

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

Office: 508-862-4093

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**MINUTES**

**CONSERVATION COMMISSION MEETING**

**DATE: APRIL 30, 2013 4:30 P.M.**

**LOCATION: HEARING ROOM**

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](http://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 4:30 p.m. by Chairman Dennis R. Houle. Also attending were Vice-Chairman Tom Lee and Commissioners Peter Sampou, Scott Blazis, Larry Morin, and Louise Foster. Commissioner John Abodeely was away. Darcy Karle, Conservation Agent, assisted, along with Claudette Bookbinder, Administrative Assistant.

The meeting was held in the Hearing Room, Barnstable Town Hall, 367 Main Street, Hyannis, MA.

**I MINUTES FOR APPROVAL**

A. April 2, 2013

A motion was made to approve the minutes.

Seconded and voted unanimously.

**II CHAIR'S EXECUTIVE SESSION REVIEW**

In consultation with 1<sup>st</sup> Assistant Town Attorney, T. David Houghton, the Chair is taking the following actions:

- A. Approve and release redacted (attorney-client privilege) minutes for the executive sessions of July 24, 2007, June 18, 2008, and June 21, 2011.
- B. Continue to retain the portion of the executive session minutes of July 19, 2011 that relates to Phinney's Bay matter, as the litigation in the case of Oakleigh Trust v. Town of Barnstable is still on-going.
- C. Unable to release the executive session minutes for April 4, 2000 and August 5, 2003, as the minutes cannot be located, are presumed lost, and following inquiry, no one was able to reconstruct.

Noted.

**III REQUESTS FOR DETERMINATION**

**Charles Ford Curran.** Construct addition to single-family dwelling at 235 Bridge St., Osterville as shown on Assessor's Map 093 Parcel 040-001. **DA-13015**

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

No concerns arose.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

**Thomas & Victoria Vallely.** Construct addition to single-family dwelling at 448 Wianno Ave., Osterville as shown on Assessor's Map 163 Parcel 026. **DA-13016**

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

A motion was made to continue the hearing to May 14<sup>th</sup>.

Seconded and voted unanimously.

No testimony was taken.

**Town of Barnstable/D.P.W.** Clear three trees and understory to provide safety view shed between Hyannis Youth & Community Center and nearby school, at 141 Bassett Ln., Hyannis as shown on Assessor's Map 309 Parcel 264. **DA-13017**

The applicant was represented by John Juros.

Issues discussed:

- Clearing the area for safety concerns;
- Eliminating "homeless camps;"
- "Denuding" the area as an opportunity to provide a "value habitat;"

A motion was made to issue a negative determination; the work to be done in consultation with staff to replace existing vegetation with appropriate vegetation.

Seconded and voted unanimously.

**Michael P. and Mary M. Ryan.** Replant coastal bank with rosa rugosa and beach plum and maintain on a yearly basis; plant new trees and shrubs along split-rail fence; install cobblestone border along driveway edge at 455 Bridge St., Osterville as shown on Assessor's Map 072 Parcel 035. **DA-13018**

The applicant was represented by Peter Kennedy.

Exhibits:

- Photo of overgrowth of rosa rugosa (undated).

Issues discussed:

- Intends to plant trees and shrubs or possibly St. John's Wort and/or hydrangea along fence;
- Yearly maintenance of rosa rugosa on existing coastal bank.

A motion was made to issue a negative determination: existing vegetation to be identified before removal, in consultation with staff; native plant list only to be used; on-site consultation with staff; remove rodent traps along the BVW; no yearly maintenance allowed.

Seconded and voted unanimously.

#### **IV NOTICES OF INTENT**

**Mass. Audubon Society.** Restore wetlands to former functioning state prior to human alteration; work to be conducted in old corn field at 345 Bone Hill Rd., Cummaquid, as shown on Assessor's Map 352 Parcel 066. **SE3-5077**

The applicant was represented by Ian Ives and Bryan Miller.

