by the Commission about whether or not the initial dredging was aggressive enough. Material was placed on the far east end which helps stabilize it and prevent a breakthrough there. This year's dredging project is starting earlier than the previous year.
- There was further questioning about whether or not it would be possible to ascertain the amount of sand or materials moving in a westerly direction or to be able to judge the overall movement of material(s). In response there was a fair amount of sand moved from the west end to the east end. Erosion has occurred due to the movement of sand. Drone work will be done to collect data along the area in hopes to have the ability to gather information on a real time basis. The Commission asked if and when the drone information is collected that the Commission is sent the materials.
- Town Engineer, Griffin Beaudoin, P.E. spoke about the "Snake's Head" of Sampson's Island. There has been slight accretion on the Snake's Head. 130 feet of material was taken off the tip of the island and 50 feet of material was taken off the southerly tip. There has been movement of material from the east to the west as expected in back passing. An additional 130 feet will be taken in to Sampson's Island which will have widened the channel two-fold by the end of this year.
- The Commission posed a concern about whether or not channel soundings have been completed in the Osterville Cut due to the concern of the potentiality of a breakthrough of a breakthrough between the jetty and Sampson's Island. In response, there has been loss at the eastern end near the jetty and that area will be re-nourished.
- A concern was raised from the Commission about the Order of Conditions in regards to the differences in the transects from the approved monitoring plan from October 14th and the revised monitoring and mitigation plan from November 14th. The report in accordance to the revised monitoring plan. It was recommended to make the revised plan a part of the Order of Conditions so that it is part of the monitoring plan so that the transects will be consistent in alignment through the following years.

Public comment:

Beth Kennedy, a resident of transect 7, which is located at 225 Ocean View Avenue in Cotuit, wanted reassurance as the project moves forward that the project will be done in compliance to the Order of Conditions. She thanked the commission for their service and opportunity to speak before the Commission.

A motion was made to adopt the revised transects of 11/18/2014.
 Seconded and voted unanimously.

II REQUESTS FOR DETERMINATION

Jennifer Goff Trustee. Proposed planting of native trees in an area damaged by a micro burst on July 23, 2019 at 511 Wianno Avenue, Barnstable as shown on Assessor's Map 162 Parcel 004. **DA-19047.**

The applicant was represented by Chuck Rowland P.E. of Sullivan Engineering & Consultants and Ian Warner of Bernice Wahler Landscapes.

Issues discussed:

- There was an expressed concern from the representation that they wanted trees to be planted before winter.
- 30 trees were being proposed to be planted instead of just the 22 trees that fell during the microburst as a means to mitigate erosion into the pond.
- Machinery for the project would include smaller bobcats, a mini excavator, and a crane to help lower the trees into place to prevent damaging the bank from machinery. In addition, trees will be planted one at a time to help prevent erosion.
- At the end of the project, it is planned to seed the hillside for quick germination so plants are sprouting soon.

- There was a question posed by the commission about the lack of stumps from the downed trees from the microburst as it would be easier to plant without the presence of stumps. The representation responding that due to a communication error the stumps have been removed.

There was no public comment.

A motion was made to motion to approve a negative determination.
Seconded and voted unanimously.

III NOTICES OF INTENT

Benjamin S. & Linda M. Butcher. Construct a pool and patio with associated mitigation at 410 Wianno Avenue, Osterville as shown on Assessor's Map 163 Parcel 023. **SE3-5727.**

The applicant was represented by Chuck Rowland P.E. of Sullivan Engineering & Consultants.

Correspondence was received and read into record:

October 29, 2019

Letter from abutter Michael J. Stepanek of 311 East Bay Road, Osterville.

Issues discussed:

- The Commission commented that the pool fence is considerable distance from the pool. It was suggested that since the pool fence is tied to the ground that it should be moved closer to the pool instead of the property line. The pool fence can deter anything from getting into the pool area, but cannot prevent animal migration.
- A concern was raised from the Commission about the location of the leaching area.
- There was a comment about the lack of a revised plan because there are concerns with the size of the plantings proposed. The area was not staked out. It was recommended to install a split rail fence on the property line and demarcation on the proposed path.
- A concern was raised by the ground elevation for the drywell as it must be known about the separation for ground water. A protocol is needed for leaching system because although there may not be a Board of Health regulation, machinery or other work could still damage the leaching field. Another concern was raised about the location of the foundation in regards to the proposed patio.
- The Commission asked the abutter, Stepanek, if he has possession of the wetland plans of which he had referred to and if those could be submitted to the Commission for review and consideration.

