



# Town of Barnstable Conservation Commission

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## **MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: June 6, 2023 @ 6:30 PM**

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US Toll-free 888 475 4499

Meeting ID: 864 0172 7648

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](mailto: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](mailto:Darcy.Karle@town.barnstable.ma.us). Comments should be submitted at least 8 hrs prior to the hearing.

### **REMINDER TO APPLICANTS:**

**FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 230 SOUTH STREET, HYANNIS, 02601**

The meeting was called to order at 6:32 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Commissioners Abodeely, Hearn, and Morin, and Sampou. Commissioner George Gillmore was absent.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant, Kim Cavanaugh.

**Agenda items were taken out of order. Notices of Intent were heard first.**

## **I. EXECUTIVE SESSION**

- A. Executive Session for the purpose of discussing litigation strategy with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break and plantings if the Chair determines that an open session could be detrimental to the Commission's litigation position.

- B. **CHAIR:** Next on the agenda is an Executive Session to discuss litigation strategy with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break and plantings.
- **DECLARATION OF THE CHAIR:** I declare that the discussion of litigation strategy in open session with respect to the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 involving construction of a wave break and plantings may have a detrimental effect on the litigating position of the Commission and I, therefore, ask for a motion to go into executive session.
  - Following the Executive Session, the Commission will reconvene in Open Session. I recognize the Clerk to make the motion.
  - **VICE CHAIR:** I move to go into Executive Session under G.L.C. 30A§21(a)(3) to discuss the case before the Office of Appeals and Dispute Resolution (OADR), in the matter of Tobias Welo, Petitioner/applicant, Docket No. WET-20022-24, DEP File No. SE3-5976, for property at 25 and 35 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009 and Map 053 Parcel 012 002 based on the Chair's declaration that an open meeting may have a detrimental effect on the litigating position of the Commission and will reconvene in Open Session following the conclusion of the Executive Session.
  - **CHAIR:** I second the motion.
  - **ROLL CALL VOTE:**  
Aye –Abodeely, Foster, Hearn, Lee, Morin, Sampou  
Nay -
  - **TIME: 8:04 p.m.**
  - **The Commission adjourned Executive Session at 8:40 and returned to Public Session at 8:47 P.M.**

## **II. NOTICES OF INTENT**

- A. **Babcock Holdings, LLC and Cape Beach House, LLC.** Proposed revetment connection between existing adjacent structures, and to replace stairway and platform at 11 and 27 Marchant Avenue, Hyannisport as shown on Assessor's Map 286 Parcels 026 and 025. **SE3-6097**

The applicant was represented by John O'Dea, P.E. of Sullivan Engineering & Consulting. John Stein owner of the property was also in attendance.

### Issues discussed:

- No comments have been received from NHESP. A continuance may be necessary.
- There is a coastal beach and a coastal bank. The project applies to both resource areas.
- The construction protocol was discussed.
- The construction area will be accessed from the land in the area near the stairs. Some grading will be necessary to get equipment in place.
- Some of the existing revetment stone will be taken out and put back in.
- There will most likely be a time of year restriction. They are hoping to begin in the fall of 2023.

- A construction protocol should be submitted by the contractor and a preconstruction meeting held with staff.
- A question was raised if the wall could be brought landward.
- They are losing a lot of beach where the revetment is currently being proposed. A lot of fill will be needed.
- There was discussion regarding the revetment curving in near the platform.
- The consultant felt it would be better in the long run to keep the revetment straight coming off the existing revetments on either side rather than have a 90 degree turn.
- The goal is to help preserve the beach along this stretch.
- A knuckle point would generate a lot of energy in a storm and could shorten the life of the revetment.
- A question was raised if a second opinion should be sought.
- Commissioner Gillmore was consulted earlier in the day. He seems to agree with the revetment being pulled back landward.
- John Steinham addressed the Commissioners. He has worked with many consultants looking for long term solutions.
- The revetment is necessary because both neighbors have revetments. Their revetments have accelerated erosion. Keeping the revetment straight is a better solution in the long term.
- The steepness of the slope currently is due to recent erosion. There has been substantial erosion in recent years.
- The studies referred to in the project narrative were discussed.
- The CZM data could be provided for informational purposes if there is a continuance.
- There are existing problems in the area just before the top of the coastal bank near the platform. There should be a detailed planting plan for the top of the bank to address any erosion concern.
- Bringing the connecting piece landward a little would leave more of the beach and lessen the amount of fill needed.
- John O'Dea will consult with an expert and provide a report on the issue of curving the revetment landward to preserve more of the beach. The Commission is ok with this approach.
- A continuance was requested to July 11, 2023.

There was no public comment.

A motion was made to continue the matter to July 11, 2023.

Seconded and voted by roll call.

