



Town of Barnstable Conservation Commission

200 Main Street
Hyannis Massachusetts 02601

Office: 508-862-4093

E-mail: conservation@town.barnstable.ma.us

FAX: 508-778-2412

MINUTES – CONSERVATION COMMISSION HEARING

DATE: July 21, 2020 6:30 PM

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.

In accordance with the Governor’s Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gathering of More Than 10 People issued on March 24, 2020, the July 21, 2020 meeting of the Conservation Commission shall be physically closed to the public to avoid group congregation.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom link or telephone number and access code for remote access below.

Join Zoom Meeting

<https://zoom.us/j/94563919535>

Meeting ID: 945 6391 9535

888 475 4499 US Toll-free

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, so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing Darcy.Karle@town.barnstable.ma.us Comments should be submitted at least 8hrs prior to the hearing.

REMINDER TO APPLICANTS:

FEEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200 MAIN STREET, HYANNIS, 02601

The meeting was called to order at 6:30p.m. by Chair F. P. (Tom) Lee. Also attending were Vice Chair Louise R. Foster, Clerk Dennis Houle and Commissioners, George Gillmore, Larry Morin, Pete Sampou and John Abodeely.

Conservation Administrator Darcy Karle assisted.

I. REVISED PLANS

Project type:

Revisions

A . Three Bays Preservation & MA Audubon
0 Sampson’s Island and Cotuit Bay

Maintenance dredging &
beach nourishment

To revise time of year restriction.

Taken out of order, after item number III. - Continuances.

Assistant Town Engineer Nathan Collins represented the applicant.

Issues discussed:

- The request is to revise the start date to the end of September (9/21) in order to get this project on the dredging list first which will help start other Town dredging projects that have a more strict time of year restriction sooner.
- All Town personnel have been consulted. Relative e-mails will be submitted.
- A question was raised regarding why a time of year restriction was set in place. A similar request was waived as it was done by prior Conservation Administrator.
- The impact of dredging on boats using the area during that time for recreational use was discussed. It will have some impact however large portions of island still available for recreation. The project will not impact boat access.
- Concern was raised that this is the nicest time of year and area is used a lot during this time period. Work should minimize the footprint so it can still be utilized.
- The west end of the island is currently closed by Audubon.

A motion was made to approve as submitted.

Seconded

Roll call

Voted unanimously.

II. NOTICES OF INTENT

- A. Todd Forman.** Construction and maintenance of a seasonal fresh water dock with boat lift at 326 Holly Point Road, Centerville as shown on Assessor's Map 232 Parcel 027. **SE3-5798 Continued from 7/14 \$28.44**

The applicant was represented by Arlene Wilson of A.M.Wilson Associates.

Comments From NHESP were read into record.

Issues discussed:

- A question was raised regarding the use of whips instead of a lift.
- Whips make the structure less stable.
- Engineering issues - piles develop resistance that whips do not support.
- Discussion of Regulations, Chapter 703 dealing with the limitation of boat lifts.
- The boat lift they are proposing is hydraulic and is strictly prohibited by the regulations.
- The lift they are proposing uses no hydraulic fluid.
- Other conditions of use of boat lifts were discussed. Hull color/bottom paint is navy or black.
- Whips would not support a strong west/southwest wind as they attach to the decking and the structure would not support it.
- Two situations where there are lifts in the area. It is for jet ski's not a boat.
- It is not comparable as it serves a different purpose.
- Neighboring lifts should not be used as justification for the lift.
- Wind condition is the justification for the lift.
- Concern about future applications wanting a lift.
- The use of fenders and the way the boat is tied should be sufficient and are effective.
- A guideline was developed for salt water. It sets a precedent if granted.
- The second issue is the depth of water. There are many variable from season to season on water depth in fresh water. A fresh water dock can be moved in or out depending on depth.

