



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION MEETING

**DATE: December 19, 2006, 6:30 p.m.**

**LOCATION: TOWN HALL HEARING ROOM**

The meeting was called to order at 6:31 p.m. by Chairman John Abodeely. Also attending were Vice-Chairman Dennis Houle and Commissioners John Parker, Peter Sampou, Scott Blazis, Larry Morin, and Tom Lee.

The meeting was held in the Hearing Room, Barnstable Town Hall, Hyannis, MA

### **I MINUTES FOR APPROVAL**

December 5, 2006

A motion was made to approve the minutes of December 5, 2006.

Seconded and voted unanimously.

### **II REQUESTS FOR DETERMINATION**

**Mass. Highway – 615 Rt. 6A and 2250 Rt. 6A, Barnstable.** Install leaching catch basin, driveway apron, and berm on Route 6A in the vicinity of Parker Rd. at 1615 Main St.; install deep sump catch basin berm and replacement flared end outlet with stone pad on Route 6A in the vicinity of 2250 Main St.; install deep sump catch basin and asphalt patching on Route 6A in the vicinity of the railroad overpass. **DA-06101**

The applicant was represented by Tom McGuire and Bill Travers, engineer.

Discussion: The sites were proposed for drainage improvement.

Public Comment: A letter from Town Councilor Ann Canedy was noted.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

**Yachtsman Condominium Trust.** Install and maintain a 6-foot-high stockade fence along a portion of the property line at 500 Ocean St., Hyannis as shown on Assessors Map 324 Parcel 040 CND. **DA-06099**

The applicant was represented by Attorney Brian Wall and Tim Santos.

Public Comment: A letter from the Peter and Kim Roth, unit owners, urged the Commission not to issue an approval until unit owners were fully informed.

Lynne Hamlyn asked the Commission to consider the full extent of the project.

Attorney Wall requested that a negative determination be issued, as the project is minor.

A motion was made to issue a negative determination.

(Yachtsman, cont'd.)

Seconded and voted unanimously.

**Michael A. and Maureen Champa.** Seek confirmation of resource areas at 239 Eel River Rd., Osterville as shown on Assessors Map 115 Parcel 006. **DA-06100**

The applicant was represented by Attorney John Alger and John O'Dea, E.I.T.

A motion was made to continue the project until January 23<sup>rd</sup>.

Seconded and voted unanimously.

**Town of Barnstable/Growth Management Division.** Construct planting and open space improvements in downtown Hyannis to create a community park; remove invasive species to rear of concrete wall, and add plantings and pathways to open grass area at 725 Main St., Hyannis as shown on Assessors Map 308 Parcel 143. **DA-06102**

The applicant was represented by Kate Kennon.

Discussion: Planting and exotic special management improvements were proposed.

Scott Blazis requested replanting within the 50-ft. buffer, where clearing is proposed.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

**Barnstable Harbor Ventures, Inc.** Raze existing house and construct new house at 140 Main St., Osterville as shown on Assessors Map 165 Parcels 074-001 and 074-002. **DA-06103**

The applicant was represented by Stephen Wilson, P.E.

Discussion: No concerns arose.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

### **III NOTICES OF INTENT**

**Charles and Francene Rodgers.** Construct pier with ramp and float; relocate existing boat rack; construct access walkway at 621 Old Post Rd., Cotuit as shown on Assessors Map 054 Parcel 015-001. **SE3-4585**

The applicants were represented by Attorney Robert Troy and Arlene Wilson.

Discussion: Attorney Troy said this was a completely new application and, if this project is approved, the Supreme Judicial Court case on the first Rodgers filing would be moot.

In the present application, the pier was moved further (approximately 50 ft.) to the west. The move puts the pier in a shellfish value of 4 (instead of 6). No treated wood would be used. An easement allowing shellfish propagation and harvesting in the inter-tidal was proposed. The abandonment of existing moorings (assuming a permanent pier is approved) was also proposed.

The shellfish relay area permit with the Commonwealth expired in 1995.

Ms. Wilson emphasized their interest in a permanent – rather than seasonal – pier.

(Rodgers, cont'd.)

Public Comment: Stan Neghos, President of BARS, requested that the Commission deny the application. Mr. Richards said that the locus is a productive shellfish habitat.

Ed Dutton opposed the pier, citing from the Open Space and Recreation Plan.

Robert Spaulding expressed concern for additional piers in the same area.

Fred Deprey spoke against the project, citing concern for eight possible additional piers in the area.

Patricia Furine opposed the project.

N. E. Cates said sailors are not interested in maneuvering around piers.

Richard Ossan, incoming BARS President took issue with the reliance on shellfish standing stock in the shellfish habitat application. He cited several court decisions. He submitted several photos showing “dark areas” at the berths of existing piers. Pete Sampou said the dark color is indicative of silts, tending toward anoxia.

