



Town of Barnstable Conservation Commission

200 Main Street
Hyannis Massachusetts 02601

Office: 508-862-4093

E-mail: conservation@town.barnstable.ma.us

FAX: 508-778-2412

MINUTES – CONSERVATION COMMISSION HEARING

DATE: MARCH 5, 2019 @ 6:30 PM

LOCATION: Hearing Room, 367 Main Street 2nd Fl., Hyannis, MA

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 6:30 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, Commissioners Pete Sampou, George Gillmore and Larry Morin. John E. Abodeely was absent.

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

I EXECUTIVE SESSION

The Barnstable Conservation Commission may vote to go into Executive Session under G.L. c. 30A §21(a) (3) to discuss litigation strategy with respect to the following cases: Kenneth & Melissa Fish Crane vs. Conservation Commission, if the Chair declares that an open meeting may have a detrimental effect on the litigating position of the Town.

CHAIR: Next on the agenda is an Executive Session to discuss strategy with respect to the lawsuit pending in Barnstable Superior Court captioned regarding Kenneth & Melissa Fish Crane, File #SE3-5473, 1772CV609 Barnstable Superior Court .

DECLARATION OF THE CHAIR: I declare that the discussion of litigation strategy in open session with respect to the case of Kenneth & Melissa Fish Crane, DEP File #SE3-5473 1772CV609 Barnstable Superior Court, may have a detrimental effect on the litigating position of the Town.”

“Following the Executive Session, the Commission will re-convene in open session. I recognize the Clerk to make the motion.”

CLERK: I move to go into Executive Session under G.L. c. 30A§21(a)(6) to discuss litigation strategy with respect to the case of Kenneth & Melissa Fish Crane, DEP File #SE3-5473 1772CV609 Barnstable Superior Court, based on the Chair’s declaration that an open meeting may have a detrimental effect on the litigating position of the Town, and to re-convene in open session following the conclusion of the executive decision.”

CHAIR: “I second the motion.”

ROLL CALL VOTE:

Lee	-Aye
Foster	-Aye
Houle	-Aye

Sampou -Aye
Morin -Aye
Gillmore -Aye

Time: 6:34 p.m.

Return to public session.

The Commission returned to public session at 6:52 p.m.

II REQUEST FOR AMENDED ORDER

Town of Barnstable/Conservation. To amend Order of Conditions **SE3-5043** to replace existing fishway/herring run by reconstructing the fishway entrance spanning the Marstons Mills River, and modifying the existing structure design at 0 Flume Ave., Marstons Mills as shown on Assessor's Map 061 Parcel 010.

Continued/rescheduled from 2/12/19

The applicant was represented by Amanda Ruggiero- Barnstable Department of Public Works **and** Chris Nappi Natural Resource Officer and Herring Warden.

Exhibit A – Pictures of existing fishway/herring run submitted by Chris Nappi.

Issues discussed:

- Received all signatures from abutters.
- The existing herring run structure has been in place for a long time and needs extensive maintenance.
- The current structure discourages fish from entering the bog and directs them to entrance of herring run.
- Excess rain has increased flow which requires the screen needing to be cleaned 3 – 4 times per day.
- Current structure is made of wood.
- The project will include excavating a channel which will allow the fish into the pond but block them from going into bog.
- The new structure is a concrete precast design which will allow for different types of management, make it easier to manage flows, and will prevent erosion.

Public comment:

Kassie Galton, of the Herring Run Association asked if there will be any impact on their property?
Both driveways will be used for access and will be restored to current condition after project is completed.

A motion was made to approve the amended order as requested with a special condition to submit a construction protocol to staff prior to construction.

Seconded and approved unanimously.

III REQUESTS FOR DETERMINATION

Gillian Hollands. Replace existing deck beside pond with same size or smaller deck at 123 Pond View Dr., Centerville as shown on Assessor's Map 229 Parcel 028. **DA-19002**

Gillian Hollands represented herself.

Exhibit A: Copy of picture of deck to show it pre-dates the Act in 1973.

Issues discussed:

- The old deck is not safe and does not meet the current code.
- The deck will be in the same location on the house, but might be 18 feet instead of the current 24 feet.
- She would like to replace the steps as well.

- She will need to resubmit for steps and include the type of material to be used.

There was no public comment.

A motion was made to approve a negative determination with a special condition that the applicant will submit a sketch of the deck to the Conservation office prior to construction.

Seconded and approved unanimously.