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

Nay -

**B. Philip B. & Mary Ellen Nelson, Trs. – Proposed construction of an elevated boardwalk at 90 Harbor Point Road, Cummaquid as shown on Assessor's Map 352 Parcel 001. SE3-6098**

The applicant was represented by Lynne Hamlyn of Hamlyn Consulting.

Issues discussed:

- According to the Mass. Division of Fish and Wildlife's bio mapping system, this is a core habitat.
- A comparison was made with the boardwalk project for Audubon. The Audubon project was for public access and programs.
- There was an existing path and a small bridge when the property was purchased.
- A boardwalk will be an improvement to what is there currently.
- There is concern about setting precedent by allowing a boardwalk through core habitat.
- There was always a trail here, this would be an improvement.
- Historically there has been a path, so it can be permitted.
- A new path on a different property would probably not be allowed.

- This is a minimalistic solution, as it is only two feet wide.
- They are offering wider spacing between the planks than what is required.
- The phragmites have historically been trimmed back.
- The native marsh grass is doing better since the cutting has been done. More cutting will improve the native marsh.
- Two feet on either side of the boardwalk should be allowed to be cut.
- Consultant recommends 4 feet on each side.
- If we were to approve something wider than 4 feet it should be re-advertised.
- A revised plan should be submitted.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing a 2 feet cut on either side of the boardwalk.

Seconded and voted by roll call.

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

Nay -

**C. Kevin Price & Sarah Schlackman.** Proposed vista pruning and seasonal dock at 46 Holly Point Road, Centerville as shown on Assessor's Map 233 Parcel 038.

The applicant was represented by Mark Burgess of Shorefront Consulting.

Issues discussed:

- The DEP number has not been issued. A continuance will be needed.
- There is some debris on the bank that should be removed.
- Staff consultation is necessary for vista pruning.
- This will be an aluminum dock.
- Vista pruning will be within the guidelines and in consultation with staff.

There was no public comment.

A motion was made to approve the project as submitted including the vista pruning but with a continuance to June 13, 2023 for issuance of a DEP number.

Seconded and voted by roll call.

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

Nay -

**D. David and Cynthia Cowan.** Proposed at-grade access steps and permanent elevated walkway at 79 Seventh Avenue, Hyannis as shown on Assessor's Map 246 Parcel 150.

The applicant was represented by Mark Burgess of Shorefront Consulting.

DMF letter dated June 6, 2023 was reviewed.

Issues discussed:

- A DEP number has not been issued. A continuance will be necessary.
- This is the only place on the lot where the marsh comes in landward of the lot line.
- The position of walkway is logical for this project.
- Mitigation demarcation should be provided.
- The demarcation should be a permanent marker.
- The demarcation will be handled between consultant and Conservation Agent.

- There was discussion on if the step is necessary.
- Over a healthy marsh open grading or seasonal placement is beneficial.
- A permanent walkway lower to the ground will damage the marsh.
- If grating or cedar decking is used it could be removed at the end of the season.

Public comment:

John McKeon – representing his mother at 4 Maple Way. – She owns 3 parcels of property. 245052 (top half of Hall’s Creek). The construction proposed goes up to the edge of the lot but does not cross into her lot. The property line will be staked prior to construction.

A motion was made to approve the project subject to receipt of a revised plan showing the slotted cedar removable decking and continuance to June 13, 2023 for issuance of the DEP number.

Seconded and voted by roll call.

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

Nay -

### **III. CONTINUANCES**

- A. Christian Camp Meeting Association.** Proposed dock and stairway reconstruction at 160 Lake Elizabeth Drive, Centerville as shown on Assessor’s Map 226 Parcel 137. SE3-6050 **Continued from 02/14/2023 Form WC Received. Re-advertised.**

The applicant was represented by Cameron Larson of Environmental Consulting and Restoration, LLC and Douglas Farquar member of the Christian Camp Meeting Association.

Revised plan dated May 22, 2023 was submitted for this hearing.  
DMF Comment letter dated June 5, 2023 was read into record.

Douglas Farquar stated the reason for a permanent dock is due to the large amount of visitors to this location throughout the year. The impact to environment is minimal. There is very little marsh under the dock, and the project would have no adverse effect to the life in the water.

Issues discussed:

- The dimensions on the stairway need to be added to the plan.
- The original proposal was to leave the old posts in and cut them. They have no problem removing them if necessary.
- The width of the stairs was discussed.
- A recommendation to 4 ft. wide stairs with handrails was made.
- The stairs will extend to the edge of the dock.
- There should be a special condition for the stairs. They should be constructed a minimum of 1’ above grade.
- They will make the stairs 4 ft wide.
- A permanent dock makes sense at this site.
- No lights are being proposed on the dock.

