



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: November 26, 2024 @ 6:30 PM

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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 Foster, Clerk Angela Tangney, Commissioners Hearn, Abodeely and Sampou.

Administrator Darcy Karle was present along with Agent Ed Hoopes, and Administrative Assistant, Kim Cavanaugh.

I. OLD AND NEW BUSINESS

A. Conservation Restriction

GRANTOR: ORENDA WILDLIFE LAND TRUST, INC.

PRIMARY GRANTEE: TOWN of BARNSTABLE

SECONDARY GRANTEE: THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.

ADDRESS OF PREMISES: 564 and 0 Main Street (Route 6A), (West) Barnstable, MA 02668

Mark Robinson, Executive Director of Compact of Cape Cod Conservation Trust addressed the Commissioners.

Issues discussed:

- There will be no direct public access to the property.
- There will be no trails developed on the property.

- Orenda will be responsible for managing and maintaining the property.

A motion was made to approve the Conservation Restriction for Smith's Creek with the address of 564 and 0 Main Street (Route 6A), West Barnstable.

Seconded.

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

Nay – none

II. CONTINUANCES

- A. U.S. Coast Guard.** To remove riprap to a minimum depth below MLLW to reduce the navigational hazard at Collier Ledge, a naturally shoaled area of Nantucket Sound in Barnstable, and to remove the toppled spindle tower, foundation, and riprap at Southwest Rock Daybeacon to a minimum depth below MLLW to reduce the navigational hazard near the south coast of Barnstable in Nantucket Sound. **SE3-6216 Continued from 10/01, 10/29, and 11/12/24. WC Form received.**

The applicant was represented by Christine Perron of McFarland-Johnson, Inc., Dan DeTufo of Appledor the project engineer, Mark Cutter and Matt Stuck from the U.S. Coast Guard.

Issues discussed:

- Questions to be addressed from last hearing are if a day beacon could be placed on top of the mounds, could more different buoys be used to mark the mounds and what is the significance of removing material to 7 feet below MLLW.
- Coast Guard feels there is no way to safely mark the area.
- Collier Ledge and Southwest Rock were both built a century ago. Navigation structures are not built that way any longer.
- Many people are not familiar with the area. There have been a lot of accidents.
- There are already two buoys at Collier's Ledge.
- There is also an AIS (aids to navigation) electronic devise on it.
- The 7 feet below MLLW number was determined to be a safe distance of the deepest sea vessel to clear the remaining rocks.
- They have tried for many years to properly mark the area but there are still a lot of strikes.
- The Coast Guard feels there are only two options. It could be taken down to 7 feet below the MLLW or leave things the way they are currently.
- Wayne Kurker addressed the Commissioners. There are some deep areas within 100 yards of Collier's Ledge that he feels the rocks could be moved to.
- The problem for the Coast Guard is permitting for the new area where the rocks will be deposited. The time frame would be a year. It would surpass the window of opportunity to work with the current contractor.
- The locations where the top rocks will be brought are already established habitat.
- Dumping the rocks in another location should not be considered as an option.
- This is a locally attractive fishing spot. It is a destination for the local fishing community and is valuable habitat for fish.
- Taking a reef down will promote siltation. The wave washed rock is extremely valuable to the habitat.
- The Marine Fisheries comment letter was reviewed. They recommended the day beacon be left in place.
- The Coast Guard is concerned that it is a very dangerous area for boaters who are unfamiliar with the area.
- It is currently presenting a clear and present danger to the public.
- The Coast Guard is responsible to remediate the navigation hazard for public safety purposes.
- There is ample evidence that this is clearly an important habitat, however it is also a significant navigation hazard.
- Division of Marine Fisheries confirmed that the material could be placed at Yarmouth or Harwich. No additional permitting would be needed to place the material at those sites.
- The best way to balance the issue is to allow them to remove down to the 7 ft. level with the condition that the rocks are placed somewhere in Nantucket Sound and added to existing habitat or by creating new habitat.

- The Coast Guard only does projects like this if it is absolutely necessary.
- Brian Taylor, Harbormaster strongly agrees with the Coast Guard on the issue. There are boating accidents at this location every year.
- There are benefits to approving the project as it can be conditioned. A condition could be added that an inter-agency meeting occur where habitat improvements could be discussed.
- They should be required to add to an existing habitat or create a new habitat.
- There is irrefutable evidence of a public hazard.

