



**Town of Barnstable
Conservation Commission**
200 Main Street
Hyannis Massachusetts 02601

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: JANUARY 11, 2022 @ 3:00 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/98218891212>

Meeting ID: 982 1889 1212

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**

3:00 PM AGENDA

The meeting was called to order at 3:00 pm by Char F.P (Tom) Lee. Also in attendance were Vice Chair Louise Foster, Clerk George Gillmore, and Commissioners Abodecely, Morin, and Hearn. Commissioner Peter Sampou was absent. Administrator Darcy Karle and Agent Ed Hoopes assisted.

I. OLD AND NEW BUSINESS

- * Items taken out of order

A. 141 Calves Pasture Lane, Barnstable – Seth Wilkinson on possibility of an open water habitat restoration project. Commission discussion only.

Seth Wilkinson or Wilkinson Ecological represented the property owner Mr. Bill Cook who was also present at the meeting.

Issues discussed:

- Commission doesn't see many open water restoration projects requested. This was just to gain some feedback from the Commission on a possible filing in the future.
- Dominate plant in wetland is narrow leaf cattail, which is an aggressive introduced species. It is not a State listed invasive plant, however is questionable.
- Reclaiming the open water wetland could improve habitat for waterfowl.
- Barnstable Land Trust was contacted as they do hold a CR.
- They still need to discuss with Mosquito Control if the Commission might entertain the idea of this project.
- The work in the wetland would be mechanical only, scooping out cattail rhizomes and muck, leaving only a ring of cattail around the edge.
- There would be some invasive treatment of plants in buffer zone edge only.
- There is purple loosestrife in the edges.
- Seth explained the habitat improvements outweigh the temporary disturbance.
- One Commissioner raised concern that this is a natural progression, a pond turning into a swamp.
- Mr. Cook, the property owner explained that the open water pond was a popular place for waterfowl.
- Seth explained that this was just to gain some initial feedback. He will discuss further with his client, approach Mosquito Control, and may be back with a NOI application in the future.

Commissioner Sampou did send in an email to the Chair to read into the record. His question was, if they were proposing any native cattail removal. Seth responded "no". They would only be removing the introduced species of cattail.

B. Long Beach Conservation Area Management Plan – 0 Long Beach Road, Centerville – Map 185 Parcel 036. Final presentation and public discussion.

Mark Manganello (LEC Environmental) gave a formal presentation of the management plan.

Issues discussed:

- There were several projects that will need to be done as part of the plan implementation – fencing (maintenance), restoration planting of areas impacted by foot traffic, and invasives inventory and management.
- Councilor Kris Clark asked about resources for implementation. We do have several options for implementing the management suggestions so it should not pose a problem.
- There was one written comment received on January 10, 2022 from Long Beach Association that supported the management plan.
- It was suggested that we put a copy of the Management Plan on the Conservation webpage, which we will do (along with the other management plans).

A motion was made to approve the management plan.

Seconded and voted by roll call:

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

Nay – none

II. REVISED PLANS

Project type:

Revisions:

A. Kathryn and Daniel Croteau SE3-5845
76 Long Beach Road, Centerville

Raze and re-build SFD

Increase footprint

Dan Ojala of Down Cape Engineering represented the applicant.

There were no issues discussed.
There was no public comment.

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

III. EXTENSION REQUESTS

Project type:

Time Requested:

A. Mass. Highway Department SE3-5068 1000 County Street, Taunton, MA	Routine Maint/Repairs Rt. 6, 6A, 28, 132, 149 and Phinney's Lane	3 years (2 nd request) Notice of Maintenance
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A motion was made to approve the extension request.
Seconded and voted unanimously by roll call.
Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin
Nay –

IV. ENFORCEMENT ORDERS

A. Frank R. & Nancy M. Selldorff – 102 Bluff Point Drive, Cotuit – Map 034 Parcel 071. Alteration of a wetland resource area – land under the ocean – by operating amphibious vessels beyond the scope of permit conditions.
Tabled from 12/14/22.

***Commissioner Sampou came into hearing at 4:26 p.m.**

Exhibits

- A ARC Reader image of 102 Bluff Point Dr., Cotuit
- B No Exhibit B Presented
- C Timeline for 102 Bluff Point as it relates to amphibious vessels
- D Part of email chain submitted to Conservation November 24, 2021 by John O'Dea sent to Darcy Karle and Edwin Hoopes
- E Photos from 10/19/21 shellfish biologist report

John O'Dea (Sullivan Engineering), Attorneys Liza Cox and Valerie Moore (Nutter McClennen & Fish, LLP), represented the Selldorff's, and Frank and Nancy Selldorff were present.

Issues discussed:

- Originally permission for use of one amphibious vessel granted by the Commission in 2014.
- In 2020, a second amphibious vessel was purchased by the Selldorff's and used throughout that summer. Conservation received several inquiries from public and Barnstable Natural Resources officers on the use of amphibious vessels from that property. On July 14, 2020, under Old/New Business, the Commission took up the use of the two vessels. At that time the Commission asked Selldorff's to use only one path into and out of the water and to work with Natural Resource staff to monitor shellfish and shellfish habitat in area of the path used by vessels. Shellfish biologist to monitor the potential impacts over the next two years.
- Mr. Selldorff admitted there was a misunderstanding of what one path into and out of the water meant. What occurred was there was 1 path used by the vessels to enter the water and there was another, separate path used by the vessels to exit the water. This was considered a violation of the permit conditions established as the July 14, 2020 meeting, and hence, the reason for the Enforcement Order being issued.
- The Commission needs more information on the potential impacts of the vessels on shellfish habitat and shellfish populations.

- The issue of the use of these vessels being “grandfathered” was clarified. The Selldorff’s will be allowed to use the amphibious vessels for another season in 2022 with the understanding that they will work with the shellfish biologist to determine potential impacts to shellfish habitat and populations. Further, they would not be held accountable if there were impacts documented to the shellfish habitat or population but they would be required to either file an NOI and receive an OOC that would address those impacts before being allowed to continue vessel use or they may be required to stop the use of the vessels.
- The Commission did state that any new requests for the use of amphibious vessels at other properties will require a Notice of Intent (NOI) be filed and an Order of Conditions be issued for that use.
- The Commission amended the Enforcement Order as follows:

Commission allows the Selldorff’s to operate their amphibious vessels for the 2022 season with the following conditions:

1. Use one single path both in and out of the water. The path shall be located perpendicular to the bulkhead.
2. The width of the path shall be no greater than + 2 ft. of the vessel width.
3. The path shall be marked with an acceptable demarcation (e.g., range-finder channel markers) between MHW and MLLW.
4. Any adjustments to the above conditions must be brought to the Commissions attention in writing by no later than June 1, 2022.
5. The Selldorff’s will provide the Commission with a Scope of Work (SOW) that will specify the type and kind of data collection required to assess impacts to shellfish and shellfish habitat. The SOW will also specify which parties are responsible for conducting the data collection and analysis. Selldorff’s shall develop and submit the SOW to Conservation staff by March 25, 2022. In writing the SOW, the Selldorff’s consultant should consult with Town of Barnstable Natural Resources personnel (Shellfish Biologist) in relation to assessing shellfish populations and shellfish habitat within the proposed travel path to be used by the vessels. SOW to be reviewed by the Commission at the April 5, 2022 Conservation Commission meeting.

A motion was made to approve the amended Enforcement Order.

Seconded and voted by roll call:

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

Nay – none

- B.** Yuriy & Yuelena Matskevich – 24 Flume Ave, Marstons Mills – Map 061 Parcel 032. Failure to comply with an Order of Conditions (SE3-5908) – changes in plan.

***Commissioner Pete Sampou left the meeting at 5:23 p.m. during vote for Matskevich.**

Exhibits

- A Current Site Photos
- B Unapproved Revised Plan (provided by A.M. Wilson showing additional note re superstructure removal)

Arlene Wilson (A.M. Wilson Associates) represented the Matskevich’s and Yuriy Matskevich was present.

Issues discussed:

- The Matskevich’s have an open Order of Conditions, but the approved plan and Order covered additions not the removal of the superstructure.
- A new plan with a note stating the superstructure would be razed but the foundation would remain as is was submitted for a revised plan hearing and approved at the February 8, 2022 meeting.
- The enforcement order was modified to include a meeting with the project supervisor, project consultant and Conservation Agent to review the approved plans and the Orders of Conditions.

A motion was made to approve the amended Enforcement Order.
Seconded and voted by roll call:
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou
Nay – none

V. NON-CRIMINAL CITATIONS

David Ryan, Cape Cod Oyster Co. – Alteration of a Wetland Resource Area – Land Under the Ocean
\$200.00

Noted.

4:30 PM AGENDA

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The meeting was called to order at 5:24 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise Foster, Clerk George Gillmore, and Commissioners Abodeely, Morin, Hearn. Commissioner Pete Sampou was absent. Conservation Administrator, Darcy Karle assisted.

VI. NOTICES OF INTENT

- A. Daniel Alperin & Julie A. Solomon.** To demolish a single family dwelling and construct new with all associated appurtenances at 247 Nyes Neck Road, Centerville as shown on Assessor's Map 232 Parcel 077. **SE3-5944**

Chuck Rowland of Sullivan Engineering Inc. represented the applicant.

Issues discussed:

- Dwelling will be relocated outside of the 50' buffer.
- DEP had raised a question on guest house proximity to wetland. John O'Dea had told staff the guest house predated the Wetland Protection Act, estimating 1960s.
- Question was raised prior to the hearing on mitigation area. A 2 ft. wide strip will be provided next to existing vegetation for the 113 sq.ft.
- Question was raised prior to the hearing. Will additional drainage be provided for steep grade next to house? Yard drain can be provided on north side.
- Question was raised by Commissioner Hearn, if they are decreasing the hardscape in the 50' buffer and taking 800 sq. ft. mitigation credit for it, (From the table : (2,422 sf – 1622 sf = 800sf decrease) 800sf x 4 = 3200sf mitigation credit). Why are they not required to plant back that area with native plants, where they would have bare dirt or mowed lawn once the hardscape is removed OR plant that 800 sq. ft. of native plantings somewhere else in the 50' buffer, so they wouldn't be up against the house? The whole idea of moving back is to reclaim the natural buffering capacity of the 0-50'.
- Other Commissioners support Commissioner Hearn's statement adding the Commission is currently reviewing the Commission Regulation (Chapter 704), to in fact re-draft the regulations

to reflect what the Commission has done in the past to clarify. If the applicant wants to get a 4:1 credit then it needs to be planted back in the 50' buffer.

- The Chair also agrees with the re-draft interpretation which will be brought back up to the Commission for a hearing on February 8th.
- 800 sq. ft. could be planted down closer to the resource area. There is a lot of open area.
- Question was raised regarding the beach and sand around base of tree. There is concern for health of the tree.
- Staff should look into history of beach to verify claim the beach was there.
- Information regarding history of beach and guest house should be provided in order to save time and prevent these questions from coming up again. Put a note on the plan. Detail on proposed yard drain addressing surface run off.
- A planting plan should be provided to address the plantings mitigating for the hardscape removal 4 to 1 credit.

There was no public comment.

A motion was made to approve a continuance until Feb. 1st.

Seconded and voted unanimously by roll call.

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

Nay –

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

A.	Blair	SE3- 5018	(COC, ez)	convert carriage house to sfd (not done)
	3075 Main Street, Rt. 6A, Barnstable		-	bordering vegetated wetland
B.	Turner	SE3- 5530	(COC, ez)	replace concrete bulkhead *
	108 Bay Shore Road, Hyannis		-	Lewis Bay

A motion was made to approve both Certificates of Compliance.

Seconded and voted unanimously by roll call.

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

Nay –

A motion was made to adjourn.

Seconded and voted unanimously by roll call.

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

Nay –

Adjourned at 5:46 p.m.