



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: April 11, 2023 @ 6:30 PM

LOCATION: James H. Crocker Jr. Hearing Room, 367 Main Street 2nd Fl., Hyannis, MA

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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, Hearn, Morin, and Sampou. Commissioner Abodeely was absent.

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

Chair Lee announced the May 9 and 23 meetings will be held remote via Zoom.

I. EXECUTIVE SESSION Executive Session postponed to a later date

- A. Executive Session for the purpose of discussing litigation strategy with respect to the case in Barnstable Superior Court (Civil Action No. 2272CV00354) by Tobias Welo et al., for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break and plantings (DEP SE3-5976 if the Chair determines that an open session could be detrimental to the Commission's litigation position.

The Executive Session was postponed to a later date.

II. OLD AND NEW BUSINESS

- A. Shellfish Habitat Rating Map, 3 Bays Area Revision Workshop MEA Elizabeth Lewis/Public Hearing.

Nina Coleman gave an overview of the maps.
The numbers have gone up in some areas.
They are meant to be helpful to the Commission.
A recommendation was made normalize the data.

Liz Lewis reviewed the data.
There are 124 total areas that were looked at in the 3 Bays area.
After the data is normalized there is less yellow (areas that increased in ratings) and more red which are areas that have decreased and white areas remained the same.

The issue is with 2011 data. There were a fair amount of people that were not familiar with the areas.
The ratings should be done by people who know the area.
There are areas that were not properly assessed in 2011.
In 2022 more people knew the shellfish area.
The program has significantly increased since 2011.
The shellfish numbers have increased significantly because more have been put out.
The commission approved the habitat assessment in 2011.
Going forward all three numbers will be reported.

Commissioner questions:

- Are there examples where the shellfish map came up with a different number than when a shellfish analysis has been done.
- In some cases soft shell clam habitat is fantastic but no soft shell clams were found.
- The planting of 4 ½ million quahogs could improve the habitat.
- If there is a re-establishment they are bringing oxygen into the habitat and making the area better. It is beneficial to put shellfish in these areas.
- The process of harvesting the quahogs helps the habitat as well.
- Could start with a clean slate instead of using data that might not be accurate.
- In 2011 there were two working group days.
- The handout from the last meeting has the criteria on it.
- The surveys were requested.
- The data provided tonight helps clarify the numbers and why the numbers are different between 2011 and 2022.
- Knowing how many people were unfamiliar with the area is very helpful.
- There is no historical context at the various sites.
- The normalized data is a big improvement.
- There was discussion on if there is a more scientific way to approach it. Core sample, chemical sample. If enough sites were done and a scale be added.
- If someone is making a dock application the analysis could be part the data collection.
- There is a lot of data in the files because dock proposals have been coming in for years. Could look at data currently in the files. It would be a research project which would take a lot of time and effort.
- An understanding by an experienced shell fisher would be helpful.
- It should not be put on Natural Resources or the Shellfish Committee to do all the work.
- The applicant is asked to collect data, Liz goes out and looks, with this data there is real data for the sight.
- This is to benefit the Town as a whole.
- A PDF version of the normalized data was requested for the website and the public.
- The dock that went into the area that was a 10 could have been one that was denied by the Commission but approved by the State.

There were three written comments from Michael Shultz, Beacon Marine, and Sullivan Engineering.

Public Comment:

Chris Clark former employee for Marine and Environmental Affairs. She is one of the first evaluators from 2000. Her knowledge has changed over the last 23 years. The people who go into the water daily have the knowledge. There are places in Barnstable Harbor called muscle point. There is no scientific reasoning how the muscles know to go there, they just do. Shellfish know where to go. We do not know their secret. There can be variables within a day. Muscle point does not set up every year. Feels there is value to the shellfish evaluation. The evaluators saying it is not good or they don't know shows good faith in the evaluation.

John Townes President of BARS - Is in support the Dept. of Natural Resources and Marine and Environmental Affairs. They do a tremendous job. BARS members help them plant and dig up the quahogs. It is a very

important activity. Without their efforts there would not be any shellfish to be had within 2-3 years. Requests come in monthly from people wanting to learn how to shellfish. BARS supports those programs. A BARS member rallied a group of Barnstable residents to try to prevent docks from going in because they are an impediment to the public's right to shellfish.

There are 200 members of BARS. Barnstable Harbor on a decent day two hours before low tide, at Cordwood, and Bay Street, there are always people out harvesting quahogs, clams and oysters. The economic impact to the Town is significant.

4000 family permits are sold per year.

Learn to shellfish programs are a joy to the community.

A lot of people enjoy it.

Anything that impedes the ability to fish, BARS opposes.

Arlene Wilson – A.M. Wilson Associates

There should be more hard data. The first set of maps done by Ty Ranta differentiated between the depth off shore. The intertidal area is full of soft shell clams, but at mean low water there are none. The shellfish maps are based on the intertidal resource. A dock could bridge the high rated area and not affect the high rated area.