Andre Sampou of the Town Shellfish Committee said that once a relay area is designated, it remains in the plans. The license to actually move shellfish there is of secondary consideration. He also cited the comprehensive plan and its relevance to Chapter 91 licensing. He stressed the areas status as a relay area.

Matt Ostrowski stressed the Commission’s ability to deny a pier for shellfish impacts.

Norman White, commercial shellfisherman, finds the area productive. He said it is important to require boats to berth at floats, rather than the side of the pier.

Attorney Troy said the Commission’s job is to enforce the ordinance. The standard it presents was clearly not in the application, he insisted. He said that the weight of credible evidence shows that a significant impact would not occur.

Ms. Wilson said that the relay area was not at all pristine.

The Chairman entered into the record documents submitted back in 2002 for the initial Rodgers filing. Letters from Lenny Clarke and Ken Malloy of the MA Division of Marine Fisheries, MA ESNHP, Waterways Committee, and the Town Shellfish Biologist were also entered into the record.

Commissioner Blazis expressed concerns with several statements in the NOI, as well as the accompanying shellfish habitat survey. He asked for additional soundings at the float.

Commissioner Parker said he would want the pier to be seasonal in nature.

Commissioner Morin said that the entire relay area and potential cumulative effects on it remain very relevant to him.

Commissioner Peter Sampou, citing studies/literature reviews by Crawford and Juzinski, said he fears that the size of the boat will cause substrate/shellfish habitat issues.

Chairman Abodeely said that the Commission would take exception to many of the legal assertions made in the NOI. He said that, while the project basically meets regulations, the whole of the evidence heard tonight must be weighed.

**Melvin Field.** Add ramp and float to existing licensed structure at 158 Long Beach Rd., Centerville as shown on Assessors Map 205 Parcel 009. **SE3-4587**

The applicant was represented by Stephen Wilson, P.E.

Discussion: The shellfish habitat was rated a 1 or 2 and, therefore, of low value.

(Field, cont'd.)

No rafting of boats was requested by Waterways. Any boat proposed for berthing will require advance Commission approval.

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

Seconded and voted unanimously.

**Shelley Abreu.** Construct home addition and install new septic system at 54 Prince Ave., Marstons Mills as shown on Assessors Map 077 Parcel 049. **SE3-4589**

The applicant was represented by Jack Vacarro.

Discussion: John Abodeely asked if the work limit could be brought landward by 10-feet, once the garage was razed.

The Commission also requested that all debris be removed.

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

Seconded and voted unanimously.

**Catherine M. Conover, Tr., CMC Great Cove Nominee Trust.** Maintenance dredging of Great Cove entrance channel, Oyster Harbors, Osterville as shown on Assessors Map 070 Parcel 018. **SE3-4588**

The applicant was represented by John O'dea, E.I.T.

Discussion: The proposed maintenance dredging goes back to the 1920's.

Pete Sampou said he wonders if the channel should be properly regarded as abandoned. Dredging inter-tidal area was troublesome to him. He suggested that marking the channel would suffice.

A letter from the MA Division of Marine Fisheries was read into the record. It expressed numerous concerns.

Commissioner Sampou said that a dredge depth of 6 feet (plus or minus 1 foot) overdredge was excessive. John O'Dea replied that most of the dredging occurs at the sandbar location.

John Parker said he would prefer 5-foot dredge depth. A 6-foot depth was acceptable.

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

Seconded and voted as follows: 5 votes "Aye"; 2 votes "Nay."

**Yachtsman Condominium Trust.** Repair/replace timber retaining wall at edge of lawn/beach with mortared fieldstone retaining wall of approximately same height as timber wall at 500 Ocean St., Hyannis as shown on Assessors Map 324 Parcel 040 CND. **SE3-\_\_\_\_\_**

The applicant was represented by Attorney Brian Wall and Tim Santos.

Discussion: Scott Blazis asked why mitigation was not offered.

Lynn Hamlyn said she was surprised not to see some sort of planting mitigation.

Standard lighting allowance (25 watts, downward-facing was proposed).

John Abodeely said that buffer zone regulations did not apply well to the site.  
(Yachtsman, cont'd.)

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

Seconded and voted as follows: 5 votes "Aye;" 2 votes "Nay."

#### **IV CONTINUANCES**

**Paul and Julie Brandes.** Proposed modifications to an existing licensed pier at 49 Oyster Way, Osterville as shown on Assessors Map 072 Parcel 039. **SE3-4577**

The applicant was represented by John O'Dea, E.I.T.

Discussion: No concerns arose.

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

Seconded and voted unanimously.

**Linda Gildea.** Proposed modifications to an existing licensed pier at 83 Oyster Way, Osterville as shown on Assessors Map 072 Parcel 043. **SE3-4578**

The applicant was represented by John O'Dea, E.I.T.

Discussion: No concerns arose.

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

Seconded and voted unanimously.