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- Regulations/guidelines need to be re-developed for freshwater.
- Regulation vs. policy. None of the current lifts are relevant to this case.
- Evidence of the force of wind should be submitted for proof of need. There isn't enough evidence at this time to make a decision.
- Chapter 91 requires a fixed location for the pier. The pier cannot be moved in and out under these regulations.
- A mooring type of float may be an option.
- The bottom is hard to drive piles or anchor in freshwater. Normally 2" pipes are used in fresh water.
- A continuance was requested for 2 weeks in order to put the additional information together.

A motion was made to continue until August 4th.

Seconded

Roll call

Voted unanimously.

- B. Murray Scudder, Hyannis Harbor Tours Inc.** To permit maintenance dredging authorized under Emergency Certification Form issued by the Barnstable Conservation and to permit future maintenance dredging as needed at 220 Ocean Street, Hyannis as shown on Assessor's Map 326 Parcels 069, 070 & 071001. **\$47.40 . Request for continuance to 8/18**

A motion was made to continue until August 18, 2020.

Seconded

Roll call

Voted unanimously.

- C. Melora Coggeshall.** Raze existing non-flood compliant dwelling, construct new dwelling above 100 year flood elevation further from resource areas at 47 Rendezvous Lane, Barnstable as shown on Assessor's Map 279 Parcel 024001. **SE3-5799 \$37.92**

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

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded

Roll call

Voted unanimously.

III. CONTINUANCES

- A. Charles J. Murphy, Trustee.** Construction of a stone retaining wall at 122 Point of Pines Avenue, Centerville as shown on Assessor's Map 230 Parcel 063. **SE3-5791 Continued from 6/23. Request for continuance to 8/18**

This is the 3rd continuance without testimony. The matter will have to open on 8/18 or be withdrawn.

A motion was made to approve a continuance to August 18, 2020

Seconded

Roll call

Voted unanimously.

- B. Timothy J. and Marla J. Kalkus.** Raze and replace dwelling within the 100 foot buffer zone to the bordering vegetated wetland along Lake Wequaquet at 99 Old Farm Road, Centerville as shown on Assessor's Map 231 Parcel 026. **Continued from 7/07 for DEP# and NHESP comments.**

There are no added conditions from NHESP letter dated July 15, 2020.

There was no representative present at the hearing.

A SE3 number has not yet been issued by DEP.

A motion was made to continue the project until August 4th for SE3 number and DEP comments.

Seconded

Roll call

Voted unanimously.

- C. Frank Raspante, Cotuit Cranberry Farm.** Continuation of Cranberry farming in a wetland resource area on a farm that dates back pre 1870 at 131, 0, and 129 Brittany Drive, Cotuit as shown on Assessor's Map 026 Parcels 017, 004, and 006. **SE3-5771 Continued from 5/26/20.**

The applicant was represented by Robert Gray, Attorney Christopher Senie, Brad Holmes of ECR, Carmeron Larston ECR, Frank Raspante, owner.

Issues discussed:

- The Commission has received plans of existing bog, proposed redevelopment, and wild life study.
- The Easton case was reviewed and proposal was used as a guideline.
- Attorney Senie reviewed the revised drawings.
- Existing conditions were reviewed by Brad Holmes.
- A question was raised regarding the significance of the red and black gridlines. The black lines are existing ditches in the bog. Red lines signify area divided up to simplify vegetation calculations.
- The proposed revised schematic conditions dated July 17th were reviewed by Brad Holmes as well. The green area will be preserved as wetland the other area in red will be used as cranberry bog.
- There are a couple of typos that need to be corrected.
- There is no area that needs to be excavated.
- Proposed new irrigation is above ground irrigation.
- Existing irrigation will be abandoned in the wetland area.
- After several area 6 revisions using the Easton case this is providing a one to one wetland vs, bog condition.
- Wetland and wildlife enhancement schematic was reviewed.
- The addition of native plantings, birdhouses and rafter poles, basking logs for turtle habitat was designed to include the cranberry farm and preserve a beautiful wetland area.
- The site was walked by staff and owner. Concern of demarcation was addressed with a ditch.
- A discussion of using signs posted to show wetland preservation area. Educational signs would be a good suggestion.
- Plan sounds like an exciting proposal.
- The native plantings, high bush blueberry, in the wetland preservation area will be a marketable commodity. Applicant is not going to be harvesting and selling blueberries from the wetland area.
- The cranberry vs. wildlife areas have both been protected.
- A question was raised if a new farm plan should be submitted or just take a revision? USDA will accept an updated farm plan.