Patricia Farinha – member of the Shellfish Committee and resident.

The definition of Conservation is to protect.... She learned Conservation at a young age. Being a guardian of conservation is everyone's job. Barnstable is one of the most beautiful places she has ever lived. Germany has top notch conservation. We work at it but do not compete.

John Norland - Impressed with the Conservation Commissioners. He has concern about the pier situation. In the shell fishing buddies program, the older members that still go out cannot get to these locations. They have to duck under piers to get to the spots.

Data from tonight will be put on the website.

III. REQUESTS FOR DETERMINATION

- A. **Robert E. Kennedy.** To seek an after the fact approval of a stone wall constructed within the 50-100' buffer at 3885 Main Street, Barnstable as shown on Assessor's Map 335 Parcel 052. **DA-23028**

The applicant was represented by Arlene Wilson of A.M. Wilson and Associates.

Issues discussed:

- This came in as a violation.

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the application as a negative determination.

Seconded and voted unanimously.

IV. NOTICES OF INTENT

- A. **Town of Barnstable.** Proposed foot/bike path improvements to include re-routing a section of trail and adding a 60' boardwalk at 0 Maraspin Road, Barnstable as shown on Assessor's Map 298 Parcel 031. **SE3-6080**

The applicant was represented by Sean Riley of Coastal Engineering and Jennifer Crawford of Crawford Land Management.

Lev Malakhoff, New England Mountain Bike Association addressed the Commissioners about their program.

Issues discussed:

- Construction of new unrequested trails. A question was asked, what do they do if they come across an unrequested trail. The message gets out to members of NEMBA. Some money was spent closing down 3 trails in West Barnstable.
- They were advised to contact Conservation if they see something unpermitted.
- This will be an intermittent boardwalk. It is 175’.
- It will be sitting on sleepers, like railroad ties.
- There is an anchor system so they will not become buoyant in heavy rain.
- The area will be accessed from the Coast Guard Museum.
- There will not be any clearing necessary for getting in.

Public Comment:

Doug Paiseon - 110 Commerce Road. He is the trail steward that takes care of all the trails in Barnstable village. This boardwalk is critical because it crosses a vernal pool which has not yet been certified. Previously atv's and motorcycles have driven through the area. A blue spotted salamander was found in the area. Other amphibians are using the water. A boardwalk will prevent any foot traffic in the area. This area is seeing increased use since the pandemic. There is extremely poor signage in the Town. He would like to work with NEMBA to improve signage. He supports the project.

The trailhead entrance would be the best place for the signage.

Ann Canedy, Chair Land Acquisition and Preservation Committee– The promotion of trails is their most important charge of the committee. Thanked Lev and his work on this trail. A grant was received to do the project. Would like to use this as a prototype for other locations in the Town.

John Townes – Member of Barnstable Land Trust agrees with everything Doug said previously. The environment is important to many people. COVID has brought everyone outside. Without marked trails there would be chaos. Trails made by public walkers cause damage to the environment. Marked trails preserve the area. He supports the project.

Nina Coleman – Town of Barnstable Natural Resources. This is a great project. There is a lot of illegal motor vehicle use in conservation areas. There are no spaces where ATV's or motorcycles are allowed in the Town.

A motion was made to approve the application subject to receipt of a revised plan showing the detail on the sleeper and on the ramp.
Seconded and voted unanimously.

B. Laurie J. Hall, Trustee – TMT Realty Trust. Proposed modifications to the existing beach cabana at 979 Sea View Avenue, Osterville as shown on Assessor's Map 090 Parcel 008. **SE3-6082**

The applicant was represented by Sean Riley, of Coastal Engineering.

Issues discussed:

- The cabana predates the wetlands protection act.
- The removal of the stair will result in a 14 sq. ft. reduction in hardscape.
- A question was raised about lights along the railing. There is a question on how they will be powered. The power would run along the boardwalk and the existing deck.
- There is concern the lights would be left on. They could be put on a timer switch or a sensor.
- An LED tape light projects down, not out.

There was no public comment.

A motion was made to approve the application subject to addition of light switch with time, and planting of beach grass where the stairs are removed.
Seconded and voted unanimously.

Items were taken out of order, Thomas Keane was taken next.

C. JMS Holdings LLC. Modification of existing pier by converting from post to pile supports with no change in footprint at 134 South Bay Road, Osterville as shown on Assessor's Map 093 Parcel 064.
SE3-6084

The applicant was represented by Arlene Wilson of A.M. Wilson and Associates.

Exhibit 1- Photographs

Exhibit 2 - Characterization of Jetting-Induced Disturbance Zone and Associated Impacts, North Carolina State University. Section of the report

A shellfish report has not been submitted by Liz Lewis for this site.