Public comment: None

Jacob Angelo – The way it is marked now is a hazard. He raised a question if the incidents would be what they are if the areas were marked correctly.

Coast Guard response: The buoys are as close as they can possibly get. It is costly to put on a navigational aid. The cost of a day beacon is two to three times the cost.

David Lawler – Decisions are made on many factors. This Conservation Commissions mandate is to protect the environment. They have the authority to deny it. Adding conditions are no guarantee. Time is the enemy of the project. The denial would delay the project which is time sensitive. He requests the application be denied.

Craig Ashworth – Asked what the “2 to 3 times the cost” is referring to. The removal and replacement of the rock would be a lot more expensive than putting a day beacon.

Coast Guard response: They do not put up day beacons any longer. They would have to clear all the rocks to put up a physical marker.

Craig Ashworth asked if there has been any hydrologic study of sand accretion in the area. Coast Guard responded there has not been a study. Mr. Ashworth feels this is drastic step to take in the absence of a study.

Possible conditions of approval were reviewed:

- Two weeks prior to start of work coordinate with Harbor Master.
- Time of year restriction between April 15 and June 15th.
- Allow dredge down to 7 ft. below MLLW.
- A bathymetry report to be submitted within 60-90 days after dredge.
- Dispose of material at previously determined location.
- A recommendation that the materials be relocated in the Nantucket Sound area and in coordination with DMF.

The conditions reviewed were acceptable to the Coast Guard.

A motion was made to approve the project with the above conditions.

Seconded.

Aye – Abodeely, Lee, Tangney

Nay – Sampou, Hearn,

Motion carries 3-2

Commissioner Foster not eligible to vote.

III. NOTICES OF INTENT

- A. Oyster Harbors Yacht Basin Realty Corp.** Proposed maintenance dredging at 122 and 182 Bridge Street, Osterville as shown on Assessor’s Map 093 Parcels 009 and 027. **SE3-6228**

The applicant was represented by John O’Dea, P.E. of Sullivan Engineering and Consulting.

DMF letter dated November 24, 2024 was reviewed.

Town biologist letter dated 11/26 stating she has no comment at this time was acknowledged.

Issues discussed:

- The consultant advised he went before the Waterways Committee and the Shellfish Committee and the Marine Fisheries letter regarding no work between 2 hours before and 2 hours after low tide should not be applicable as there is 6 feet of water at this location at low tide.
- They should close the previous OOC before this is issued.
- There is no bathymetric survey submitted for the prior OOC. And should be submitted before a COC is issued.
- Sullivan Engineering was not involved in the prior OOC. If there no survey data available the new survey is more critical.
- It was last dredged in 2015.
- There was discussion on using silt curtains during dredging.
- The area is mostly sand, but if turbidity becomes an issue, they will have the tools to minimize it and will implement the use of silt curtains.
- The question on how much has filled in since the last dredge can be looked at when requesting the COC for the previous project.
- There is a lot of question about what was done previously. The information should be gathered and reviewed before approving a second one.
- This project is a direct result of the previous project.
- A post dredge survey is to make sure the contractors haven't over dredged somewhere.
- Conditions for approval were reviewed:
 - Work cannot start until the COC has been requested for previous filing.
 - Notify Harbor aster at least 21 days before work begins.
 - Notify the shellfish biologist at least 21 days before work begins.
 - Time of year restriction between January 15th and June 30th for dredging.
 - Relocation of existing shellfish, if necessary, with cost to the applicant.
 - A post bathymetric survey to be done within a year.
 - Silt curtain shall be available for use if needed.
 - The file to be closed out is SE3-4405

Public comment: None

A motion was made to approve the project with above conditions.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney, Sampou

Nay – Foster

B. Courtney C. & Melissa S. Palmer. Proposed construction of an in-ground swimming pool and fence at 621 Main Street, West Barnstable as shown on Assessor's Map 132 Parcel 013-001. **SE3-6230**

The applicant was represented by Paul Shea, P.E. of IEC, Inc.

