



Town of Barnstable Conservation Commission

200 Main Street
Hyannis Massachusetts 02601

Amended agenda originally posted
on 12/16/21 @ 9:51 am to edit
item II.A. and add item IV.C.

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: December 21, 2021 @ 6:30 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/92552775973>

Meeting ID: 925 5277 5973

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, 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.

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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 6:30 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Clerk George Gillmore, Commissioners John Abodeely, Bill Hearn, Larry Morin and Pete Sampou.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant, Kim Cavanaugh.

I. REQUESTS FOR DETERMINATION

- A. Daniel Lee, Lennar Multifamily Communities.** Request to determine the jurisdiction of the Wetlands Act and Barnstable Wetland Bylaw regarding an existing storm-water management pond at 35 Scudder Avenue, Hyannis as shown on Assessor's Map 289 Parcel 110. **DA-21061**

The applicant was represented by Ed Pesce of Pesce Engineering and Associates and Dan Lee Lennar Management Company, along with Wetland Scientists Kathryn Barnicle and Mike Ball.

Mike Ball submitted Man Made Basin bottom survey transect locations.

Abutter notifications were sent based on an NOI list. 48 abutter letters were sent out vs. 12 which would have been required for an RDA.

Six comment letters were received and acknowledged.

Two memo's from Commissioners Bill Hearn and Larry Morin were acknowledged.

Staff opinion is that pond #4 does not fall under Conservation jurisdiction.

Issues discussed:

- Larry filed a motion and memorandum to have an outside organization determine if there is a pervious or impervious bottom on the pond.
- This application is solely to determine Conservation jurisdiction.
- Commissioner Hearn went into the pond and determined there is an asphalt bottom.
- The bottom is 50 years old and the asphalt has broken up and crumbling. There is a question if it could be a seepage pond.
- A study could be done to determine what type of pond this is.
- There was discussion on the size of the pond and the material on the bottom.
- During drought conditions the water level in the pond is still at a high level. Meets the description of a man made non draining pond.
- Man-made does not disqualify it from being in Conservation jurisdiction.
- There was discussion on if the sides of the pond are impervious.
- There is no evidence that the pond is draining.
- The definition of the word pervious and if it applies to this pond.
- Storm water management is done under a NOI. There was discussion if the pond is being demolished if an NOI should be filed.

PUBLIC COMMENT

Bob Colford – 67 Fiddlers Circle – Just got notified a couple of days ago. Asked Commission to not take a vote tonight because abutters have not had enough time to look into it.

Laura Krause BETA Group – Feels the applicant has not met the burden of proof to satisfy an impervious bottom. Letter submitted from Marsh Matters addressing the bottom being impervious was inconclusive.

Roberta Mauch – 80 Greenwood Avenue. Grateful for Conservation Commission to protect the communities' best interest. The wildlife is amazing in the area. Lennar should look for another location. This space is used by the Town to support the community.

Myrna Nover - VP of BETA Group - Agrees with Larry Morin. Storm water made man pools created prior to 1996 can be considered wetland resource areas if they meet the definition. If this meets the definition of a pond and was created prior to 1996 than it can be considered an area subject to protection and take jurisdiction.

Felicia Penn – 15 Daisy Bluff Lane - Submitted letter dated 12/18. Hopes members will not make a decision based on what was built but on how it is performing today. She has heard no information on Town Code. The Commission has jurisdiction weather man made or natural.

Issues discussed (continued):

- There was discussion on storm water management, man made or natural is irrelevant.

PUBLIC COMMENT (Continued)

Kris Clark Town Counselor – Flag #12 was referred to as a 1928 photo but is labeled 1952.

Ed Pesce clarified it is a 1938 photo but the header was incorrect.

End of public comment.

A motion was made by Larry Morin that the commission authorize the hiring and appointment of an outside consultant pursuant to the regulations of Chapter 708 and request the applicant to agree to the stay of the 21 day rule.

Seconded

Aye – Hearn, Morin, Sampou

Nay – Abodeely, Foster, Gillmore, Lee

Motion denied vote of 4 -3.

- There was discussion on if there is a need for further study.
- The area is golf course at the edge of the river. Part of the NOI will deal with wildlife habitat.

A motion was made to determine this as a negative determination for pond #4 only.

Dan Lee was asked for a voluntary commitment that a written protocol be submitted to the Conservation office prior to any work being done to address the wildlife habitat relocation in the pond.

Mr. Lee agreed.

Seconded

Aye – Abodeely, Foster, Gillmore, Lee

Nay Hearn, Morin, Sampou

Motion carries 4-3

II. CONTINUANCES

- A. **S&D Boston Properties, LLC** Proposed site improvements to include pool and deck, landscaping, and ecological restoration at 108 Little River Road, Cotuit as shown on Assessor's Map 054 Parcel 020. **SE3-5937 Continued from 12/07. Continuance requested to 1/18/22. Last continuance.**

A motion was made to approve the continuance without testimony to 1/18/2022. It will be the absolute last continuance.

The reason for the continuance is there is no engineering stamp on the plan.

They have been asked to hire an engineer to stamp the plan.

There is no set rule or regulation on continuances, this is a standard practice.

A motion was made to approve the continuance without testimony to 1/18/2022. It will be the absolute last continuance.

Seconded and voted unanimously by roll call.

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

Nay

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

- | | | | | |
|----|------------------------------------|----------|-----------|--|
| A. | Town Of Barnstable/D.P.W. | SE3-5615 | (coc, ez) | various storm water and other improvements * |
| | Sea Street & Ocean Avenue, Hyannis | - | | Stewarts Creek and Keyes Beach |
| B. | Town Of Barnstable/D.P.W. | SE3-5279 | (coc, ez) | various storm water and other improvements * |
| | Route 149, Marstons Mills | - | | Mill Pond & Marstons Mills River |

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

IV. MINUTES

- A. November 9, 2021
- B. November 23, 2021
- C. December 7, 2021

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

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

The time was 8:08 p.m.