



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

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**MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: November 5, 2019 @ 3:00 PM**

**LOCATION: Hearing Room – 367 Main St., 2<sup>nd</sup> Floor, Hyannis, MA 02601**

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.

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, Commissioners George Gillmore, Pete Sampou arrived at 3:50 p.m. Commissioners John E. Abodeely and Larry Morin were absent.

Darcy Karle, Conservation Administrator, and Edwin Hoopes Conservation Agent assisted.

**3:00 PM AGENDA**

**I OLD AND NEW BUSINESS**

- A. Signing of final CR for GS Barnstable Land Owner, LLC 200 Communications Way (aka Villages at Barnstable)

**II CERTIFICATES OF COMPLIANCE**

(coc = Certificate of compliance) (ez = no deviations, staff recommends approval)

- A. Carey SE3-4336 (coc, ez) construct garage/guest house (not done)  
986 Sea View Avenue, Osterville - West Bay

A motion was made to approve A.  
Seconded and voted unanimously.

**III REVISED PLANS**

**Project type:**

**Revisions:**

- |  |   |  |
|--|---|--|
| A. Melvin Shuman, Trustee SE3-5483<br>82 Lake Drive, Centerville | Landscape, sand re-nourishment<br>stone edging, access stairs | Change of retainage<br>materials, relocation of mitigation<br>plantings. |
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The applicant was represented by Arlene Wilson of A.M. Wilson Associates.

Issues discussed:

- Discussion covered both revised plans listed on the agenda.
- Staff raised concern that 2 trees out of the 7 planted were not native.

- The new stone work paths installed were not permitted.
- Staff recommended that the buffer strip, required as mitigation under a special condition in SE3-5483 be planted.

A motion was made to approve the revised plan request subject to receipt of a further revision indicating the required mitigation buffer strip near the top of the stone wall.

Seconded and voted unanimously.

B.	Melvin Shuman, Trustee SE3-5521 82 Lake Drive, Centerville	Addition	Addition of stone paths.
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The applicant was represented by Arlene Wilson of A.M. Wilson Associates.

A motion was made to approve the revised plan request subject to receipt of a further revision indicating the required mitigation buffer strip near the top of the stone wall as discussed in A above.

Seconded and voted unanimously.

C.	BW Residential LLC SE3-5679 23 Atlantic Ave, Hyannis Port	Move foundation, porch addition covered deck, replace garage, walls, stairs, boardwalk	Larger garage, change to wall
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The applicant was represented by John O’Dea of Sullivan Engineering and Consulting Inc.

A motion was made to approve the revised plan.

Seconded and voted unanimously.

D.	James & Susan Whelan SE3-5307 65 Ocean Ave, Hyannis Port	Remove invasive & non- invasive/dead & dying trees.	Relocation of restoration plantings.
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The applicant was represented by John O’Dea of Sullivan Engineering and Consulting Inc. and Peter Hansen of Peter Hansen Design.

Issues discussed:

- Staff supports the Landscape Plan revision, but does request a further revision be submitted to clarify the areas the applicant is requesting to mow twice per year.
- Discussion on whether one or two year mow is better.
- This area did have an invasive issue.

A motion was made to approve the revised plan request subject to the receipt of a further revision with a note indicating areas to be mowed with a 2 x’s a year mow for the first three years followed by 1 x a year mow thereafter.

Seconded and voted unanimously.

E.	Virginia & Ryan McCourt SE3-5578 206 Long Beach Rd, Centerville	Stabilize & repair seawall	Install vinyl sheet pile into section of existing seawall.
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The applicant was represented by Matthew Creighton of BSC Group.

A motion was made to approve the revised plan request.

Seconded and voted unanimously.

F.	Thomas Fischer SE3-5267 164 Annable Point Rd, Centerville	Raze & rebuild SFD	Alterations to the footprint of SFD & accessory features.
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The applicant was represented by Matthew Creighton of BSC Group.

Issues discussed:

- Staff mentioned the wrong address was listed in the body of revised plan request letter.

A motion was made to approve the revised plan request.

Seconded and voted unanimously.

G.	Barnstable Land Trust SE3-5703 1540 Main Street, Barnstable	Construct boardwalks and viewing platform.	Connect boardwalks and add ramps at ends.
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Kelly Barber, Land Stewardship Coordinator represented Barnstable Land Trust.