Issues discussed:

- There will be 3' wide pavers installed around the pool which are not on the plan.
- The wetland may contain vernal pool habitat. This is an isolated vegetated wetland that had pooling in it, but it had dried up.
- It is not classified as a vernal pool by NHESP currently.
- A question was raised if a 6" clearance could be left under the fence for amphibians.
- The pool builder/contractor advised code only allows 2" under the fence.

- The location of the pool equipment needs to be added to the plan. It will be to the right or behind the existing shed.
- There is a beautiful undisturbed 50' buffer at this location.
- There will be no draw down area for the pool. It will be taken away by truck if needed.
- A draw down / dry well is on the plan.
- The plan he is showing is not the one submitted with the NOI.
- The plan without the draw down area is the correct plan.
- The distance between the isolated wetland vs the pool and the distance between the isolated wetland vs the fence also needs to be added to the plan.
- The 3' wide pavers around the pool need to be added to the plan.
- The mechanical equipment needs to be labeled and put on the plan.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing the distance between the isolated wetland and pool, the isolated wetland and the fence, label of the 3' wide pavers around the pool, label the mechanical equipment storage area for the pool, and a 2" clearance under the fence, with a special condition that draw down water needs to be trucked out.

Seconded.

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

Nay – none

- C. Stephen S. & Gretchen K. Bates, Trustees – 102 Bridge Street Realty Trust.** To demolish the existing single-family dwelling, the existing attached garage will remain, and construct new single-family dwelling, pool and all associated appurtenances at 102 Bridge Street, Osterville as shown on Assessor's Map 116 Parcel 001. **SE3-6227**

The applicant was represented by John O'Dea, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- This is a flood zone only project.
- The wall going around the property is 2 to 3 feet and is not within a velocity zone or a moderate wave action area, so it does not trigger the additional guidelines.
- This is not an approval of the septic system. The septic has to be approved by the Board of Health.

Public comment: None

A motion was made to approve the project as submitted.

Seconded.

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

Nay – none

- D. Ted and Dorsey Titcomb.** Raze and replace existing single-family dwelling at 797 Old Post Road, Cotuit as shown on Assessor's Map 073 Parcel 008-002. **SE3-6229**

The applicant was represented by Dan Ojala, P.E. of Down Cape Engineering and Ian Peach of Wilkinson Ecological Design.

Issues discussed:

- Only one dead pitch pine in the 0-50' buffer is being removed.
- There are other trees in the 50-100' buffer being removed.
- They will add a demarcation line for the mitigation planting area.
- There should be an additional buffer strip in the lawn area.
- It does not appear that all 8 trees being removed are for construction purposes.

- The area is very bare all the way out to the top of the bank.
- The restoration of the bank will be included only if they run out of room for the mitigation.
- An additional 6’ strip of mitigation across the top of the bank was offered.
- A 6’ strip along the top of the wall would be approximately 1,000 sq ft of additional mitigation.
- An 8’ strip would be better.
- The top of bank mitigation strip currently proposed is 4-5 feet and around 3 feet in the narrowest area.
- The area near the seating platform has no vegetation, that is where the 8’ strip should be added.
- There should be shrubs not just grasses.
- A continuance is needed for submittal of a revised plan.
- The trees necessary to be removed for construction need to be verified.

Public comment: None

A motion was made to continue the project to December 10, 2024.

Seconded.

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

Nay – none

IV. ENFORCEMENT ORDERS

- A. New Rushy Marsh Realty LLC. – 1541 Main Street, Cotuit – Map 017 Parcel 007. Alteration of a wetland resource area – vegetated wetland and floodzone - and alteration of the buffer to a wetland resource area – vegetated wetland – by cutting vegetation, placing fill and regrading without a permit AND failure to comply with an Order of Conditions/Approved Plan of Record. **Continued from October 15, 2024.**

A motion was made to keep the enforcement order open and tabled to 2/11/2025.

Seconded.

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

Nay – none

V. MINUTES

- A. October 15, 2024
- B. November 5, 2024
- C. November 12, 2024

A motion was made to approve the minutes as submitted.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Commissioner Sampou had left the meeting.

A motion was made to adjourn the meeting.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Commissioner Sampou had left the meeting.

The time was 9:48 p.m.