Estate of Thomas Hazlett, c/o Paul Waldmiller. Install septic system upgrade to include pumping/filling existing cesspools with sand; sewer connection will be made to existing 4” sewer outlets at the house at 600 Main St., Centerville as shown on Assessor’s Map 186 Parcel 043. **DA-19003**

Applicant was represented by Peter McEntee P.E., Engineering Works, Inc.

Issues discussed:

- Leeching field will be outside 50’ buffer.
- The two existing exit points will remain. Plan has been approved by the Board of Health.
- There will be no disturbance to the wetland area.

A motion was made to approve a negative determination.

Seconded and approved unanimously.

Patrick Aylmer. Install septic system upgrade to include pumping/filling existing cesspools with sand; sewer connection will be made to existing 4” sewer outlets at the house at 119 Tern Ln., Centerville as shown on Assessor’s Map 212 Parcel 020. **DA-19004**

Applicant was represented by Peter McEntee P.E., Engineering Works, Inc.

No comments by commissioners or public.

A motion was made to approve a negative determination.

Seconded and approved unanimously.

James DiTroia. Install septic system upgrade to include pumping/filling existing cesspools with sand; sewer connection will be made to existing 4” sewer outlets at the house at 122 Annable Point Rd., Centerville as shown on Assessor’s Map 211 Parcel 017. **DA-19005**

Applicant was represented by Peter McEntee P.E., Engineering Works, Inc.

- Wording should be septic instead of sewer.
- There appears to have been a significant amount of clearing on this property. The system had been designed previously and had not gone through approval process. Contractor started before approval.

There were no public comments.

A motion was made to approve a negative determination.

Seconded and approved unanimously.

Edmund Lukas. Vista pruning according to town guidelines at rear of property; work to include removal of two trees and pruning of one additional tree at 6 Leonard Rd., W. Barnstable as shown on Assessor’s Map 136 Parcel 011-002. **DA-19006**

The applicant was represented by Matthew Foley of BJ’s Lawncare.

Issues discussed:

- The buffer has grown substantially over past 10 years. No pruning has been done.

- The plan does not indicate which trees are going to be removed.
- There is only one location to achieve a better view of the bay and dunes.
- All material will be removed by hand.

There was no public comment.

A motion was made to approve a negative determination.
Seconded and approved unanimously.

IV NOTICES OF INTENT

Margaret L. & Michael T. Kerr, Trs., Kerr Family Trust. Construct and maintain a timber pier, ramp and float at 25 Maywood Ave., Hyannis as shown on Assessor's Map 287 Parcel 156. **SE3-5655**

Chuck Rowland, P.E. and John O'Dea, P.E. of Sullivan Engineering

Exhibit A: Copy of Com. of Mass., Department of Environmental Management order under M.G.L. c130, s.105

Comment letter from Tom Marcotti of the Natural Resources Division read into record.

Issues discussed:

- This area is rated a 10 under shellfish rating map, and is in the shellfish relay area.
- There is a 2 ½ ft. mean low water tide.
- It will be a non-motorized dock.
- Because of wave action it needs to be a permanent pier as opposed to seasonal pier. Four by four's will not be strong enough.
- Float stops and seasonality of the float: The float could be removed in off season. Float stops should be put in to prevent grounding.
- Previously applied for a permanent dock which was changed to seasonal dock.
- Woods Hole Group has been retained to do a survey of the tidal range.
- Habitat for birds of prey. Concerned a third pier in small area will prevent birds from working in the area.
- Concerned a pier for non-motorized use this long is not needed. Boats could come in to pick up passengers from pier.

Public comment:

Bill Riley Attorney for Wendy Garthwaite abutter to west.

A restriction was imposed in the 1980's. Attorney believes only temporary structures are allowed under the Wetland Restriction Order. No Permanent structures allowed under State restriction. This restriction is enforced by the Mass. DEP. A copy was given to Commissioners.

Exhibit A: Copy of Commonwealth of Mass. Order, M.G. L. , c130, s.105. Wetland Restriction Program.

This was for property recorded with the Registry of Deeds in 1980. Attorney is suggesting a permanent dock cannot be approved.

Commission will consult with Town Council.

Public Comment:

Shawna Donohoe, 35 Ocena Avenue (parents property). Told they were going to abandon path and a boardwalk will be built. Homeowner says they are not building a boardwalk. This is a separate project and was discussed at a previous hearing.

A motion was made to approve a continuance until April 2, 2019.
Seconded and approved unanimously.