Issues discussed:

- The revised plan represents the extensions required to improve conditions for public relief from walking in the mud.

Exhibit A: GIS Plan revised date of 10/30/19.

<b><u>IV</u></b>	<b><u>EXTENSION REQUESTS</u></b>	<b><u>Project type:</u></b>	<b><u>Time Requested:</u></b>
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A.	Peter & Maria Smail SE3-5420 339 Eel River Road, Osterville	Revetment	3 years
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A motion was made to approve the extension request.

Seconded and voted unanimously.

B.	Kevin Shea, K. Blake SE3-5428 19 Vine Avenue, Centerville	Addition to SFD, relocate front steps, remove concrete walls & stairs on coastal bank.	3 years
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The applicant was represented by Dan Ojala of Down Cape Engineering, Inc.

A motion was made to approve the extension request.

Seconded and voted unanimously.

**V**      **ENFORCEMENT ORDERS**

- A. Ninety Bay View LLC. – 90 Bayview Rd., Barnstable – Map 319 Parcel 031 Alteration of wetland and 50’ buffer by allowing erosion and drainage issues on property causing water and/or sediment to run into isolated wetland off-locus, site conditions not consistent with approved revised plan.

\*Pete Sampou arrived.

Exhibits

- A. Photos of site conditions on 10/28/2019
- B. Order of Conditions issued for BCC-195
- C. Building Inspectors report submitted by Ed Bowers, Building Inspector, Town of Barnstable

Ninety Bay View, LLC was represented by Daniel A. Ojala, Down Cape Engineering.

Issues discussed:

- Erosion controls were removed after mitigation planting's were installed.
- Excessive amount of mulch in mitigation area along with missing erosion controls resulted in washouts after moderate rain storms. Some of this reached within 20' of the wetland boundary.
- Water in the crawl space continues to be a problem.
- Lack of information about location of drywells, pipes, and their connections continues. Applicant to supply an as-built plan showing all drywells, specifications, pipes, drains, water and sewer lines and all connections.
- More stones have been added to the crawl space to approximately 6" – 12" below grade. Engineer suggested if vapor barrier and concrete slab poured on top of stones along with adjustment of sump pumps, that the continuous cycling of groundwater should stop.
- It was noted that staff has been required to expend an inordinate amount of time dealing with complaints by neighbors about this property.
- The Commission voted to amend the order to include:
  1. The applicant is required to appear at the December 10, 2019 Conservation Commission meeting with a revised plan (as-built).
  2. Applicants engineer to provide weekly reports about site conditions to Conservation staff.
  3. Applicants engineer will use camera to check connections between drainage lines and drywells, water, and sewer lines. To be done for the December 10, 2019 meeting.

The Commission voted unanimously to approve the Amended Enforcement Order.

- B. Randolph E. & Anastasia M. Rogers – 138 Plum St., West Barnstable – Map 195 Parcel 036 Alteration of a wetland resource area – Garrett's Pond – unpermitted dock and alteration of 50' buffer - unpermitted structure (platform).

Exhibits

- A. Assessors photo showing dock in the water and platform, dated 8/12/2009.  
B. Photos of site conditions on 10/30/2019.

The Roger's were represented by Attorney Jessica Summer.  
Mark Philie of Kinlin Grover Real Estate was present.

Issues discussed:

- There have been no filings with Conservation Commission for this site.
- The dock had been in the water for many years perhaps from the late 1980's. The dock and platform were on site as of 2002.
- Dock was maintained by Cape Cod Docks through the 2000's/2010's until dock was damaged by ice in 2014 at which time it was removed. Platform is still on site.
- Platform legs extend into pond edge and is at grade between pond and inland bank.
- Inland bank has had rocks piled on it.
- The Roger's have been cooperative and hired Paul Shea, wetland specialist, to assist with compliance and restoration of the site.

The Commission voted unanimously to approve the Enforcement Order as written.

**VI WARNING LETTERS**

- A. Nancy B. Gardiner Tr. & 45 East Avenue Realty Trust – 45 East Avenue, Osterville - Filling and regrading in flood zone.

Noted.

- B. Mark B. Elefante Tr. & 25 East Avenue Realty Trust – 25 East Avenue, Osterville - Filling and regrading in flood zone.

Noted.

- C. Pinho, James F. & Kerri J. – 65 Short Beach Rd., Centerville – Deficiencies to mitigation planting pursuant to Enforcement Order and Order of Conditions.

Tabled to December 10, 2019 meeting. Staff will check on wording as it relates to bulkhead reconstruction and impact to mitigation planting area immediately behind bulkhead.

#### **4:30 PM AGENDA**

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### **REMINDER TO APPLICANTS: FEES FOR LEGAL ADS ARE DUE AT HEARING. YOUR FEE IS LISTED BELOW**

\*Matters were taken out of order. Hostetter NOIs were heard first.

#### **VII REQUESTS FOR DETERMINATION**

**Gerard P. and Joan T. Regan, Trs.** Proposed septic system upgrade from cesspools at 1068 Craigville Beach Road, Centerville as shown on Assessor's Map 206 Parcel 133. DA-19048

The applicant was represented by Dan Ojala of Down Cape Engineering, Inc.

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

**William Russell.** Proposed 51.1 kW PV solar canopy on the southwest uplands of the cranberry bog. The footprint of the canopy is approximately 20 feet by 154 feet and the low end will be 8 feet high with a 15 degree tilt at 110 Hollidge Hill Lane, Marstons Mills as shown on Assessor's Map 081 Parcel 005. DA-19049

The applicant was represented by John O'Dea of Sullivan Engineering and Consulting Inc., and Kevin Maloney developer of Solar Array.

A finding was made stating - the area described in the request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required.

Based on the finding, a motion was made that the Commission is approving this project as normal maintenance or improvement of land in agricultural use (310 CMR 10.4).  
Seconded and voted unanimously.

**Dan Dewey.** Proposed removal of seven (7) trees and stumps. Trees are located in the 100' buffer from existing coastal bank at 571 Old Post Road, Cotuit as shown on Assessor's Map 054 Parcel 018. DA-19050

The applicant was represented by Dan Dewey of Dewey Gardens.

Issues discussed:

- The reason for the request to remove the seven trees is a safety concern with their close proximity to the house and the solar panels.

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

### **VIII NOTICES OF INTENT**

**Daniel C. Hostetter, Trustee.** Regrading of an existing 275 foot section of roadway to reduce the steepness of the road, including installation of stormwater facilities at Berry Hollow Drive, Marstons Mills, as shown on Assessor's Maps 044 and 045. SE3-5733

**Daniel C. Hostetter, Trustee.** Paving of an existing 363 foot gravel section of roadway within the 100' buffer zone to an existing active cranberry bog on Berry Hollow Drive, Marstons Mills, as shown on Assessor's Maps 044 and 045. SE3-5732

The representatives attending were: Attorney Michael Schulz representing the developer, Richard Tabaczynski of Atlantic Design Engineers, Attorney Brian Wall representing Whistleberry Residents Association, and Assistant Town Attorney Charles McLaughlin.

The two NOIs under Daniel Hostetter, Trustee were opened together.

#### Correspondence:

- Email from George Quart dated 11/4/19 in support of the project.
- Email from Assistant Town Attorney Charles McLaughlin to Chair dated 10/31/19 stating that road work plans were vetted by Roger Parsons prior Town Engineer.

#### Exhibits:

- A – Photos submitted by Jacques Morin showing current conditions of the hill and road.
- B – Email from Stephen Seymour PE to Rob Gatewood, Conservation Administrator dated June 10, 1997.

#### Issues discussed:

- Attorney McLaughlin gave a brief background on subject location, developmental meetings and everyone finally reaching an agreement, supporting both projects.
- The projects were vetted by Roger Parsons prior Town Engineer now consulting.
- Discussions have taken place between developer, association the Town and attorneys for many years
- Staff mentioned there was a yard waste pile that has been building up for years just off the edge of the road across from proposed drainage structures.
- Question raised on current location of water main lines around proposed drainage structures. COMM should be notified.
- COMM fire has always been concerned about the current conditions, such as traction to get up and braking to get down.
- Project needed to meet the requirements of the Planning Board. A settlement agreement was reached between all parties. It lists who is doing what section of the project, what happens if issues arise.
- Attorney McLaughlin supports the two proposals.

#### Public comment:

Attorney Brian Wall representing Whistleberry Residents Association – Attorney Wall contacted the Town for assistance dating back to 2012. Gave three reasons on why the Commission should support the project. The proposals comply with the Commission regulations under both the bylaw and state regulations. It will be a key to obtaining a larger settlement agreement, and the proposed projects will greatly improve conditions for residents at the top of the hill.

Gary Blazis, 105 Berry Hallow Drive – In support of project. Mentioned public safety issues regarding the current grade of the hill and how the drainage improvements will be beneficial to the water quality of the bog. Once paved people will be able to notice wildlife crossings.

Jacques Morin of 104 Berry Hallow Drive – In support of the project. Submitted Exhibits A and B for the record. Concern how water rushes back into the bog.

A motion was made to approve the project SE3-5733 with the following condition, that a no dumping sign be posted in consultation with staff and be shown on a revised plan.

Seconded and voted unanimously.

Secondly in regards to SE3-5732 a motion was made to approve the project as submitted. Seconded and voted unanimously.

**John T. & Elizabeth M. Ganey.** Proposed improvements to include two additions, deck or patio work, and a proposed shed, with associated appurtenances and restoration/mitigation at 251 Bay Lane, Centerville as shown on Assessor's Map 166 Parcel 057. SE3-5731

The applicant was represented by John O'Dea of Sullivan Engineering & Consulting Inc. and Caitrin Higgins of Wilkinson Ecological Design.

Issues discussed:

- Mitigation being offered is almost double the amount required.
- Concern raised on the free form patio indicated on the plan. Dimensions on the plan would be beneficial.
- Staff recommendation that demarcation of the mitigation area should be provided to reduce the possibility of mowing over the plants in the future.

A motion was made to approve the project as submitted, subject to receipt of a revised plan indicating distance to the resource area of the most northerly patio/deck and mitigation demarcation in consultation with staff. Seconded and voted unanimously.

**Lebow & Barbara J. Guilfoile.** Proposed construction of a boardwalk and patio at 1199 Craigville Beach Road, Centerville as shown on Assessor's Map 206 Parcel 053. SE3-5734  
John O'Dea PE of Sullivan Engineering and Consulting Inc.

Issues discussed:

- Usual policy of requiring a Certified Ecological Restoration Practitioner (CERP) when restoration of a wetland.
- Need for a written protocol for phragmites removal.
- Question raised on whether old piles will be removed or left in place.
- If it is determined that removing the posts poses an environmental issue than the posts can be left in place. Just flush cut them.
- Annual reports on restoration for three years

A motion was made to approve the project as submitted subject to receipt of a revised plan with a note indicating the applicant has the option to pull or cut posts flush, depending on what the results are in consultation with staff. A special condition requiring a letter from a Certified Ecological Restoration Practitioner (CERP) that has been selected. If there is to be any changes to the CERP, then staff shall be notified on who the new CERP will be. A written protocol of phragmites removal from CERP shall be submitted for review and approval from staff, and annual reports on restoration for three years. Seconded and voted unanimously.

## **IX AMENDED ORDERS**

**John & Mary Lombardo.** Addition of hot tub, outdoor rinse station and generator, miscellaneous landscape revisions, relocated walkway, addition of a small mitigation area and updated mitigation calculations, addition of a driveway light pole and associated underground electric, replacement of an existing fence, conversion of a stone paved patio to a wood deck, and a change from a 3-season screened porch to a 4-season room within the limits of the pre-existing building footprint at 81 Willow Run, Centerville as shown on Assessor's Map 210 Parcel 056. SE3-5476

The applicant was represented by Richard Tabaczynski of Atlantic Design Engineers, John Ingerson - Architect of project and John Lombardo, homeowner.

Issues discussed:

- Clarification on what has already been completed
- Correction on the record that a rinse station can have hot and cold water, just no soap.

A motion was made to approve the amended order based on the revised site plan dated 10/17/2019.

## **X MINUTES**

A. October 15, 2019

A motion was made to approve the minutes.  
Approved unanimously with one abstention.

A motion was made to adjourn.  
The time was 5:32 p.m.