Proposed finding: Based on the Easton Case, which refers to a cranberry bog restoration at the Williams Property in Easton MA (file #1413), and in consultation with Gary Makuch of DEP, the Barnstable Conservation Commission approves of the idea of blending of a Limited Agricultural Project under the Wetland Regulations (310 CMR 10.53) and Renovation of Abandoned Cranberry Bog Regulations (310 CMR 23.00) for this site. The proposed project is providing wetland preservation, with wetland and wildlife enhancement, at approximately 1.11 to 1 ratio or 52.38% of the total site area. The designated cranberry farming area is limited to approximately 130,680 sq. ft. or 3.0 acres, locations where existing cranberry vine is dominant, while wetland and wildlife enhancement is designated for approximately 143,748 sq. ft. or 3.3 acres where wetland vegetation is dominant.

A motion was made to approve the finding.

Seconded

Roll call

Voted unanimously

Roll call

Proposed conditions:

All work under this Order of Conditions “Work” shall be in accordance with the plans, specifications and other representations contained in the record plan set reviewed by the Commission, which is made up of the following:

- July 6, 2020 Environmental Consulting & Restoration, LLC (“ECR”) “Wildlife Habitat Evaluation” letter with the attached DEP Appendix A Simplified Habitat Evaluation form
- July 6, 2020 ECR “NOI Support Report”
- March 20, 2020 Division of Fisheries & Wildlife letter referencing NEHSP File No.: 19-38529
- July 2020, Revised July 17, 2020, “Existing Vegetative Conditions Schematic” by ECR
- July 2020, Revised July 17, 2020, “Proposed Conditions Schematic” by ECR
- July 2020, Revised July 20, 2020 “Wetland & Wildlife Enhancement Schematic” by ECR
- July 6, 2020 “Plan of Existing Farm Layout”, Prepared for Frank Raspante Family Trust, Lot #25, #0 Brittany Drive in Cotuit Barnstable, MA by Holmes and Mcgrath, Inc. Job # 219283, Sheet 1 of 3
- July 6, 2020 “Plan of Existing Vegetation”, Prepared for Frank Raspante Family Trust, Lot #25, #0 Brittany Drive in Cotuit Barnstable, MA by Holmes and Mcgrath, Inc. Job # 219283, Sheet 2 of 3
- July 6, 2020 “Plan of Proposed Farm Layout”, Prepared for Frank Raspante Family Trust, Lot #25, #0 Brittany Drive in Cotuit Barnstable, MA by Holmes and Mcgrath, Inc. Job # 219283, Sheet 3 of 3

I. Preface

Caution: Failure to comply with all Conditions of this Order of Conditions may have serious consequences. Consequences may include: issuance of a Stop Work Order; fines; requirement to remove un-permitted structures; requirement to re-landscape to original condition; inability to obtain a Certificate of Compliance, and more.

The General Conditions of this Order begin on Page 5 and continue through Page 9. The Special Conditions contained herein and all Conditions require your compliance.

II. Prior to start of work, the following conditions shall be satisfied.

1. The bog area being farmed for cranberries shall be certified as an organic facility.
2. A revised Conservation Plan certified by the Natural Resources Conservation Service (USDA) shall be submitted to the Conservation Division prior to start of work.
3. Within one month of receipt of this Order of Conditions and prior to the commencement of any work approved herein, General Condition Number 9 (recording requirement) shall be complied with. It is the responsibility of the applicant, the owner and/or successor(s) and the project contractors to ensure that all conditions of this Order are complied with. The applicant shall provide copies of the Order of Conditions and approved plans (and any approved revisions thereof) to project contractors prior to the start of work. