



**Town of Barnstable  
Conservation Commission**  
200 Main Street  
Hyannis Massachusetts 02601

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**MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: August 10, 2021 @ 3:00 PM**

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.

**Remote Participation Instructions**

The Conservation Commission's Public Hearing will be held by remote participation methods.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom link or telephone number and access code for remote access below.

Join Zoom Meeting  
<https://zoom.us/j/99720490655>  
Meeting ID: 997 2049 0655  
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](mailto: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](mailto: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, 200  
MAIN 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 Foster, Clerk George Gillmore, Commissioners Abodeely, Morin, and Hearn. Commissioner Sampou was absent.

Conservation Administrator, Darcy Karle was present along with Conservation Agent Ed Hoopes and Conservation Assistant Fred Stepanis.

**3:00 PM AGENDA**

**I CERTIFICATES OF COMPLIANCE**

(d = deviations, staff recommends denial) (\* = on-going conditions) (ez = no deviations, staff recommends approval)

- |                                |           |               |  |
|--------------------------------|-----------|---------------|--|
| A. Vinios                      | SE3- 5593 | (partial coc) | repair revetment & beach nourishment * |
| 47 Sea View Avenue, Osterville | -         |               | Nantucket Sound                        |

- B. Vinios SE3- 5407 (coc) replace garage & pool; construct cabana; etc. \*  
 47 Sea View Avenue, Osterville - Nantucket Sound
- C. Wianno Club SE3- 5190 (coc, ez) construct deck \*  
 107 Sea View Avenue, Osterville - Nantucket Sound

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

**II. REVISED PLANS**

- | <b>A.</b>   | <b>Project type:</b>                              | <b>Revisions:</b>                      |
|---|---|--|
| 979 Old Post Road LLC SE3-5874<br>979 Old Post Road, Cotuit | Outdoor kitchen, fire pit,<br>addition, landscape | Modify front entry and pool<br>cabana. |

Arlene Wilson of AM Wilson Associates Inc. represented the applicant.  
 Issues discussed:

- Revision date of the revised site plan and mitigation plan are 7/19/21.

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

- |  |   |                    |
|--|---|--------------------|
| B. Michael E. Olson SE3-5651<br>11 Maywood Ave., Hyannis Port<br>(Formerly Garthwaite) | 2 boardwalks, storage box,<br>kayak rack, landscaping | As built boardwalk |
|--|---|--------------------|

John O’Dea of Sullivan Engineering and Consulting Inc. represented the applicant.  
 No issues discussed.

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

**III. EXTENSION REQUESTS**

- | <b>A.</b>  | <b>Project type:</b>                                   | <b>Time Requested:</b>            |
|--|--|-----------------------------------|
| Mark & Colleen Superko SE3-5588<br>69 Wianno Head Rd, Osterville | Construct pool, cabana<br>clearing, grading, landscape | 3 years (1 <sup>st</sup> request) |

John O’Dea of Sullivan Engineering and Consulting Inc. represented the applicant.  
 Issues discussed:

- John requested the 3 years to be added on despite the COVID tolling period offered. He would like an actual extension (paper) permit that can be recorded.
- Staff will calculate the date with the 3 years added to tolling period. (Extension to 11/5/2025)

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

- |  |                            |                                   |
|--|----------------------------|-----------------------------------|
| B. Home Port Investments, LLC SE3-5599 | Construct SFD, pool, patio | 3 years (1 <sup>st</sup> request) |
|--|----------------------------|-----------------------------------|

21 Indian Trail, Osterville

John O’Dea of Sullivan Engineering and Consulting Inc. represented the applicant  
Issues discussed.

- No work has started on this permit.
- John requested the 3 years to be added on despite the COVID tolling period offered. He would like an actual extension (paper) permit that can be recorded.
- Staff will calculate the date with the 3 years added to tolling period. (Extension to 11/25/2025)

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

- C. Myles Walton & Annalisa Weigel Elevate SFD, New Foundation 3 years (1<sup>st</sup> request)  
139 Freezer Road, Barnstable SE3-5350 **WITHDRAWN**

#### **IV. ENFORCEMENT ORDERS**

- A. Theresa H. Hills – 69 Watergate Ln., West Barnstable – Map 217 Parcel 037. Alteration of a wetland resource area – Bordering Vegetated Wetland – by placing fill and alteration of the 50’ buffer to a wetland resource area – Bordering Vegetated Wetland – by placing fill and yard waste.