Ron & Sheila Perry. Construct a pool and cabana with all associated appurtenances; replace existing patio at 52 Caillouet Ln., Osterville as shown on Assessor's Map 164 Parcel 012. **SE3-5656**

Applicant was represented by Chuck Rowland, P.E. and John O'Dea , P.E. of Sullivan Engineering

- This project abuts East Bay.
- There are some enforcement issues that need to be addressed. The width of the current path was to be 4 feet wide and is 10 feet wide in places. Plantings are missing. Meadow area limited to mowing.
- There are substantial trees that will need to be removed if putting in a pool that are not indicated on the plan. Will need to submit a revised plan.
- During site inspection Commissioners were unable to find stakes for the pool. Need clarification of placement showing the corners of the fence.
- The buyers of property will be closing in a week or two. Meadow management needs to be addressed with new owner.

No public comment.

A motion was made to approve the project as submitted, subject to receipt of a revised plan to indicate the trees to be removed between the 50' and the 100' buffer for the construction of the pool.
Seconded and approved unanimously.

Edmund J. & Mary E. Burke. Construct garage addition with living space above; construct pool and patio with all associated appurtenances including a shed, rinse station and equipment area at 53 Bridge St., Osterville as shown on Assessor's Map 116 Parcel 118. **SE3-5657**

Applicant was represented by John O'Dea, P.E. of Sullivan Engineering.

Exhibit A – revised plan dated 03/03/19. Revised to add isolated wetland on abutting lot.

Issues discussed:

- Proposed garage from closest point to wetland is 105 feet.
- Wetland is north of property line. Forty feet behind the garage.
- There were some enforcement issues. A written warning was issued in 2015 for a fire pit that was placed in the marsh/phragmites area. It has been moved closer to the fence, but the area marked by pin flags is still being mowed.
- The property is out of compliance.

No public comment.

A motion was made to approve the project as submitted, (using 03/03/19 revised plan).
Seconded and approved unanimously.

Susan W. Ambrose. Phragmites removal and management at 132 Keveney Ln., Barnstable as shown on Assessor's Map 351 Parcel 023. **SE3-_____**

Application was withdrawn without prejudice.

Robert & Ellen LaBerge. Remove portions of dwelling, renovations; proposed addition, bulkhead, patio and covered porch; proposed garage; extend driveway to garage at 1257 Bumps River Rd., Centerville as shown on Assessor's Map 188 Parcel 077. **SE3-_____**

The applicant was represented by Steve Cook from Cotuit Bay Designs and Dan Ojala From Down Cape Engineering.

Issues discussed:

- The dwelling has existed since 1946.
- There will be a small amount of disturbance to area and will be replanted.
- Drywell shown on revised plan.
- Plan shows living space in garage which may require a larger septic. Applicant will apply through the Board of Health and submit a revised plan.

There was no public comment.

A motion was made to approve subject to receipt of a revised plan showing the draw down pit, septic revisions as described, and deck relocation.

Seconded and approved unanimously.

John & Gretchun Ciluzzi. Install in-ground pool and adjoining patio at rear of residence; implementation of planting mitigation plan; relocation of existing shed at 444 Bay Ln., Centerville as shown on Assessor's Map 186 Parcel 084. **SE3-_____**

The applicant was represented by Mike Ball P.E. of Baxter Nye Engineering.

Issues discussed:

- The project is off the back of house.
- Application was submitted with a Town coastal bank indicated, but should only be a State bank.
- The plan was submitted proposing mitigation.
- Fence line added.
- Mitigation will fill in open area.
- Need to submit construction protocol for approval.

Exhibit A- Color mark-up of mitigation planting under Chapter 704.

A motion was made to approve the project subject to receipt of a revised plan indicating it is a State bank, not a Town bank and deleting the 50' buffer from the bank. A special condition to be added stating a construction protocol shall be submitted to Conservation staff for review and approval prior to pool construction.

Seconded and approved unanimously.

V _____ CONTINUANCES

Anthony Sapienza. Raise house for FEMA compliance at 301 Harbor Point Road, Unit 14, Cummaquid as shown on Assessor's Map 352 Parcel 035-00N. **SE3-5640**

A motion was made to continue the hearing until June 11, 2019 without testimony.

Seconded and approved unanimously.

George Haseotes. Permit existing/proposed pier modifications; proposed 28' gangway in place of most landward float and existing permitted ramp; permit current length of pier (seasonal floats); permit two sets of existing pilings at 773 South Main St., Centerville as shown on Assessor's Map 185 Parcel 013. **SE3-5617**

The applicant was represented by Dan Ojala, P.L.S of Down Cape Engineering.

