



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: April 25, 2023 @ 6:30 PM

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Meeting ID: 820 9598 7702

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.

**REMINDER TO APPLICANTS:
FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 230
SOUTH 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, Commissioners Abodeely, Hearn, Morin and Sampou. Commissioner George Gillmore was absent.

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

I. OLD AND NEW BUSINESS

- A. The Barnstable Conservation Commission and Marine and Environmental Affairs will hold a public workshop allowing for public comments, on the proposed revised shellfish habitat rating map dated 2022 for the Three Bays area. The date for the Commission vote on revised rating maps will be announced at a later date.

Nina Coleman, Natural Resources Director and Amy Croteau, Shellfish Constable, were in attendance for the discussion.

- There was discussion on the reformatted data, which included not familiar (NF) and not significant (NS) as factors, and how and whether to incorporate them into the shellfish ratings map.
- A question was raised, “what does normalized” mean.
- It was agreed that the “reformatted data” in this discussion was not normalized.
- Knowing the number of people that called an area Not Familiar is very important.
- Not significant (NS) and not familiar (NF) are very different. The NS is just as important as NF and should be included in any data treatment.

Public Comment:

Arlene Wilson – There has not been an opportunity for the public to view the charts. She was not aware they wanted the maps revised to reflect any reformatted data. There is concern about the methodology and usefulness of the maps. Without knowing the type of shellfish, whether soft shell clams, quahogs, oysters, etc. it would be difficult for a consultant to design a structure that will not be impactful to the resource and not useful to the Commission in trying to set conditions for the projects.

The chart was placed into the meeting materials on the website the day after the last hearing.

Commissioner comments continued:

- The maps should be kept simple and in line with what has been done in the past.
- To try to differentiate the type of shellfish would make the matrix too difficult. The value of the shellfish is the same for all. It is not necessary to determine the type of shellfish.
- The shellfish surveys done by the consultants and by the shellfish biologist at the time of the application will provide the information on the variety and specific location of shellfish.
- A question was raised, if the rating is for habitat value, shellfish population, or scarcity of land.
- It is not just based on what the standing stock is, but also the stock historically and if it is an area where shellfish could grow and survive.

Anna Villadalobos Topete - A natural resource conservation student at the University of Amherst. Asked if they are looking at resource re-population or just keeping the areas stable throughout the Town. The approach to this was a subjective one. There is an objective standard to measure the value of the shellfish.

Anna was asked if she had any suggestions or recommendation. You can look at it based on how healthy the population is, how it is helping the eco system, has the quality of water changed, and how the species is doing overall if you look at the shellfish population over time.

Lynne Hamblin – The ratings are completely subjective, and based on the majority of the opinion. It is only about who voted yes. The others may not know or may think it is not significant. The new reformatted data addresses it. There should be a standard. She feels it would be helpful to know the basis of the participants opinions. The measurement is too broad. There are no specifics as to the reasons for the ratings.

- The rating map is only one tool in making a determination. The 10 people have knowledge and experience of the areas in the Town.
- The regulation is to determine the depth of water needed under the dock.
- The map rating is rebuttable.
- The value of an area is determined by the rating maps, the independent surveys by the applicant and the Town biologist surveys at the time of the application.

Amy Croteau – There is a list of people of who participated in 2011 and in 2021. They tried to use people familiar with the area. Amy listed the people involved in the surveys. The 10 individuals selected are experts.

- There was continued discussion on how the areas were rated.

- Whichever idea is voted on down the road, chart with map or no map, there would need a further discussion on how this would impact Chapter 703.
- There was discussion if color coding is needed.
- The Commission was leaning toward the idea of posting the 2022 chart with the numbers on the website with Significant, Non-Significant and Not Familiar, and not posting a colored map with numbers.

Nina Coleman asked for some direction and what the Commission is looking for at the next meeting. There is nothing needed for the next meeting.

II. REQUESTS FOR DETERMINATION

- A. **Samuel Mullin.** Upgrade failed septic system within buffer zone to bordering vegetated wetland at 89 Blue Heron Drive, Osterville as shown on Assessor’s Map 117 Parcel 005. **DA-23029**

The applicant was represented by Darren Meyer of Meyer and Sons

Issues discussed:

- There were no questions from Commissioners.
- The project was approved by the Health Department.

There was no public comment.

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

Seconded and voted unanimously by roll call.