#### Exhibits

- A ARC Reader image of 69 Watergate Ln., West Barnstable
- B Before and After Photos
- C Current Site Photos

Mike Ball, Marsh Matters Environmental represented Ms. Hills, Mr. Walter Brennick was present .

Issues discussed:

- Homeowner, wetlands consultant and Conservation Agent to meet on site within 1 week of this hearing to discuss strategy for removal of fill from wetland.
- Wetland Consultant will be on site when fill is removed
- The space between the shed and the wetland will be left to naturalize, no storage of vehicles, boats, equipment in this space, a path (max. 4’ wide) may be maintained for access to back of house from driveway.

A motion was made to approve the Enforcement Order as written.  
Seconded and voted by roll call:  
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn  
Nay – none

- B. Damon & Natalie Elizabeth Fieldgate – 67 Lakeside Drive East, Centerville – Map 252 Parcel 096.  
Alteration of a wetland resource area – Lake Wequaquet – by maintaining an unpermitted pier.

#### Exhibits

- A ARC Reader image of 67 Lakeshore Dr. East, Centerville
- B Before and After Photos

Mr. Damon Fieldgate represented himself .

Issues discussed:

- The dock was removed by July 31, 2021 as requested in the Enforcement Order.
- The Fieldgates will file a NOI application for permitting a seasonal, freshwater dock by September 30, 2021.

A motion was made to approve the Enforcement Order as written.  
Seconded and voted by roll call:  
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn

Nay – none

- C. Jonathan A. & Erin M. Lubash – 38 Peep Toad Road, Centerville – Map 173 Parcel 068. Alteration of a wetland resource area – unnamed pond – by placing and maintaining an unpermitted dock.

Exhibits

- A ARC Reader image of 38 Peep Toad Rd., Centerville
- B Site Photos

Mr. Jonathan Lubash represented himself.

Issues discussed:

- The Lubashes were issued an Enforcement Order in October 2020 for the same violation. At the time Mr. Lubash removed the dock and initiated the permit process but felt permitting a dock was cost-prohibitive.
- He asked the Conservation Agent in November of 2020 if the Lubashes had any other option to which they were advised they could seek a mooring permit from the town Harbormasters Office to permit a swim platform.
- Mr. Lubash inquired at the Harbormaster Office for such permit and was told a mooring permit was not needed as the unnamed pond has no public access and that property owners along the pond shore owned to a point in the middle of the pond.
- Regardless of ownership, a seasonal dock requires an Order of Conditions from the Conservation Commission.
- The Lubashes may keep a float in the pond without further permitting as long as the float remains on their property and it is not connected to the shore by any walkway, planks or other means.

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

Seconded and voted by roll call:

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

Nay – none

- D. Thomas Carvalho and E. J. Jaxtimer – 158 Swift Avenue, Osterville – Map 165 Parcel 083. Unauthorized activity beyond the scope of an Order of Conditions and Plan of Record (SE3-5869).

Exhibits

- A ARC Reader image of 158 Swift Ave., Osterville
- B Before and After Photos
- C Order of Conditions (Special) from SE3-5869.
- D Narrative from NOI Application for SE3-5869
- E Timeline of Events pertaining to 158 Swift Ave.

Mr. John O’Dea, Sullivan Engineering, represented Mr. Carvalho and Mr. Jaxtimer, EJ Jaxtimer and Jeff Garran (Jaxtimer Building) were present.

Issues discussed:

- NOI hearing for SE3-5869 (Carvalho) was heard and an Order of Conditions issued on 5/28/2021. According to the NOI narrative the house was to remain in tact but would require a partial foundation repair. On April 30, 2021, a structural engineer determined the house and foundation was not able to be repaired.
- On May 28, 2021, Jaxtimer Builders filed a Demolition Permit application with the town Building Department. No plans were filed with that permit application and the only plan of record was part of SE3-5869 that showed the house remaining.
- In mid June, Jaxtimer Builders razed the entire house without receiving the Demolition permit from Building Department.
- In order to bring the property back into compliance Mr. Carvalho will have to file a new plan showing the demolition of the old house and location of a new house. Depending on the location of the new house (either partially in the 100’ buffer or completely out of the 100’ buffer), there will have to be a Revised Plan Request or an Amended Order of Conditions sought.
- This item was tabled to September 7, 2021 pending receipt of a new plan showing the location of the new home.