#### **V AMENDED ORDER OF CONDITIONS/ AMENDMENTS**

**Town of Barnstable Conservation Division.** Apply aquatic herbicide Sonar for 2007 season at Long Pond, Centerville for continued management of invasive aquatic weed hydrilla. **SE3-3953**

The applicant was represented by Rob Gatewood, Conservation Administrator.

Discussion: Keith Gazaille of Acquatic Control Technology presented a year-end report. No viable tubers were sampled at the end of the summer of 2006.

Scott Blazis expressed his interest in seeing the boat ramp re-opened to the public for fishing at the earliest time that it is safe to do so.

John Abodeely asked how many more years of further sonar use will be required. Mr. Gazaille said that, in a sense, we are in "unchartered waters."

Public comment: The Long Pond Association Chairman spoke in strong support of the project. He said that hydrilla expert William Haller indicated that they were right on course. He stated that sonar use is like taking medication for herpes.

A motion was made to approve treatment of Long Pond with sonar in summer, 2007.

Seconded and voted unanimously.

**Robert Benedetto.** Reconfigure a proposed single family residence, septic system and landscaping at 359 Santuit Road, Cotuit as shown on Assessors Map 020 Parcel 003. **SE3-4203**

(Benedetto, cont'd.)

The applicant was represented by Stephen Wilson, P.E.

Discussion: The work limit will be reconfigured to the top of the bank.

The washed-in float would be promptly removed.

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

Seconded and voted unanimously.

## **VI OLD & NEW BUSINESS**

A. 2006 year-end report on hydrilla control project at Long Pond, Centerville

Presented by Keith Gazaille of Acquatic Control Technology. (see above, Amended Order/T.O.B., Conservation)

B. Public hearing on land management issues at Crocker Neck conservation area

Dennis Houle presented background information. He said that the “tried-and-true” model for conservation area management was to place a parking lot and gate at street-side, while allowing foot or bicycle access to the interior portions of the parcel.

The Chairman cited documented land use violations at the site.

Dennis Houle emphasized that the parcel is not a way-to-water. Rather, it is a conservation area. He said that with moorings there, mooring holders are warned in advance that access is at the discretion of the Commission. He stressed that we would not be locking out people, but locking out cars instead. It is only a five-minute stroll to the beach from the outer gate.

Public Comment: Scott Pelman, who moors a boat at Crocker Neck, encouraged the Commission to keep the gate open.

Attorney John Alger representing Mr. and Mrs. King Lowe spoke in favor of permanent closure of the gate. He said that it was intended to be kept closed at the time of Town acquisition.

Paul Foster, abutter, encouraged permanent gate closure.

Richard Rowan said that parking lot revelling may occur. He, nonetheless, favored gate closure. Kathy Rowan agreed. She said she is afraid of the late night users.

King Lowe said he strongly agreed with Mr. Houle’s comments.

Rick Barry, Town Councilor, asked the Commission to note that it is the nearby abutters who are aggrieved. He said there are many competing interests to sort out, and considered that closing the gate was a drastic measure. Councilor Barry also stated that a fire-safety concern would exist if the gate were closed. He said a committee comprised of the Conservtion Commission, Police, Fire and Waterways Committee would seem like a good idea. He hopes that the new police chief will be more responsive to the issue than was his predecessor.

Scott Blazis said the issue was a matter of law enforcement, which could be dealt with by means other than gate closure.

A motion was made to continue the subject matter until January 9, 2007, with the gate remaining closed until then.

Seconded and voted unanimously.

C. Vista Pruning Guidelines – Draft revisions

A motion was made to approve the changes proposed by staff.

Seconded and voted in favor, with one “nay” vote abstaining.

D. Commission reorganization

A motion was made to nominate Dennis Houle for Chairman.

Seconded and voted unanimously.

A motion was made to nominate John Abodeely as Vice Chairman.

Seconded and voted unanimously.

E. Jan. 30<sup>th</sup> evening meeting?

A quorum of only four would be difficult to obtain for this meeting. Thus, the meeting will not be held.

F. Other

None

**VII CERTIFICATES OF COMPLIANCE (ez = staff recommends approval) (\* = on-going conditions)**

A.	Nantucket Electric	SE3-4327	(coc,ez)	install submarine cable under Kalmus Beach
B.	Carvalho	SE3-4402	(coc,ez)	restoration of disturbed wetland; install wall *
C.	Feder	SE3-4173	(coc,ez)	raze & construct single-family dwelling *
D.	Manzi	SE3-4152	(coc,ez)	raze cottage; construct cottage & upgrade septic (not done)
E.	Bay Road R.T.	SE3-4089	(coc,ez)	construct single-family dwelling (not done)
F.	Giniewicz	SE3-4164	(coc,ez)	permit existing seasonal dock *

A motion was made to issue the certificates of compliance.

Seconded and voted unanimously.

**A motion was made to adjourn the meeting.**

**Seconded and voted unanimously.**

**The time was 11:20 p.m.**