Public Comment:

Michael J. Stepanek of 311 East Bay Road in Osterville, expressed his concerns about this project as an abutter. Stepanek was concerned about the noise that would be generated from this project. He noted that the wetland area, including the pool fence area. There is a freshwater pond behind the pathways. Ducks, Geese, and turtles inhabit the pond. The turtles will migrate from the pond, across the road, and to the beach to lay eggs. There is concern that this project will prevent animal migration. Stepanek asked if the property could be walked again. Stepanek believes that a swimming pool goes beyond the pale of what the property can withstand.

A motion was made to continue the matter until 11/12/2019.

Seconded and voted unanimously.

Lynn Candella. Raise existing dwelling with new foundation to conform to FEMA standards at 11 Harbor Bluffs Road, Hyannis as shown on Assessor's Map 325 Parcel 132. **SE3-5728.**

The applicant was represented by Tris Weller of Weller & Associates.
Exhibit A – Revised Plan dated October 28, 2019.

It is proposed that the concrete patio will be replaced with pervious pavers as well as removing existing privet hedge to replace it with appropriate wetland plantings.

Issues discussed:

- There was a concern raised by the Commission about the location of the patio. The edge of the patio was close to the resource. The patio is also located in the buffer zone.
- There was a comment about diversifying the native wetland plantings.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan which eliminates the new patio area (the half-moon shape patio may remain), but allows for the existing concrete patio to be rebuilt with permeable pavers, and the privet hedge is to be replaced with an assortment of native plantings in consultation with staff.

Seconded and voted unanimously.

Thomas Munsell. Raze existing dwelling. Construct new 3 bedroom dwelling and new septic system (no increase in flow) at 15 Circuit Avenue, Centerville as shown on Assessor's Map 226 Parcel 178.

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

Correspondence was received and read into record:

October 29, 2019

Email from Janet Milkman, Executive Director of the Barnstable Land Trust with site plans dated: April 2, 1946, May 25, 1955, September 7, 1984, December 17, 1973 and October 15, 1977.

There is a resource area relevant to the location of the dwelling which was a manmade dug out bog through a steam shovel and does not have a natural water source as it dries up in the drier months. If the Commission feels as though the project is mitigation restrained than to bring the 50 foot buffer into compliance than an additional 488 square feet.

Issues discussed:

- The Commission addressed the concern of the gravel turn around area cuts into the Barnstable Land Trust land. There is a corner that cuts into the land by about 11 inches which will be brought back a foot and will be demonstrated on a revised plan.
- There was a concern about the property line and the 50 foot buffer and how mitigation planting would be completed in that area. If the area becomes an untouched buffer zone than the applicant has fulfilled their obligation in the 50 foot buffer zone and mitigation would not be viewed as restrained.
- There was a comment about debris behind the shed area that could be cleaned up.
- A question arose about the 1950s plan provided to the Commission and its property lines. Furthermore, the accuracy of the survey was questioned. It is a stamped and sealed survey.
- It was confirmed that the dwelling will be turned 90 degrees so that the front door will be where the current garage is oriented.
- A question arose from the Commission about the existing shed on the easterly side of the property and what would happen to the structure in regards to the proposed plan. The shed will remain due to it being built in 1968, pre-dating the Wetland Protection Act outside the 50 foot buffer zone.
- There was a concern risen about the mark on a USGS map in which Mosquito Control needs to be contacted.
- A concern about the trees being taken down arose from the Commission and whether or not those trees were in the 50 foot buffer zone.

Public Comment:

•Thomas Munsell of 35 Stephanie Lane, South Windsor, Connecticut commented that the proposed plan objective is to reduce the residents’ carbon footprint with the creation of an energy efficient home by knocking it down and constructing it with modern materials. Munsell lives in an energy efficient home in Connecticut. The plan is design for the back of the dwelling to receive full sun to capture the available energy. Munsell has hired landscapers each year to remove the leaves from his yard. Organic fertilizer is used on the property’s vegetation. He explained that the debris on his property originated from conservation land. Munsell thanked the Commission for walking the property.

A motion was made to approve the project subject to receipt of a revised plan indicating the road layout in red, expanded mitigation in the 50’ buffer on the applicants property to make up the mitigation required, indicating the shed that is to remain in place, location of the new tree at the 50’ buffer line, and a letter from mosquito control regarding the status of the intermittent stream. The mitigation area is to be demarcated with a special condition of once a year mowing in October. Seconded and voted unanimously.

George and Josee Klentak. Proposed construction of 2 car garage in front of existing footprint of current garage, second floor expansion; re-build first floor over existing garage footprint; construct front porch at 212 Holly Point Road, Centerville as shown on Assessor’s Map 232 Parcel 034. **SE3-5729.**

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

Issues discussed:

- A concern was raised from the Commission about a floating dock.
- There was a comment about trees overrun by vines and a potential dead tree. The Commission reminded the representation and applicant that permission needs to be granted to take down trees within the 50 foot buffer zone.

There was no public comment.

A motion was made to approve the project as submitted with two special conditions the applicant is responsible to make sure the pier is in compliance, and any tree work within the 50’ buffer will require a permit from Conservation. Seconded and voted unanimously.

Douglas and Tina Crook. Construction of a new single family dwelling with a drive under garage, grading, utilities, an accessory building, and a new septic system at 115 Bog Road, Marstons Mills as shown on Assessor’s Map 045 Parcel 016-005. **SE3-5730.**

The applicant was represented by Hannah Raddatz, Wetland Scientist, of BSC Group, Inc.

There was a previous Order of Conditions which has been closed out. The property is located 4 feet away from a functioning commercial cranberry bog. There is a steep slope with two rock walls which has been re-vegetated. There will be no work within the 0 to 50 foot Buffer Zone to the Cranberry bog.

Issued discussed:

- A concern was raised about a retaining wall located on the slope. It is proposed that grading is done to stabilize the retaining wall. However, the Commission is concerned about the area under the deck, the foundation walk out, to become a recreation area. The majority of the recreating should be on the back and sides of the dwelling. the Marston Mills river and cranberry bog are significantly impaired to nutrient loading.
- A question was raised about the proposed stonewall elevation. There was an additional question posed by the Commission about what will happen in the triangular area where the stonewall runs up to the 60 foot contour.
- There were concerns voiced about the potential of this project creating erosion.

- There was a note about how the general landscaping plan should be submitted and approved to the Conservation Commission, presently the embankment should be vegetated with creeping juniper and should be shown on the landscaping sketch plan.
- There was a question about mitigation in the buffer zone and the compliance of the buffer zone regulation.
- The Commission discussed the property line in relation to the cranberry bog.
- A question was posed by the Commission about how the Commission can be bound to a 2007 Order of Conditions and should be only taken into consideration under the new regulations.
- There was a comment that the recreation or activity area is not well defined.
- The Commission is concerned about the changes to the ground. The ground and wall elevations need to be defined as well as how the land will be maintained.
- It was noted that recreating on the slope, the northerly side of the house, would be difficult given that it is not flat and that it is a highly shaded area that would be difficult to grow anything. However, the southern side of the house has flat, sunny land that would be the recreation area.
- The stone wall should be oriented close to the driveway. In regards to the other wall off the deck, if there is no grading going to be done than there is no reason for a wall.
- A recommendation from the Commission was put forth that the door for a walkout could be placed near the garage instead of underneath the deck.
- The Commission identified the major issue in 2007 is that the Commission did not want development on the steep slope above a commercial bog given the impact on the bog and the bog system into the Marston Mills River.
- It was suggested that the applicant reevaluate the need for the retaining wall.
- The Commission expressed the need for stairs if the walk out foundation door was to be placed for safety.
- The Commission would like to see drywells on the plan for drainage. The plan should also demonstrate whether or not the driveway will be paved and how the runoff will be managed.
- In regards to a new structure, the 50 foot needs to be demarcated

There was no public comment.

A motion was made to approve a continuance until 11/12/2019.
 Seconded and voted unanimously.

IV CERTIFICATES OF COMPLIANCE (ez = no deviations, staff recommends approval) on-going conditions)

A.	Thomas	SE3-5564	(coc, ez)	raze & construct detached garage *
	1248 Craigville Beach Road , Centerville	-	Centerville River	
B.	Coombs	SE3-5344	(coc, ez)	construct single family dwelling *
	555 Old Mill Road, Osterville	-	bordering vegetated wetland	
C.	Laugharn	SE3-5525	(coc, ez)	reconstruct pool, patio, and retaining wall *
	91 Calves Pasture Lane, Barnstable	-	bordering vegetated wetland	
D.	Crowell	SE3-5196	(coc, ez)	construct addition; relocate driveway *
	4099 Main Street (Route 6A), Barnstable	-	bordering vegetated wetland	

A motion was made to approve A – D.

Seconded and voted unanimously.

VI MINUTES

A. October 8, 2019

A motion was made to approve minutes A.
Seconded and voted unanimously.

A motion was made to adjourn.
Seconded and voted unanimously.

TIME ADJOURNED: 8:54 P.M.