A motion was made to approve the Enforcement Order as written.  
Seconded and voted by roll call:  
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn  
Nay – none

## **V. ENFORCEMENT ORDER RESPONSE PLAN**

- A. Richard F. & Jennifer B. Gallagher – 611 Santuit Rd., Cotuit – Map 007 Parcel 005. Review of Restoration Planting Plan.

### Exhibits

- A Buffer Restoration Plan for 611 Santuit Rd., Cotuit by Raul Lizardi-Rivera dated 8-10-2021

Raul Lizardi-Rivera represented the Gallagher's, Mr. Gallagher was present .

Issues discussed:

- The Town and State Coastal Bank was delineated on the plan of record. Most of the property lies within the coastal bank or the buffer to the coastal banks.
- A total of 45” dbh of trees had to be restored. 36” dbh are being restored by planting 8 trees on the property. The last 9” dbh will be restored by planting 145 sq. ft. shrubs and groundcover in an area within what will be a no mow – no disturb area.
- A no mow – no disturb area will be established at the 50’ buffer to the salt marsh. This area will be permanently defined by rocks placed along this line.

A motion was made to approve the Enforcement Order as written.  
Seconded and voted by roll call:  
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn  
Nay – none

## **4:30 PM AGENDA**

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### **REMINDER TO APPLICANTS:**

**FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200 MAIN STREET, HYANNIS, 02601**

The meeting was called to order at 4:35 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise Foster, Clerk George Gillmore, Commissioners Abodeely, Morin, and Hearn. Commissioner Sampou was absent.

Conservation Administrator, Darcy Karle was present.

Thomas Rodman and Marianne Riggio announced they were recording the meeting.

## **VI. REQUESTS FOR DETERMINATION**

- \*Commissioner Sampou arrived during this RDA application review.
- \*Commissioner Abodeely left during this RDA application review.

- A. Bog Partners, LLC – c/o A.M. Wilson Associates, Inc.** Installation of security fencing along southerly and westerly portions of property lines at 1246 Bumps River Road and 0 Marie-Ann Terrace, Centerville as shown on Assessor's Map 188 Parcels 045 and 012. **DA-21042**

Arlene Wilson of AM Wilson Associates Inc. represented the applicant.

Issues discussed:

- Applicant requesting a 1,800 ft. long, 6' high, black vinyl fence with 6" clearance under it.
  - Questions raised, is 6" clearance, enough for wildlife. Arlene offered 10-12".
  - Some literature stated 16 to 18" clearance for wildlife friendly fencing.
  - Bottom of fence should be smooth, preventing wildlife from getting hung up.
  - The question of why fencing is needed for security is not relevant under the Wetland Protection Act. What is relevant, are the impacts the project could have.
  - Perhaps a finding can be made for the height other than the Commissions standard height.
  - Possible impact to birds.
  - Surveyor has been to the site and set off set stakes. Surveyor will be back to locate property lines.
  - GIS plan shows 3 gates, a stake out plan that does not show the gates.
  - There is a section of fence, a couple of hundred feet shown on GIS plan that does not show on staking plan.
  - The staking plan will need to be revised again indicating the proposed fence location and the gates.
  - Public requesting to see the revised plan showing the proposed fencing, prior to the Commission voting.
  - Continuance hearing - plan revision should show the final fence location, the gates, and fence design, with some 6" clearance and 12" clearance so people can see it.
  - Next hearing (8/17/21) the Commission will have a discussion on what additional information should be submitted.
- 
- The chair listed written comments received, opposed to the project and have questions:
    1. Craig Valenti – 85 Pine Tree Drive, Centerville
    2. Chuck Guilmette – 39 Emerson Way
    3. Helen Banevicius – 1330 Bumps River Road
    4. Paul and Mary Zamorro and Amoret Zamorro Beiter -52 Longfellow Drive
    5. Hildy Paris – 29 Emerson Way
    6. Carlton Antoine – 98 Marie Ann Terrace
    7. Barbara Valenti – 85 Pine Tree Drive

Public Comment:

Robert Ward – 1288 Bumps River Road – raised questions on fence vs. security fence, what is the difference. Question on exactly where fence is going to be located in relation to the staking and is it backing up to vegetation.

Mary McCarthy – 42 Longfellow Drive – concerned with potential impact on deer and birds. What will happen to wetland? Why is there a need for a fence now? What has changed?

Thomas Rodman – 61 Emerson Way – Question how can it be a security fence if it doesn't go all the way around the bog. How can it be secure? Questions raised on surveying completed.

\*Arlene Wilson stated surveyor has been out there, locating limit of property lines. Conservation was provided with plan.

Paul Zamorrow – 52 Longfellow Drive – concerned with potential impact on deer and birds.

Mary Ellen St. George – 87 Overlook Drive – Former field guide, concerned with impact on eastern box turtle that uses bogs. Concerned for deer. Walks bog with her dogs.

**\*\* Commissioner Abodeely left the hearing at this point.**

Karen Rodman – 61 Emerson Way – Raised the question why is a fence needed that doesn't go all the way around. Walks the bog with her dog. Concerned for wildlife in this area.

Stephanie and Philip Panasci – 69 Emerson Way - Raised the question why is a fence needed that doesn't go all the way around. What makes it secure? It is stated as a security fence, why half of the bog? This has not been answered.

Ron Knight – 27 Kalami Way – asked Robert Ward to speak for him for his 3 minutes. Mr. Ward questioned where bog fence is to be located, comparing GIS plan with staking plan. Concern if application request has changed when looking at the staking plan now that was submitted after the RDA was received. What is the board voting on, the application or an amended application? Public should get to see the revised plan prior to the Commission voting.

Karen Antoine – 98 Marie-Ann Terrace – would like to see insurance requirement. Concern with height of fence. The new property owner is not working with neighbors. Concern with cementing posts in and impact.

Janie Barber – 28 Kalami Way – lives on area that will be unfenced. What will happen to animals, will they head to their side.

Jane Crosby – 89 Emerson Way – Concerned for wildlife, as there is so many animals and birds. What is need for security? There is not vegetation to back up to for many parcels. Concerned with clearance under fence proposed. Property line concerns.

Carlton Antoine – 98 MarieAnn Terrance – same concerns as everyone stated. He will be walking out directly to fence if this goes in. Concerned for wildlife.

Pat and Bill Coughlin – 49 Pine Tree Drive – concerned for coyotes and deer. See evidence of deer killings, deer legs. There are snapping turtles. Unique biosystem. Is insurance company specifying things. Will gates be locked? Is there a constructive easement here now, after 20 years? Public has been walking here for many years. Requesting insurance requirement information.

Barbara Valenti – 85 Pine Tree – Concern on lack of information on consultants background. Requests a revised plan to review and believes there should be some type wildlife study completed. Requesting more information on fence construction i.e. height.

Bob Valenti – 85 Pine Tree - Need for more credible wildlife research. The fence will impact wildlife.

Jack Murphy – 2 Longfellow Drive – believes there is a need for a Notice of Intent application, Should there be a Zoning board of Appeals review and possible variance. Agrees with other comments made.

Ed Eichner – 141 Pine Tree Drive – Request for determination application (RDA) should be withdrawn and a Notice of Intent (NOI) 2 provisions proposed for exemption mention no barrier to wildlife. Many species out there that could be impacted by fence. He is familiar with the area. Exemption of Agricultural Land in proposal, is application being segmented.

Hildy Paris – 29 Emerson Way - Agrees with other comments made. Believes people are being kept in the dark. Would like the opportunity to discuss with insurance company.

Marianne Riggio – 1222 Bumps River Road – There needs to be more investigation of the wetlands and the purpose for the fence. Has a shallow lot, so fence would be right behind her house, would like to know more about the quality of the fence. Will it be safe for children playing nearby?



Linda Powers – 1302 Bumps River Road – Need for clarity on maps. Believes the fence does impact the wetland. There is a river running through it. There is a food chain and animals that follow this river. Signs could go up, “no trespassing, pass at your own risk.”

Rob Boone – 32 Rainbow Drive – Question, the consultant said in opening statements, a certain type of fence would be sufficient or not sufficient for property owners use. So “The purpose of fence” is important. Suggestion – the Commission and public should receive the following information prior to approving anything, the amended plan, insurance documentation, specific design of fence, and expert wildlife analysis.

Chuck Guilmette – 39 Emerson Way- Agrees with everyone’s comments. It should be submitted as a NOI. Heavy vegetation was mentioned, but there are areas that are not. Need to protect migration of animals. Inviting Commission to come and see the bog.

Terry Hurd – 23 Longfellow Drive – Will change aesthetics of area. It is not security to anything as it doesn’t go around. The gates will just keep people from walking. It will change character of neighborhood.

Revised plan should show the final fence location, the gates, and fence design, with some 6” clearance and 12” clearance so people can see it.

Motion to continue to September 14, 2021.

Roll call

Aye – Foster, Gilmore, Hearn, Lee, Morin, Sampou

Nay –

Motion carries

## **VII. NOTICES OF INTENT**

- A. AAR Legacy, LLC.** Proposed shoreline improvements to include replacement of existing failing timber bulkhead with a stone revetment, and the replacement of the beach house, deck and stairs at 671 Old Post Road, Cotuit as shown on Assessor’s Map 054 Parcel 013001. **SE3-5905**

Representative – John O’Dea of Sullivan Engineering Inc. Also present Kris Horiuchi and Jeremy Schaub  
Issues discussed:

- John O’Dea stated after discussions he will take the request to use Cordwood Landing Road for access off the table. They will use the property owners property for access and storage of materials, however there will need to be some access below the existing bulkhead to do actual work.
- Beachhouse may need replacement.
- Chairman Lee mentioned two comment emails from MEA staff Amy Croteau and Elizabeth Lewis’s shellfish report.
- Question raised, due to high value of shellfish habitat, can project be pushed back? Could toe stone go where existing wall is?
- Question raised will access for work be where current wall is or in front to wall? Answer -traverse back and forth in front of wall where rocks would go.
- Administrator asked if there was a possibility for just repairing the wall.
- Could there be a possibility of pulling beach house landward, more into the bank.
- Beach house would need to remain same size.
- Construction protocol and line of toe stone is most important for review

Public comment:

MEA Senior Natural Resource Officer Amy Croteau spoke – She mentioned public access at landing needs to be preserved and not inhibited during project. Tiny landing. There have been softshell clam sets



in the proposed foot print. The amount of work done from applicants property is important, but understands sea level and storms are getting worse, but public shouldn't have to bear the burden of a person trying to protect their property.

Motion to approve a continuance to September 14, 2021.

Roll call Aye – Foster, Gilmore, Hearn, Lee, Morin, Sampou

Nae –

Motion carries

B. **Mark Klamman.** Addition to single-family residence at 25 Cross Way, West Hyannisport as shown on Assessors Map 245 Parcel 043. **SE3-5907**

Representative Matthew Eddy, of Baxter Nye Engineering along with Mike Ball.

Issues discussed:

- No COC issued yet for SE3-4989.
- Invasive species management wasn't complete under prior file. Some of phragmites work was done, but mechanical removal of vines and other invasives have not taken place yet and addition of plantings.
- Applicant would like to request ongoing condition under new application to continue invasive management.
- Concern raised on taking credit for removal of end of driveways which are not on the property.
- Concern there is no proof of red brick patio existing prior, i.e. photos, and they are not providing mitigation for it.
- Question raised what is the percentage of the total space of this site including addition and red brick patio, will now be impervious? How can one justify adding large addition.
- Question raised on how they will access site for mechanical removal of invasives.
- Correction needed on mitigation calculation.
- Serious variance is being requested under this project.
- Concern, at what point does the Commission say, we have reached a point where no more hardscape should be proposed on such a tight lot.
- Concern that prior project was not complete in 2012 and now asking for a waiver.
- Concern raised that approving this project like, and taking in-lieu fee this could set a precedent.
- Administrator raised the point that the Commission may request a certified ecological restoration practitioner CERP or proof of resume, experience.
- Request made to have applicant/consultant come back with historic photos of brick area if they have them, reduced addition size, and provide additional onsite mitigation.
- Clarification – this will be a one story addition.
- Plans should indicate distance to wetland resource.

Public Comment:

Attorney Sarah Alger representing direct abutter, Patricia Bradley – stating concern over proposed work in 50' buffer on such a constrained site. Concern deck could have doubled in size, but she would need to look at prior file. Did they apply for special permit to be 35' from wetland. Concern that 2012 order is still open. Commission should request floor plans and check number of bedrooms. An above ground pool was constructed and removed recently. Landscaper throws cutting over wall. Unable to document brick patio. This site is not appropriate to add onto. She also pointed out the narrative said the addition was proposed to be two story.

Motion to approve a continuance to September 14, 2021.

Roll call:

Aye – Foster, Gillmore, Lee, Morin, Sampou

Nay- Hearn

Motion carries

Motion to adjourn.

Rollcall:

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

Nay-

Motion carries.

Adjourn 7:36 pm.