Issues discussed:

- This is a hybrid pier, part seasonal and part permanent.
- There is shellfish data from before the pier was put in as well as for 17 years since it has been in place.
- Square footage for the pier is 17' for proposed and 20' for existing seasonal pier.
- The conversion from seasonal to year round is very similar to several projects heard recently.
- The vote has been consistent with the Wetlands Protection Act but not with the Town By-Law.
- The Wetland Protection Act does not deal with recreation. The decisions have come down to recreational activities.
- There have been several times earlier tonight where recreational issues have been mentioned.
- The ordinance upholds the recreational impact.
- There is an impact to recreational activities when a pier goes from seasonal to permanent.
- The state does not have the performance standard for the shellfish. The ordinance has performance standards.
- The distance from the decking to the water. Current elevation is 5 ½' mean low water. There is a vertical seawall. The elevation could be raised to 6 ½ or 7'. But it would be an aesthetic issue.
- The shellfish survey was on either side of the pier. The 1/2022 Megladon study and the findings were very similar.
- There is a 12" rule in place. There is no desire to change the size of the boat.
- The shellfish rating has the potential to become a 10 in this area, based on new data, revised map is still in review by Commission. A 30" rule usually applies in a 10 rated area.
- The 12" rule was applied even with a 9 rating.
- This pier did go on appeal. The special conditions of the 12" rule were the result of mediation.
- A question was raised how much the dock system has been used. Current owner has had his boat there for two summers.
- In 2005 part of the agreement which led to the 12" rule was the fact that this remain seasonal.
- The argument is there has been no change in the environment for 17 years since it was put in.
- If approved as permanent vs. seasonal may the 12" rule could be changed.
- There is now a soft shell habitat in this location that was not there previously.
- This site is not easily accessed by the public.
- There are more posts with the seasonal pier than there will be with a permanent pier.

- The shellfish rating remaining a 9 over the last 17 years and addition of soft shell clams with the seasonal pier is significant. A permanent pier could change that.
- The 2011 shellfish rating map needs to be used for this application.
- The previous owner used the dock constantly.
- This could be used as a study as discussed earlier in the evening.
- The previous owner had a 22' boat with a 150 hp motor.
- Current owner is not a year round resident.
- The dock is only going to be used seasonally.
- The owner does come to the site on weekends and days, off season. His plan is to come down frequently but not make it a permanent home.
- The boat will be in the water as long as the season allows.
- This year there seems to be an onslaught of requests to make seasonal piers permanent.
- There was minimal effect of the jetting of a seasonal pier at the Ryan site observed this fall.
- There is long standing understanding the temporary docks are better than permanent docks. A question was raised on what the current boat is.
- Commissioner Sampou would like time to review the complete report from North Carolina State University that Arlene only submitted a few pages from.
- Is there a sign currently on the dock stating 12"?
- The NOI did not request a 12" rule.
- A written statement should be provided requesting the 12" rule.
- Arlene believes this is not a significant change so the 12" rule should still apply.

A continuance is needed to get Liz Lewis' report. A continuance was requested to April 25, 2023.

Public Comment:

John Townes, President BARS – Commended Commission for work and hours put in. People can not get to the area for shell fishing. It is something that needs to be considered. A beach sticker is not allowed unless you are a permanent resident. He feels someone who is not a permanent resident should not have a permanent dock. He would like Commission to keep in mind the public has a right to access not only the intertidal, but the sub tidal area.

Chris Clark – There is a small access point for the public off of South Bay Road. This flat is extremely productive. It has been used for a relay area. That planting and harvesting could have contributed to the soft shell clam habitat.

Chris referred to Liz Lewis' letter stating the shellfish survey was not done in the proper area. There was a correction to the letter.

Patricia Farinha – Would like to know the size and horsepower of the boat currently at the dock.

End of public comment.

DMF Comment letter dated April 10, 2023 was acknowledged.

- Commissioners should consider if this is a major change. A major change may bring the project up under current regulations. If approved in 2005 or 2006 it would be current regulations. It would not be a 12" rule under current regulations it would be 30" rule.

A motion was made to continue the project to April 25, 2023.
Seconded and voted unanimously.

- D. **Thomas Keane.** Remove and replace existing deck with new deck. A 2' extension is proposed on the west side with repurposing of existing sono tubes at 160 Huckins Neck Road, Centerville as shown on Assessors' Map 252 Parcel 144. **SE3-6083**

The applicant was represented by David Flaherty of Flaherty Environmental Services.

Issues discussed:

- NHESP comment letter has not been received.
- There are two decks. This is just the upper deck.
- It will be a cantilevered 2' extension.
- There are items stored on the beach that should not be there. They should be more upland.
- There will be an enforcement order on it and will be addressed.

There was no public comment.

A motion was made to approve the application as submitted with a continuance to 4/25 for NHESP letter. Seconded and voted unanimously.

A motion was made to adjourn.
Seconded and voted unanimously.
The time was 9:27 p.m.