Exhibits:

Exhibit "A" photo packet:

- Ashumet Holly Wildlife Falmouth 2010
- Ashumet May 2011 (2 photos)
- Ashumet December 2011
- Ashumet Holly May 2012
- Ashumet Holly July 2012
- Ashumet Holly October 2012
- Ashumet Holly April 2013

Issues discussed:

- The Audubon Society has partnered with MA Fish & Wildlife for wetland restoration. Mr. Ives spoke of his experience with Ashumet restoration of habitats of species and wildlife prior to the farming era, and passed out photos (exhibits);
- Desire to bring back the spade-foot toad;
- Total project not to exceed 4,000 square foot area;
- Only temporary disturbances to BVWs;
- Excavation will result in only minimal disturbance with good results, e.g., depth of wetlands;
- No pitfall trapping to be done
- Multiple vernal pools to ensure success;
- Monitoring to be done.

A motion was made to approve the project with standard and special conditions: yearly monitoring and annual report for three years required.

Seconded and voted unanimously.

**Fresh Pond Realty Trust, LLC.** Construct office building, parking lot, stormwater management system and landscaping at 189 Attucks Ln., Hyannis as shown on Assessor's Map 294 Parcel 080. **SE3-\_\_\_\_\_**

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

Issues discussed:

- Time needed to review the storm water report (submitted by applicant) was requested by Vice-Chairman Lee.

A motion was made to approve the project with standard and special conditions contingent upon storm water review by Vice-Chair Tom Lee, and information shared with Commission and staff.

Seconded and voted unanimously.

**V \_\_\_\_\_ CONTINUANCES**

**David J. Der Hagopian, Tr./David J. Der Hagopian Trust.** Remove existing rotting stairs and deck; replace with new ramp and deck with 4-foot-wide path to water; removed invasive species and re-vegetate with native plants at 265 Ocean View Ave., Cotuit as shown on Assessor's Map 033 Parcel 020. **SE3-5072**

Exhibits:

- A report on the black locust tree was noted as Exhibit A

- The proposed revised site plan was displayed and noted as Exhibit B.

Issues discussed:

- The ramp has been replaced by stairs with landings for safety concerns;
- Native species to be restored;
- On coastal bank black locust not to be touched;
- Mr. Talbot said there were shoots of the invasive black locust at the base of the dunes;
- The applicant would like to manage oriental bittersweet to prevent further invasion;
- Discussion of mountains as natural habitat of the black locust; the tree poses a serious problem in wetland/shrubland;

Public comment:

- The attorney for Mr. Bendetson, abutter, claimed that the site plan shows the existing walkway on his client’s property. He said the revised plan should include dimensions and the property line; he was also concerned with setbacks. The Chair stated that this is a property matter between abutters.
- Brian Delori, abutter, said there were drainage issues. The Chair replied that it was on a different parcel.
- Richard Bendetson, abutter, said that road flooding is a problem; he questioned the applicant’s integrity and credibility. The Chair said that the Commission will not deal with this personal issue;
- The attorney questioned whether the stairs are on his client’s property; Mr. Talbot answered that the railing may lean over the line, but that is all.

A motion was made to approve the project with standard and special conditions: annual reports for three years; the project to include pitch pine and scrub oak planting; management of oriental bittersweet; and no black locust removal from bank.

Seconded and voted unanimously.

**VI AMENDED ORDERS**

**Town of Barnstable/DPW/Water Supply Div.** To amend permit **SE3-4919** to also allow paving of existing well access road, fencing of property and installation of improvements to stormwater conveyances at the Maher Pumping Station at 47 Old Yarmouth Rd., Hyannis as shown on Assessor’s Map 328 Parcel 142-001.

Vice-Chairman Lee recused himself.

The applicant was represented by Bruce Adams of Sampson & Weston.

Exhibits:

- The proposed plan was displayed and noted as Exhibit A.

Issues discussed:

- A security fence to protect the water supply.

A motion was made to approve the project with standard and special conditions

Seconded and voted unanimously.

**VII REVISED PLANS**

Project type

Revision

A.	Barnstable Conservation Div. SE3-4984	Long Beach boardwalk	footprint, timing
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Exhibits:

- The proposed site plan was displayed and noted as Exhibit A.

The applicant was represented by John Juros and Rebecca Richardson.

Issues discussed:

- Extension of the boardwalk would still be in dune area, but the area is flat;
- No timing-extension needed.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

B.	Haley SE3-4645	Raze/reconstruct house, pool	pool, pool patio, landscaping
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The applicant was represented by Steve Wilson, P.E.

Issues discussed:

- The original house was moved back;
- A new work limit now at the wall;
- No increase in hardscape.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

C.	Von Schroeter SE3-5029	Pier	timing – to extend to June 1 <sup>st</sup>
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(See “D” below)

D.	Manco SE3-5023	Pier	timing – to extend to June 1 <sup>st</sup>
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The two revised plans (“C” and “D”) were heard simultaneously.

The applicants were represented by George Gilmore.

A motion was made to approve the revised plan “C” as presented.

Seconded and voted unanimously.

A motion was made to approve revised plan “D,” subject to approval by Tom Marcotti and also by Marine Fisheries, if deemed necessary by staff.

Seconded and voted unanimously.

E.	Barnstable Conservation Div. SE3-4531	Rushy Marsh Pond restoration	rail fence
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The applicant was represented by Darcy Karle for Rob Gatewood.

No concerns arose.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

**VIII CERTIFICATES OF COMPLIANCE**

A.	Walske	SE3-4765	(coc,ez)	construct pier, ramp, & float *
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- B. Sousa SE3-0486 (coc,ez) dredge spur to channel in West Bay
- C. Slifka SE3-4813 (coc,ez) construct additions, pool, & hardscaping to single-family dwelling \*

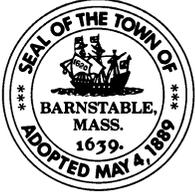
A motion was made to approve all certificates.

Seconded and voted unanimously.

**A motion was made to adjourn.**

**Seconded and voted unanimously.**

**The time was 6:15 p.m.**



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**MINUTES (Continued from 4:30 hearing of same date)**

**CONSERVATION COMMISSION MEETING**

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The meeting was called to order at 6:45 p.m. by Chairman Dennis R. Houle. Also attending were Vice-Chairman Tom Lee and Commissioners Peter Sampou, Scott Blazis, Larry Morin, and Louise Foster. Commissioner John Abodeely was away. Darcy Karle, Conservation Agent, assisted, along with Claudette Bookbinder, Administrative Assistant.

The meeting was held in the Hearing Room, Barnstable Town Hall, 367 Main Street, Hyannis, MA.

**I REQUESTS FOR DETERMINATION**

**John Ahern.** Remove invasive vines on slope; prune dead and broken limbs in area; remove pitch pines closest to house at 640 Poponessett Rd., Cotuit as shown on Assessor's Map 006 Parcel 018. **DA-13019**

The applicant was represented by Justin O'Connor.

Issues discussed:

- The coastal bank is in bad shape, according to one of the Commissioners;
- Pruning would be done in consultation with staff;
- No buffer exists;
- Top of coastal bank could be replanted with mitigation planting of shrubs;
- Applicant has not identified the plants to be planted, i.e., no sketch plan.

A motion was made to continue the hearing to May 14<sup>th</sup>.

Seconded and voted unanimously.

**Inna Senkovsky.** Maintaining existing decks at 80 Crocker Dr., Hyannis as shown on Assessor's Map 306-028-002. **DA-13020**

The applicant was present at the hearing.

Issues discussed:

- One deck is five feet deeper than originally permitted;
- The proximity of phragmites to the fire pit was thought to be a fire hazard by one of the Commissioners.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

**Barnstable Harbor Builders.** Propose upgrade to existing septic system at 194 Bay Ln., Barnstable as shown on Assessor's Map 186 Parcel 075. **DA-13025**

The applicant was represented by Lynne Hamlyn.

Exhibits:

- A revised plan was displayed and noted as Exhibit A.