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

Nay -

- B. **Town of Barnstable – DPW.** To install two (2) modular non-permanent Granite Memorial Benches at Loop Beach, 281 Ocean Avenue, Cotuit as shown on Assessor’s Map 033 Parcel 021. **DA-23030**

The applicant was represented by Joe Marshall from Barnstable Department of Public Works.

Issues discussed:

- They are asking for two locations. There is one family interested now, but would like both locations approved so they don’t have to come back if there is another in future.

There was no public comment.

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

Seconded and voted unanimously by roll call.

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

Nay -

- C. **Karen Aylmer.** Proposed addition to single family dwelling at 4317 Main Street (Route 6A), Barnstable as shown on Assessor’s Map 350 Parcel 004. **DA-23031**

The applicant was represented by Daniel Ojala, P.E. of Down Cape Engineering and Consulting.

Issues discussed:

- The incursion is only 3’ into the 100’ buffer.
- RDA’s do not require mitigation.
- Each project is site specific relative to the type of filing.

- This is a very small and simple project.
- There is no Certificate of Compliance issued on an RDA so any mitigation would not be followed up on.

There was no public comment.

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

Seconded and voted unanimously by roll call.

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

Nay -

D. Richard and Anne Segerson. Installation of pool, fence, landscape plants, driveway adjustment, pergola, fire pit and front fence at 21 Cockchoisett Lane, Osterville as shown on Assessor’s Map 116 Parcel 008. **DA-23032**

The applicant was represented by Barbara Mahassel Conolly of Gardens by Barbara Conolly.

Issues discussed:

- This application came in front the Commission before but there was not enough information given.
- The new application is flood zone only and has all the information needed.

There was no public comment.

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

Seconded and voted unanimously by roll call.

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

Nay -

III. NOTICES OF INTENT

A. Susan Moore Morgenthau, Trustee – 710-713 Sea View Avenue Realty Trust. To modify and expand existing pier, ramp, and float at 710 Sea View Avenue, Osterville as shown on Assessor’s Map 114 Parcel 013. **SE-6086**

The applicant was represented by Chuck Rowland, P.E. of Sullivan Engineering and Consulting.

DMF letter dated April 24, 2023 was acknowledged and read into record.

Town Shellfish Report April 24, 2023 was acknowledged and read into record.

Issues discussed:

- The shellfish rating is a 5.
- A question was raised if the mean low water line moved.
- The Buzzards Bay study was used to determine the mean low water.
- They are lengthening the boardwalk 8’.
- The float orientation is different.
- The dock is getting lengthened.
- There are two other docks in the vicinity which will make this area tight.
- A question was raised if this request to become permanent instead of seasonal will initiate the other piers in the area to apply as well.
- The project meets all the requirements.
- The area is a unique situation.

- The bottom is muck and requires a permanent pile.
- The ramp and float will be coming out in the winter.
- There is not a lot of shellfish in the area.
- Removal of shellfish in the area before the work is done will be a requirement.
- A question was raised if the shellfish should they be put back after the work is done.
- The area is not high quality for shellfish.
- MEA will determine how the shellfish are removed and if they will be put back.
- There is no waiver request for this application.

There was no public comment.

A motion was made to approve the project as submitted with condition to contact Natural Resources regarding removal and replacement of the shellfish.

Seconded and voted unanimously by roll call.

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

Nay -

B. Christopher C. Bushing. Addition to existing single family dwelling and relocation of septic tank at 39 Hilliards Hayway, West Barnstable as shown on Assessor’s Map 136 Parcel 048. **SE3-6085**

The applicant was represented by Daniel Ojala, P.E. of Down Cape Engineering and Rick Anderson, builder.

Issues discussed:

- In 2021 was the last project.
- This is a very mitigation constrained site, an in lieu fee was discussed in the prior 2021 filing.
- The Commission said in 2021 it was not a mitigation constrained sight and required some mitigation.
- In the area where they are proposing to increase mitigation, there is not a lot of three dimensional structure. Some complexity of vegetation would be welcome.
- There are some cedar trees on either side of the house.
- The corner on the west side could be a possible location for some additional cedar trees.
- The rocks indicate the existing mitigation area. The area looks like it has been mowed. It looks like lawn.
- It is a wildflower meadow. They did not do well because of the drought last year. There is usually an end of the year mow on a wildflower meadow.
- It does not appear to have ever been planted.
- An area demarcated for mitigation is a no touch zone. This area is clearly being managed.
- Maybe instead of wildflower there should be more substantial plantings.
- A condition should have been put in for annual reports.
- Instead of an in lieu fee, the money could be spent on more significant plantings.
- Trees at each end would be beneficial.
- The current OOC has not had a COC issued yet.
- They could put in blueberry bushes instead of the wildflower meadow, and a couple of trees at each end.
- A fence instead of the row of rocks would be an improvement.
- Mitigation is always preferred over fees in lieu of mitigation.
- At what point do you not allow any more hardscape if it is a mitigation constrained site.
- The last project did not include the full mitigation that should have been required.
- To approve another project with not enough mitigation should not be considered.
- The owner needs to decide if he wants the addition or the grass in the back yard.
- A continuance was requested to incorporate more mitigation into the plan to May 9, 2023.