Public Comment letter from Patricia Deyton, President of the Red Lily Pond Project Association dated June 5, 2023 in support of the project was reviewed.

Public Comment:

Bill McKinney - President of the Christian Camp Meeting Association. There is a lot of community support for the project. The project is covered by volunteer gifts from the community.

A motion was made to approve the project subject to receipt of a revised plan showing cross section of stairs and railing is limited to 4' wide.

Seconded and voted by roll call.

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

Nay -

**B. Lori Sidman, Trustee - Bonnybrook Realty Trust.** Proposed repairs and maintenance necessitated by accreted shoreline consisting in part of relocation of pier head and boat lifts at 185 Ocean View Avenue, Cotuit as shown on Assessor's Map 033 Parcel 016 **SE3-6074. Continued from 4/4/23.**

The application was withdrawn without prejudice.

**C. George Torbay.** Proposed in-ground pool, garage, landscaping, & on-site sewage disposal system replacement at 70 Ocean Avenue, Hyannisport as shown on Assessors Map 288 Parcels 182-004 & 182-005. **SE3-6095 Continued from 5/23/23. WC Form received.**

A revised plan dated June 1<sup>st</sup> was received.

The applicant was represented by Mike Ball of Marsh Matters Environmental, Eddie Snyder of Snyder Pools and Attorney Christopher Ohara from Todd & Well, LLP.

Issues discussed:

- The pool was moved approximately 10 feet.
- The amount of hardscape was reduced by 80 sq. ft. moving it closer to the house.
- The spa was relocated.
- The northeast corner will be 34' from the top of the bank.
- The new plan will add an additional 10' of mitigation. There will be a 22' buffer of vegetation.
- The total mitigation will be 6,000 sq. ft.
- A draw down pool has not been added to the plan.
- Fiberglass pools must remain full at all times, so a draw down pit is not necessary.
- Ed Snyder addressed the Commissioners. The water in the pool should not be lowered to under the skimmer. The only draw down that would be done would be for winterization.
- A drywell should be added to the plan.
- The regulations state in the 0-50' buffer, incursion is allowed when there is four times the mitigation provided.
- A pool is not an allowance for incursion.
- 40 percent of this pool is in the 0-50.
- This project would be allowing hardscape in the 0-50' buffer when there is a massive amount of yard that could be used.
- There are reasonable options to put it in another location.
- Consultant feels in this location, the coastal bank should be looked at differently than if it were another resource such as BVW or salt marsh which provide strong habitat. The coastal bank provides a physical vertical barrier providing storm damage protection and flood control. He feels the impacts should be looked at differently depending on the resource.
- A question was asked if there is any other reason other than it wouldn't look good to move it out of the 50' buffer.
  
- George Torbay, owner addressed the Commissioners.
- The landscape architect and he worked on trying to take it out of the buffer but it ends up being a front yard pool. Even with fencing and landscape privacy is an issue.

- There is an existing structure which will be removed in the location where the pool is being proposed.
- There is 6,000 ft of mitigation being provided.
- There is no back yard. It does not seem appropriate to put a pool in the front yard.
- The bank also is a place that the plants will suck up the nutrients. Stewarts Creek needs to be protected.
- There is a huge area outside the buffer that can be utilized.
- There are ways to add privacy using landscaping.
- Precedent could be set by approving the project inside the 50' buffer.
- A buffer to a coastal bank is different than to a wetland but the 50' buffer should still be protected.
- A question was raised if there something specifically different about this coastal bank. The bank is a very long bank and heavily vegetated.
- The depth of the pool was discussed.
- The project will not de-stabilize the bank, will not cause erosion and will not adversely affect the bank.
- Considering the amount of mitigation the project will result in improving the conditions to the bank.
- Construction hay bales should be used for work limit line.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the draw down pool and hay bale line for the construction of the pool, annual reports for three years for the mitigation planting.

Seconded

Aye Morin, Hearn, Lee

Nay Sampou, Foster,

Abodeely hesitant on vote.

The owner offered the removal of the patio which is 400 sq. ft. of hardscape and will still provide the full mitigation.

There was continued discussion.

A new motion was made to approve the project subject to receipt of revised plan removing the proposed patio, adding a drywell, and putting a hay bale line during construction of the pool, annual reports for three years for the mitigation planting, and inclusion of the original remediation area.

Seconded and voted by roll call.

Aye –Abodeely, Hearn, Lee, Morin, Sampou

Nay – Foster,

## **V. MINUTES**

A. May 9, 2023

B. May 23, 2023

A motion was made to approve the minutes as submitted.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Sampou

Nay - Morin nay on 5/9 and aye on 5/23

A motion was made to adjourn.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Morin, Sampou  
Nay –  
The time was 10:06 p.m.