



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

DATE: October 13, 2009 9:30 a.m.*

LOCATION: SELECTMEN’S CONFERENCE ROOM

***Note time change**

Scrivener’s note: The following minutes are general in nature. For those wanting specific detail on matters heard on this agenda, additional resources are available to you: video-on-demand (free on the Town website at town.barnstable.ma.us), and DVD recordings. Please contact the Conservation Division at 508.862.4093 for assistance.

The meeting was called to order at 8:30 a.m. by Chairman Dennis R. Houle. Also attending were Commissioners John Abodeely, Larry Morin, and Louise Foster. Vice-Chair Tom Lee was away; Commissioners Peter Sampou and Scott Blazis were teaching. Rob Gatewood, Conservation Administrator, assisted, along with Darcy Karle, Conservation Agent, and Fred Stepanis, Conservation Assistant

The meeting was held in the Selectmen’s Conference Room, Barnstable Town Hall, Hyannis, MA.

I REVISED PLANS

			<u>project type</u>	<u>revision</u>
A.	Daniel	SE3-4635	pool, patios, access way	pool reorientation

The applicant was represented by Arlene Wilson, P.W.S.

Issues discussed: No concerns arose.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

B.	Kariotis	SE3-4365	sfd, pool, patio, cabana	footprints
C.	Kariotis	SE3-4366	sfd, pool, patio, cabana	footprints

Revised plans for “B” and “C” were discussed simultaneously.

John O’Dea, P.E., summarized the projects

The Commission desired additional mitigation (at 3:1 ratio), and reduction in the dimension of the proposed patio in the 50-foot buffer. A revised plan will be submitted.

A motion was made to approve the revised plans.

Seconded and voted unanimously.

D.	Selldorff	SE3-4663	sfd, pool, patio, etc.	footprints
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The applicant was represented by Peter Sullivan, P.E.

(Selldorff, cont'd.)

Mr. Sullivan described the project.

Issues discussed: No concerns arose.

A revised plan will be submitted, indicating the following:

- Leaching for any driveway runoff not leached by the permeable pavers
- Owner-responsibility for maintaining the pavers.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

E. Lowrie SE3-4657 sfd, landscaping wall, patio, lawn, meadow

The applicant was represented by John O'Dea, P.E.

The discussion centered on a lawn incursion into the 50-foot buffer zone. The Commission suggested that the mowing schedule be set in consultation with staff. The irrigation would be removed; no fertilizer would be allowed within the 50-foot buffer. Mitigation at 3:1 would be required for the path within the 50-foot buffer. (Note: lawn width to be 10-feet where closest to the wetland; wider outside of the 50-foot buffer). The plan will be further revised to reflect these changes.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

F. CTS Fiduciary SE3-4827 pool, patio lighting

The applicant was represented by Peter Sullivan, P.E.

Issues discussed: No concerns arose.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

G. RMR Nominee Trust SE3-4206 sfd driveway turnouts

The applicant was represented by Peter Sullivan, P.E.

Issues discussed: No concerns arose.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

H. Town of Barnstable/DPW SE3-4598 re-construct pier add light fixture

The Commission found the request worthy of approval, provided that the wattage was acceptable to staff, and that it be used only when berthing.

A motion was made to approve the revised plan with contingencies.

Seconded and voted unanimously.

II EXTENSION PERMITS

- A. Oyster Harbor Golf Club SE3-3738 mgmt. of aquatic vegetation 3rd Request; 3 yrs.

The matter was tabled until the November 10th meeting.

- B. Tonsberg SE3-4561 raze/reconstruct sfd 1st Request; 3 yrs.

The applicant was represented by Lynne Hamlyn.

Issues discussed: No concerns arose.

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

Seconded and voted unanimously.

III ENFORCEMENT ORDERS

- A. Daniel Salvatore – 110 Prince Ave., Marstons Mills **SE3-4502**
Alteration of the Conservation Commission 50' undisturbed buffer zone and river protection area by enclosing an area under an existing upper level deck (15' x 15') for storage, within 41' of a river.

(See also item G. under Certificates of Compliance, below)

Ms. Roxanne Pappas was present to represent her husband Mr. Salvatore.

Both the enforcement order and certificate of compliance request (IV. G.) were discussed together.

Several issues were addressed:

- Unpermitted area under the deck
- Continued disturbance by the river, beyond the normal meadow-mowing previously permitted
- Three-to-four wheel barrows of loam brought in, along with seeding
- Stakes moved to accommodate mowing.
- Whether an NOI, RDA, or Revised Plan be submitted for the enclosure.