There was no public comment.

A motion was made to continue the project to May 9, 2023.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Hearn, Lee, Morin, Sampou
Nay -

C. Richard and Judith O’Connor. To construct swimming pool and patio along with other landscape features and pruning of understory of the trees on the state defined coastal bank at 70 High Street, West Barnstable as shown on Assessor’s Map 133 Parcel 028-001. **SE3-6087**

The applicant was represented by Wayne Tavares.

Issues discussed:

- A revised plan is needed.
- The distance from the BVW to the closest point of the project should be located on the plan.
- The area for limbing and lifting vegetation /trees should be hash marked on the plan.
- The demarcation for the mitigation area should be on the plan.
- There is no draw down for the pool indicated and the location of the pool equipment needs to be added.
- There is no pool fence shown on the plan.
- The location of the fire pit is not on the Julia Garden Plan.
- The trimming of the lower branches up 15’ from property line to property line is for sunlight enhancement for the understory, not for a vista view.
- It could be approved for approximately 20’ for an experiment and if it works well, come back for further approval.
- Richard O’Connor owner addressed the Commission and is in agreement of the idea.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing drywell location, pool equipment, pool fence, distance from the BVW and the demarcation area for the mitigation and allow for an area up to 20’ with limbing lower branches for understory enhancement , in consultation with staff prior to the field work, annual reports for 3 years, and written notification to staff if there is change of consultant.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Hearn, Lee, Morin, Sampou
Nay -

IV. CONTINUANCES

A. **Angela Hahn.** Construct and maintain 4’ brushed footpath; bank access stairs; pile supported dinghy dock with 3’ x 12’ ramp, 8’ x 12’ float and kayak racks; vegetative maintenance and understory plantings at 150 Bay Road, Cotuit as shown on Assessor’s Map 007 Parcel 018. **SE3-6071 Continued from 3/28/23 NHESP letter received. WC Form received.**

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

DMF letter dated February 24, 2023 was read into record.
Harbor Master and waterways committee letter dated March 2, 2023 was acknowledged.
Shellfish Report dated April 19, 2023 was acknowledged.

- There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted unanimously by roll call.

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

Nay -

- B. **Robert Willett.** Proposed construction of a deck and associated stairway access at 31 Paine Avenue, Hyannis as shown on Assessor’s Map 289 Parcel 119-001. **SE3-6078 Cont from 3/28/23 WC Form received.**

The applicant was represented by Cameron Larson from Environmental Consulting and Restoration, LLC.

Issues discussed:

- There were some prior enforcement issues.
- Staff does not have any issues with the project.
- The majority of the deck is within the existing footprint. There is a slight increase into the 50’ buffer.
- There is concern going into the 50’ buffer with such a steep bank.
- The bank will be well protected.
- There will be four times the increase of hardscape into the 0-50’ buffer in mitigation.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted unanimously by roll call.

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

Nay -

- C. **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 Continued from 4/11 for NHESP letter. Form WC received.**

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

Issues discussed:

- The NHESP letter has not been received.
- An additional continuance to May 9th is needed.
- Abodeely is not part of the quorum.

There was no public comment.

A motion was made to approve the continuance to May 9, 2023.

Seconded and voted unanimously by roll call.

Aye –Foster, Hearn, Lee, Morin, Sampou

Nay –

D. **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 Continued from 4/11/23 WC FORM submitted**

The applicant was represented by Arlene Wilson of A.M. Wilson Associates. John Abodeely has done the evidentiary review, filled out the form, and is part of the quorum.

Arlene answered some questions from the prior meeting.

- The 12' rule continuation is requested.
- Waivers are requested.
- J-1 allowable length. It would be 94' beyond mean low water.
- Section L – centered on property. It was originally authorized off center. Proposing same location and footprint.
- M would require 30" under the boat.
- Shellfish report shows no change since the pier has been put in.
- Applicant is between boats and will provide specifications when he decides what the new boat will be.