Ms. Hamlyn stated that a wetland flag was adjusted three feet.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

**Kathleen & Michael Marchese.** Reconstruct porch and finished room with proposed deck above at 215 Sea View Ave., Osterville as shown on Assessor's Map 138 Parcel 017. **DA-13021**

The applicant was represented by John O'Dea, P.E. and E. J. Jaxtimer.

Issues discussed:

- Shrubs along the top of the bank to be replaced in the same planting area.

A motion was made to issue a negative determination, with the special condition that the shrubs are to be replanted in the same footprint as those existing on the bank, in consultation with staff.

Seconded and voted unanimously.

**Thomas Patten.** Replacement of cesspool in northeast corner of site at 26 Woodvale Ln., Centerville as shown on Assessor's Map 190 Parcel 185. **DA-13022**

The applicant was represented by Jack Vaccaro.

Issues discussed:

- Two cesspools to be abandoned and replaced with a new Title-5 septic system.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

**Town of Barnstable/Conservation Div.** Improve drainage of Rushy Marsh Pond by modifying seaward end of existing 18-inch pipe on north side of pond. Proposed work includes installing additional ± 15 linear feet of 18-inch pipe and a ± 2-foot duck-bill valve on end to prevent clogging with sand. Work to be done by hand landward of mean high water at 130 Oregon Way, Barnstable as shown on Assessor's Map 017 Parcel 018. **DA-13023**

Issues discussed:

- Pond flooding a problem – same issues as were addressed in DA-12093;
- This filing represents a new attempt to stop the flooding.

Public comment:

- Atty. Michael Ford, representing New Rushy Marsh Realty Trust of 1524 Main St., said the driveway is a problem. His client wants a long-term solution, as opposed to a temporary attempt, and is willing to work with the Town.

A motion was made to issue a negative determination.

Seconded and voted unanimously.

## **X      NOTICES OF INTENT**

**Town of Barnstable/D.P.W.** Maintenance dredging of entrance channel to Hyannis Harbor and placement of dredged material in ocean at previously used site near shore at Hyannis Inner Harbor, Lewis Bay and Hyannis Harbor. **SE3-5083**

The applicant was represented by Roger Parsons, Town Engineer.

Issues discussed:

- The Army Corps of Engineers will do the work;
- The channel has become shoaled (to a 13-foot depth);
- Propose to maintenance dredge same channel;
- The disposal site to be under the ocean near breakwater; no landward disposal; material consists of clean sand only;
- Work to be done in June and July, and again in September and October; work to cease on fourth of July;
- As much as 100,000 cubic yards to be displaced;
- A small portion of the work to be in Yarmouth; Mr. Parsons has spoken with them;
- A request was made by Commissioner Sampou to investigate whether the dredge spoils could be used in the Three-Bays project on Dead Neck.

A motion was made to approve the project with standard and special conditions: to inquire of Three-Bays/MA Audubon if funding is available to move dredge spoils to Dead Neck.

Seconded and voted unanimously.

**Joseph R. Jenkins, Tr./South Bluff Realty Trust.** Modifications to existing licensed pier at 195 Seapuit River, Osterville as shown on Assessor's Map 070 Parcel 015. **SE3-5082**

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

Exhibits:

- The proposed site plan was displayed and noted as Exhibit A.

Issues discussed:

- Built in 1930, the pier was rebuilt in 2000 – 2001, issued under SE3-3609.
- The shoal is building up, though last dredged in 2012;
- The large boat to be moved;
- One portion of the pier to be removed and added to the float.

A motion was made to approve the project with standard and special conditions

Seconded and voted unanimously.

**New Rushy Marsh Realty Trust.** Renovations and maintenance of existing residence and terrace; demolition, reconstruction, maintenance and vista pruning for existence residence and cottage; install Title-5; reconfigure/maintain existing driveway, drainage, generator enclosure, utilities, landscape improvements, mitigation plantings, coastal dune plantings and landscaping; revisions to existing cabana and widening of existing timber boardwalk at 1524 Main St., Cotuit as shown on Assessor's Map 017 Parcel 014. **SE3-5080**

This notice of intent and the request for an amended order for SE3-4747 were taken up simultaneously.