Issues discussed:

- They need to re-permit what is there currently.
- Project has been revised to the Commissioners recommendations.
- Comments came in today at 4:00 PM from Marine Fisheries.
- Assessment of quality of shellfish habitat is not conducive to shellfish. The area has a significance rating of 7 out of 10.
- Need four feet of water to support the boat. The data shows barely 4 feet.
- Boat spec sheets for a 24' center console boat with a 200 hp outboard.
- There will be two jet skis on the float.
- Need a waiver for width of lot. Pier is 73' width of lot 63'.
- Expansion of long docks on river is taking away from public enjoyment of Centerville River.
- Currently a float system. Most landward floats were not permitted and were grounding out.

There was no public comment.

A motion was made to have a finding that this new pier represents a substantial expansion and the applicant is requiring the following 3 waivers, J1 J4 and L.

Seconded and approved unanimously.

Based on the finding, a motion was made to approve the project as submitted, with no specific vessel indicated at this time. When it comes time for choosing a vessel, spec sheets must be reviewed and approved by the Conservation Administrator. Vessel must comply with 30" rule, no longer than 24' in length and maximum 200 horse power engine (single). If a jet ski float is desired as one of the approved floats, it shall be indicated on a revised plan.

Seconded and approved unanimously.

George Haseotes. Amend Order of Conditions **SE3-4963** to permit rock veneer retaining wall at 773 South Main St., Centerville as shown on Assessor's Map 185 Parcel 013

The applicant was represented by Dan Ojala, P.L.S. of Down Cape Engineering and Jennifer Crawford, mitigation plan expert.

Issues discussed:

- A concrete wall was installed.
- The mitigation area below the wall will be moved out a little to allow access for maintenance.
- The square footage of grass area is 20 x 40 or 800 square feet.
- Home owner will be required to maintain vegetation in perpetuity.
- Mitigation should have annual reports for 3 years.

No public comment

A motion was made to approve the amended order as submitted with one special condition of annual reports for 3 years. Seconded and approved unanimously.

Yasmine Realty, Limited. Permit maintenance dredging and maintain existing ramp and floats at 253 Seapuit River Rd., Osterville as shown on Assessor's Map 051 Parcel 002. **SE3-5650**

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

Issues discussed:

- In 2009 maintenance dredging was approved.
- There is a protrusion out on Dead Neck causing significant erosion to neighbors properties which causes material to be deposited the under float.
- Requesting waivers for floats, pier. This configuration is as it has existed for last 10 years. The boats have been at this pier a very long time. Applicant just wants to continue using. They are not asking for improvements.
- The dredging off Sampsons' Island may cut down on the amount of secretion to this dock.
- Could the dredging alleviate the need for the temporary float?
- Dredging would be for next summer.
- Jet ski float should be removed. If temporary float is not needed after dredging it should be removed.
- Need something in file to show footprint of dredging.

No public comment:

A motion was made to approve the maintenance dredging as proposed. The Commission is not changing the status of the pier itself, not adding any conditions on it. The Commission is permitting the continued use of this temporary float, during the 3 year life of the order of conditions only, not to be extended. A report, prior to the end of the 3 years shall be submitted, reporting as to what the condition is at this site, whether it continues to fill in or not. The extra float is to be removed and

indicated on a revised plan along with the foot print of the previous dredging provided. A dredging window of Nov. 15th to Jan. 15th.

Seconded
4 Aye, 2 Nay
Motion carries.

Hyannisport Club. Demolish existing tennis shop building; construct new two-story building and associated grading; construct 2nd story 2-bedroom apartment for staff; an ADA handicap parking space to be added adjacent to the building; cart path to be enlarged for fire truck access of the building at 2 Irving Ave., Hyannisport as shown on Assessor's Map 266 Parcel 031.

SE3-_____

The applicant was represented by Matthew Creighton, PWS of BSC Group.

Issues discussed:

- Mitigation is not required for area off State coastal bank.
- The applicant would like to provide mitigation even though not required.

A motion was made to approve the project as submitted.
Seconded and approved unanimously.

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

A.	LeBlanc 276 Holly Point Road, Centerville	SE3-5492	(coc, ez)	rebuild boathouse * Bears Pond / Lake Wequaquet
B.	King 273 Regency Drive, Marstons Mills	SE3-5391	(coc, ez)	construct stairs & seasonal pier * Mystic Lake
C.	Burns 12 South Cedar Road, Centerville	SE3-5484	(coc, ez)	construct single family dwelling * bordering vegetated wetland
D.	Prentiss 18 Sand Point, Oyster Harbors	SE3-5427	(coc, ez)	construct single family dwelling * North Bay

A motion was made to approve certificates A-D.
Seconded and approved unanimously.

VII MINUTES

A. February 19, 2019 - A correction needs to be made on page three.

Time adjourned: 10:11 p.m.