Shellfish report dated April 24, 2023 was acknowledged and read into record.

DMF letter dated April 10, 2023 was acknowledged and read into record.

Issues discussed:

- The OOC issued in 2004 was before Chapter 704 regulations were adopted.
- Under Ch.703 regulation, this is a substantial change and requires the 30' rule.
- Megladon report refers to areas of dredging. There is no dredging requested in this project.
- There was discussion on the report from University of NC submitted by Arlene Wilson.
- The report refers to a formula for calculating the diameter of disturbance created around a jet driven pile.
- The executive summary lists several factors important in such a calculation. The size of the grains of jetted material is one of them.
- A question was raised, if the grain size in this report is really comparable to those in the area of the proposal.
- There are many parameters in the formula when applied to the project case, which have only been guesses. The density of the substrate, depth of the piling, and pressure of water are all examples. There is concern about the validity of the conclusions reached using the formula in this manner.
- The report is for installing bridges and larger projects, not seasonal docks.
- Their interests may be different than ours.
- A question was raised how long the owner has been without a boat. Just this winter.
- It was asked if the jetting process in spring is the same as in the fall.
- The process of putting in and taking out piles was reviewed.
- The jetting in spring is very different than it is in the fall.
- The Megladon report, figure 4, page 5, sediment observation is very broad in terms of assessment of habitat for shellfish.
- Figure 4 and 5 shellfish results – assessment of sediment and shellfish is all done on the east side of the dock. An update was done to include the middle and 10' on each side dated 4/2/23.
- Commissioner Sampou walked the area and sampled shellfish. On the east side, the sediment was firm, on the west side, it was much softer. It was hypothesized that most of the time the boat was birthed on the west side of the dock because there is a very noticeable difference in the quality of the sediments on the opposite sides of the dock.
- There was continued discussion on the NC study regarding size of the piles and the materials the piles were made of.

- The first hearing Arlene said it is not a substantial expansion. It is substantial as it is important and significant to go from a seasonal to permanent pier. There is a substantial change in the existing dock.
- A suggestion was made for a finding that it is a substantial change in the existing dock. The project would then be required to be filed under the existing regulation which includes the 30” rule.
- There is concern on the harvest on shellfish, regardless if there a path to the area.
- There was discussion on the CCA treated pilings.
- Legal definition of substantial is “having importance or significance”.
- There was continued discussion on “substantial change”.
- If this is a substantial change, bringing the new pier regulated under Chapter 703, and given the high shellfish value of the area, this would require that the 30” rule would apply.
- With a permanent pier a boat would be there for a longer period of time. That would be a significant change.
- This is a significant impact on the environment.

Arlene Wilson addressed the Commissioners.

- The fluidity of the sediment on either side of the dock found by the Town biologist, the Megladon report, and a different consultant are all similar.
- There have been boats docked on both sides of the pier.
- The formula in the North Carolina report was used because it was the only report with a scientific basis for the conclusions that they could find.
- Arlene suggested the Commission could craft an order to include all conditions discussed tonight. Impose the 30” rule, require the height to be increased, use tropical hardwood piles.
- The time of use differential is not a significant change. Most people do not use their boats before April or after October.
- Tropical hardwood for piles would not need to be added.

Public comment:

Patricia Farinha is not in support of the project. The dock predating the relay area is not significant. The Town put the shellfish there. She encourages the project not be approved.

A motion was made for a finding that a change from a seasonal to permanent pier at this location is considered a substantial change and bring it under Chapter 703.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Hearn, Lee, Sampou

Nay – Morin

The options for a vote were discussed.

A motion was made to take the matter under advisement until May 9, 2023.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Hearn, Lee, Sampou

Nay - Morin

V. CERTIFICATES OF COMPLIANCE –

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

- A. **Barry Cosgrove** **SE3-5853** (COC, ez) Relocate Driveway & Landscape
71 Sand Point, Osterville Coastal Bank / Flood Zone

B. **Melora Coggeshall SE3-5799** (COC, ez) RAZE EXISTING DWELLING
CONSTRUCT NEW DWELLING ABOVE 100 YEAR FLOOD ELEVATION FURTHER FROM
RESOURCE AREAS 47 Rendezvous Lane, Barnstable Salt Marsh / Flood Zone

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

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

The time was 10:53 p.m.