The applicant was represented by Attorney Michael Ford and Michael McGrath.

The request to amend was withdrawn, without prejudice.

NOI Exhibits:

- A colored presentation of proposed renovations and improvements was shown and noted as Exhibit A;
- Two photos (undated) showing vegetation near boardwalk, Scotch broom, was displayed and noted as Exhibit B..

Issues discussed:

- Mr. McGrath presented an overview of the property and proposed changes via an “overall site plan,” consisting of several large sheets;
- Applicant proposing 9,500 square feet of mitigation planting;
- Creating a new wetland resource by creating a dune;
- Approximately 2,170 square feet of “invasives” to be removed;
- Heather not to be disturbed;
- Scotch broom to be removed and replaced with appropriate species;
- The previously approved cabana now slightly different;
- Storm damage prevention and flood control included in the project;
- Boardwalk to be kept on applicant’s side;
- Narrowed driveway, etc., to be shown on a revised plan.
- Letter issued from NHESP.

The Chair suggested that more plantings on the Rushy Marsh (pond) side of the property be provided.

The Chair asked if the applicant can stay within the existing footprint for the cabana.

A new septic was proposed for the cottage. A revised plan will be forthcoming to address the issues posed by the Commission, e.g., the driveway, the size of the cabana, moving the cottage out of the 50-foot buffer zone.

A motion was made to continue the hearing to May 28<sup>th</sup>.

Seconded and voted unanimously.

**XI CONTINUANCES**

**Ocean Drive LLC.** Construct in-ground pool with patio, pool house with utility shed, site prep and landscaping mitigation planting on-site at Eugenia Fortes Beach at 27 Marchant Ave., Hyannisport as shown on Assessor’s Map 286 Parcel 25 and 40 Iyanough Ave., Hyannisport as shown on Assessor’s Map 287 Parcel 132. **SE3-5045 WITHDRAWN**

The project was withdrawn via letter from Arlene Wilson.

**Niraj & Jill Shah.** Construct boardwalk across salt marsh to access East Bay at 110 East Bay Rd., Osterville as shown on Assessor’s Map 141 Parcel 123-001. **SE3-5078**

The applicant, Mr. Shah, attended the hearing and was represented by Steve Wilson, P.E., and Adam Hostetter.

Exhibits:

- Four sheets of photos (undated) were displayed and noted as Exhibit A;
- A July 10, 2009 aerial of Map 141 Parcel 123-001 was displayed and noted as Exhibit B;
- A July 10, 2009 aerial showing surrounding parcels was displayed and noted as Exhibit C.

Issues discussed:

- Mr. Wilson said the material to be used is Tru-flo decking;
- The Chair asked whether a boardwalk made sense in an area with no water; Mr. Wilson answered the boardwalk would be approximately 40 – 50 feet before it would reach the water at low tide;
- Mr. Shah said the problem was getting stuck by the change of tides with kayaks;
- One of the Commissioners asked if a more direct route to water could be sought; Mr. Wilson answered that they were trying to keep out of the channel area;

- A Commissioner thought the applicant should use the dock, with improvements; he didn't think the project was justified.
- One of the Commissioners thought that the marsh was already under assault (erosion); he said that the size of the boardwalk, among other things, would set a precedent;
- No CCA was being proposed – Mr. Wilson said a boardwalk would cause less disturbance to the marsh than walking on sand and mud;

A motion was made to take the matter under advisement.

Seconded and voted unanimously.

**Marcia S. & Robin A. Brown, Trs./Robin A. Brown Living Trust & Marcia S. Brown Living Trust.** Elevate existing cottage to meet flood code; add 2<sup>nd</sup> story; replace septic system; construct guesthouse and access stairs at 250 Smoke Valley Rd., Osterville as shown on Assessor's Map 097 Parcel 002. **SE3-5061**

The applicant was represented by A.M. Wilson, P.W.S. and Attorney Kevin O'Flaherty.

