



# Town of Barnstable Conservation Commission

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## **MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: JANUARY 22, 2019 @ 6:30 PM**

**LOCATION: Hearing Room, 367 Main Street 2<sup>nd</sup> 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](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 6:30 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, and Commissioners Pete Sampou, Larry Morin, and George Gillmore. Commissioner John E. Abodeely was away.

Darcy Karle, Conservation Administrator assisted, along with Claudette Bookbinder, 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

The Chair informed the public that the Commission could be expected back in public session at approximately 7:00 p.m.

### **Return to public session**

The Commission returned to public session at 7:18 p.m.

## **II NOTICES OF INTENT**

**Christopher & Lindsay Pike.** Landscaping to include replacing a boulder wall, management of invasive, non-native and nuisance vegetation with new grass path and sitting area and deck at 876 Main St., Cotuit as shown on Assessor's Map 035, Parcel 085. **SE3-5639**

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

Issues discussed:

- The path to the neighbor's property will stay
- Propose to mechanically clean out vegetation within the 50 and 100 buffer zones
- Boats/dingys were seen stored on the beach
- Rosa rugosa will remain
- Hand management of invasives (after initial clearing) within the 50' buffer.

A motion was made to approve the project as submitted with a special condition added that, after initial mechanical clearing in the 50' buffer, only work by hand to take place subsequent of that within the shrub area.

Seconded and approved unanimously.

**Joseph & Devonia Keller.** Pool to replace greenhouse, establish view corridors, access pathway to water and kayak rack, mitigation for hardscape (patio and retaining wall), and invasive plant species management at 206 Starboard Lane, Osterville as shown on Assessor's Map 166 Parcel 053. **SE3-\_\_\_\_\_**

The applicants were represented by D. Michael Ball of Baxter Nye Engineering.

Issues discussed:

- Proposes 4,500' of mitigation/lawn area
- Mitigation calculations had been received from Michael Ball
- Applicants will receive no credit for mitigation from a prior filing
- Much erosion noticed by the Commission not addressed in the NOI, but can be tied into a leach pit
- The oak tree to be removed should be depicted/indicated by a ribbon
- A pipe coming out of the wall: where does it originate from?
- The generator pad should be on the plan
- The edge of the mitigation area should be demarcated in consultation with staff
- A notation referring to prior filings should appear on the plan

A motion was made to approve the project as submitted, subject to receipt of revised plan addressing erosion drainage issue by either directing it to pool drawdown pit or separate drain well, in consultation with staff, and indicate generator pad; a special condition to indicate flagging of oak to be removed, and proposed mitigation area shall be demarcated in consultation with staff.

Seconded and approved unanimously.

**Nelson & Shelley Abreu.** Elevate existing dwelling, remove existing foundation, and construct new concrete foundation within existing footprint at 54 Prince Avenue, Marstons Mills as shown on Assessor's Map 077 Parcel 049. **SE3-\_\_\_\_\_**

The applicant was represented by Daniel Ojala, P. E. of Down Cape Engineering, Inc.

Issues discussed:

- Reason for the foundation work is due to structural issues
- Drywell
- The need for a construction protocol
- House exists outside of the flood zones

A motion was made to approve the project subject to receipt of a revised plan showing the proposed drywell location and a special condition stating a construction protocol shall be submitted.

Seconded and approved unanimously.

**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**

The applicant attended, and was represented by Brad Malo and Don Monroe of Coastal Engineering Co.

Exhibits:

- A – Master Plan of Cape Cod Village Condominium
- B – Master Deed of Cape Cod Village Condominium

Issues discussed:

- Letter received late this day from Atty. Patrick J. Brady on behalf of certain members of the Cape Cod Village Condominium Association
- Assessor's database reveals that taxes are paid on the building only
- The property has been surveyed; is an exclusive area. In 1983 a similar case involving pilings and structural activities were permitted, per Mr. Malo.
- All work in the dune area
- According to Mr. Malo, the Town Building Commissioner is OK with the project
- The Commission stated their need for an opinion from the Town Attorney's Office, but would hear the project
- House to be elevated 10.5' – 16' – cinder blocks placed by hand and work with the use of a Bobcat
- Two prior storm events resulting in flooding and damage when the house was located 50' closer to the water and seawall
- The deck also to be elevated.

Correspondence: Karen Moriarty, member of C. C. Village Association, email of 1/18/19; Patrick J. Brady, Esq., email of 1/22/19; Robert J. Keady, homeowner in C. C. Village Condominium, Email of 1/22/19;

Public Comment:

1. Attorney Patrick Brady of Marcus, Errico, Emmer & Brooks, P.C., represented certain association members, e.g., Bridgette Keady, but not the association board. He claimed that the land is "common area," and not subject to a condo owner's exclusive rights. He handed out a copy of the Master Plan (Exhibit A);

[Commissioner George Gillmore recused himself]

Mr. Brady stated that the Association Bylaws prohibit structural change, height, or views by other owners. He handed out a Master Deed (Exhibit B).

The Commission asked for a copy of the 1983 ownership document, and suggested that the Town Attorney arrange a meeting between the owner (Mr. Sapienza) and association members and their counsel.

2. Richard Moriarty, condominium owner, spoke of a drainage problem and the lack of candor demonstrated by Mr. Sapienza.

A motion was made to continue the project to March 5<sup>th</sup>.

Seconded and voted unanimously.

**Town of Barnstable Department of Public Works.** Construct roughly 263 linear feet of stormwater conveyance pipe, install a concrete headwall with a stone apron dissipation bowl, and conduct associated grading at 725 Main Street, Hyannis as shown on Assessor's Map 308 Parcel 143. **SE3-5641**

A verbal request for a continuance to February 5<sup>th</sup> was received by the Chair; a written request to follow.

A motion was made to continue the project to February 5<sup>th</sup>. No testimony was taken.

Seconded and approved unanimously.

### **III CONTINUANCES**

**John T. Hailer.** To permit and maintain existing paddle board locker, boat shed and rinse station at 743 Old Post Rd., Cotuit as shown on Assessor's Map 054 Parcel 011-004. **SE3-5631**

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

Exhibit A – Site plan for SE3-5554

Issues discussed:

- A quorum of all was present
- This is an after-the-fact (ATF) filing
- A boat-access storage shed approved under SE3-5554, twice as large as that proposed (Exhibit A)
- No hot water; single pipe
- The Commission thought the rinse station should be brought closer to the retaining wall or stone steps
- No fuel or chemical storage in sheds
- The possibility of moving the locker and shed out of the buffer
- Smaller size of the two structures than boat shed (SE3-5554), however, there is a retaining wall to consider

A motion was made to approve the existing location of the after-the-fact paddle board locker and boatshed, and require the submission of a revised plan indicating the rinse station to be relocated landward of the 50' buffer to the top of the coastal bank.

The motion was seconded.

Further comment ensued:

- No storage of fuels or chemicals in either structure.

Along with the additional special condition, the motion was seconded and voted: 4 votes = Aye; 2 votes = Nay. The motion carried.

**Max & Shelly Woolf.** Construct addition to existing house and a swimming pool at 50 Gosnold St., Hyannis as shown on Assessor's Map 324 Parcel 026. **SE3-5633**

The applicants were represented by Rob Sykes of Eastbound Land Surveying, Inc.

Issues discussed:

- A quorum of all was present
- The project is in the AE flood zone, only.

A motion was made to approve the project, as submitted.

Seconded and approved unanimously.

**IV CERTIFICATES OF COMPLIANCE**

- A. Hirsch SE3-5353 (coc, ez) - - - - - raze & construct single family dwelling \*  
251 Nyes Neck Road , Centerville - - - - - Wequaquet Lake

A motion was made to approve the certificate.

Seconded and approved unanimously.

**V MINUTES**

- A. 1/8/2019

A motion was made to approve the minutes.

Seconded and approved unanimously.

**A motion was made to adjourn.**

**Seconded and approved unanimously.**

**The time was 8:58 p.m.**