A motion was made to require the submission of a revised plan showing the enclosure under the deck and the installation of a split rail fence (two rails) demarcating a “no touch zone” 10-feet off the edge of the wetlands; fence location shall be staked in the field by a professional engineer; a 4-foot-width path shall be permitted and maintained, its location determined in consultation with Conservation staff; the enforcement order shall be amended, addressing the issues discussed above.

Seconded and voted unanimously.

- B. Robert Turnbull – 797 Old Post Road, Cotuit **SE3-3255**
Alteration of a resource area by construction a dinghy rack. Failure to consult with Conservation Division before planting of spartina patens and questionable supply of sand for planting/beach nourishment.

A motion was made to approve the enforcement order as written, including no storage of a dinghy on the beach.

Seconded and voted unanimously.

- C. John and Ardell Callas – 300 Smoke Valley Road, Marstons Mills **SE3-3488**
Alteration of the Conservation Commission's 50' buffer and 100' buffer zone by: mowing beach grass to the edge of southeast bulkhead, cutting trees, shrubs and mowing near north bulkhead and front of house.
Additional cutting of oaks within 50' and 100' buffer.

The matter was tabled until the November 10th meeting.

- D. Hilda S. Whyte – 362 Huckins Neck Road, Centerville
Alteration of a BVW and 50 buffer zone, by cutting vegetation on Shallow Pond. Two large pile of cut material placed in edge of wetlands. Majority of the vegetation is sweet pepper and one two trees.

(Whyte, cont'd.)

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

Seconded and voted unanimously.

IV CERTIFICATES OF COMPLIANCE

(ap = as-built plan) (coc = Certificate of compliance) (ez = no deviations, staff recommends approval) (ok = minor deviations, staff recommends approval) (c = staff recommends approval with contingencies) (d = deviations, staff recommends denial) (* = on-going conditions)

- A. Bay Shore RT SE3-4314 (coc,c) stairway, pier, ramp, floats, etc.

The applicant was represented by Steve Pizzuti, Esq., and Lynne Hamlyn. The owner, Mr. Paine attended, as did First Assistant Town Attorney David Houghton.

Staff said nearly every condition typically incorporated into a pier Order was, by error, omitted in SE3-4314. The error left pier construction and ongoing use essentially unregulated.

Attorney Houghton advised the Commission that it could correct the error through the issuance of an “amended, re-stated” Order of Conditions. Such an Order would return the alignment between the vote taken by the Commission when it approved the project with standard pier conditions, and the paper permit, wherein the conditions were mistakenly omitted.

Attorney Pizzuti said such an Order would pose a due process issue. The Order expired in 2007. To impose new conditions would unilaterally change the approval he added. Mr. Pizzuti felt that this would be unconstitutional; simply too much time has elapsed since issuance of the Order in 2004. He said this would affect the mortgage on the property.

A boat has not been utilized thus far at the constructed pier.

The Commission agreed to discuss an avenue for settlement with the applicant.

A motion was made to continue the matter to November 10, 2009, morning meeting. Discussions will ensue between Attorney Pizzuti and staff.

- B. Pieper SE3-4271 (coc,d) relocate pier; add ramp & float *

The applicant was represented by Stephen Wilson, P.E.

Staff informed the Commission of an error in the Order, requiring the imposed deed restriction to provide a shared use for the new pier. The Commission agreed that it should not be part of the forthcoming restriction.

A motion was made to deny the certificate.

Seconded and voted unanimously.

- C. St. Onge SE3-4272 (coc,d) construct additions to single-family dwelling *

The application was withdrawn.

D. Bodfish Mktg. SE3-1332 (revised plan, ok) reduce size of buffer

A motion was made to approve the revised plan.

Seconded and voted unanimously.

E. Griffith SE3-0384 (coc) construct single-family dwelling*

(Certificates, cont'd.)

The application was tabled until a forthcoming RDA is approved.

F. Silvia & Silvia SE3-1493 (coc) construct single-family dwelling*

A motion was made to deny the certificate, due to the existence of a hot tub within the 50-foot buffer.

Seconded and voted unanimously.

G. Salvatore &Pappas SE3-4502 (coc,d) construct addition to single-family dwelling *

A motion was made to deny the certificate, based upon the lack of a buffer along the river bank.

Seconded and voted unanimously.

The agenda was amended to add H:

H. Mellon SE3-3696 (coc,eZ) construct addition

A motion was made to approve the certificate.

Seconded and voted unanimously.

V OLD & NEW BUSINESS

A. Barnstable County Land Management grant award

Noted. The Commission issued its congratulations.

B. 45 Mitchell's Way under Article 1

A motion was made to decline interest in the parcel as conservation land under Article 1.

Seconded and voted unanimously.

C. Reconsideration of possible breach of County Farm CR

The Commission agreed to allow staff to take the lead on this matter with the County.

A motion was made to adjourn.

Seconded and voted unanimously.

The time was 12:57 p.m.