Exhibits: (from Arlene Wilson)

- Exhibit A – Technical Bulletin 91-001 (final) Nitrogen Loading April 1992
- Exhibit B – TOB Chapter 360 On-site sewage disposal systems
- Exhibit C – Order of Conditions and plans from SE3-5022
- Exhibit D – Determination of Applicability DA-05047 Wade and Mary Staniar
- Exhibit E – Table, New Construction Residential Additions

Exhibits: (from Chairman Dennis Houle)

- Exhibit 1 – July 8, 1996 aerial;
- Exhibit 2 – July 10, 2009 aerial showing map 097 parcel 003 Staniar Property
- Exhibit 3 – July 10, 2009 aerial showing map 097 parcel 002 Brown Property
- Exhibit 4 – TOB Property assessment records for Brown property 2013

Exhibits: (from Commissioner Larry Morin)

- Exhibit B – packet exhibits obtained from Building Department;
- Exhibit H – packet exhibits obtained from Health Department.

Issues discussed:

- Order of Conditions SE3-5022, previously approved;
- The Chair pointed out that the Board of Health declined the applicant's previous request;
- The septic was relocated;
- Ms. Wilson said the sketch of the work limit was previously approved;
- Nitrogen-loading calculations;
- Revised location for accessory building to top of hill;
- The efficiency of an A-I Leaching System was disputed;
- Trees on southwest side to remain;
- Per Ms. Wilson, 4,000 square feet of mitigation was being proposed; the large tree next to deck to come down;
- A letter from Arlene Wilson to Robin Brown was read by Commissioner Blazis;
- The need for a specific planting plan;
- The Chair cited that aerial photos from 1996 through 2009 shows tree growth which does not exist today;
- The number of bedrooms near water was thought to be detrimental, as additional erosion from vehicles would intensify use of property;
- Increase in height of boathouse proposed to be 16 feet at its highest point;
- Question of whether the Commission has the ability to approve this project;
- Cut tree violations in the past and a 6-bedroom increase made the project hard to accept by the Chair;
- Two of the Commissioners would support a scaled-down project: an elevated, repaired, and/or renovated boathouse.

A motion was made to continue the hearing to May 28<sup>th</sup>.

Seconded and voted unanimously.

**Christopher Stavros, Tr./21 Wianno Head Road Realty Trust.** Raze and rebuild single-family dwelling with appurtenances within the 100-foot buffer zone to coastal bank and land subject to coastal storm flowage at 21 Wianno Head Rd., Osterville as shown on Assessor's Map 091 Parcel 005-001. **SE3-5066**

The applicant was represented by Brian Madden and Don Bracken.

Exhibits:

- The proposed revised site plan was displayed and noted as Exhibit A.
- The proposed landscape plan of 4/25/2013 was displayed and noted as Exhibit B.

Issues discussed:

- Raze/rebuild further from the resource area;
- Increase in hardscape;
- Native trees to remain in the 0 – 50-foot buffer;
- A retaining wall and a dense re-vegetation plan.

Public comment:

- Abutter Michael Kaneb was concerned about border plantings.

A motion was made to approve the project with standard and special conditions: vista pruning in consultation with staff; removal of cherry tree in 50-foot buffer allowed; storm water to be kept on site; temporary irrigation for the first year after planting; downspouts to drywells or gravel drip trenches; planting on eastern side between properties to be done in consultation with staff.

Seconded and voted unanimously.

**XII AMENDED ORDERS**

**New Rushy Marsh Realty Trust.** To amend permit **SE3-4747** to increase footprint of previously approved cabana renovations. Proposed mitigation will replace existing lawn areas to create a naturally vegetated condition at 1524 Main St., Cotuit as shown on Assessor's Map 017 Parcel 014.

This filing was withdrawn, with the matter was taken up as part of the New Rushy Marsh Realty Trust Notice of Intent hearing, above.

**A motion was made to adjourn.**

**Seconded and voted unanimously.**

**The time was 10:32 p.m.**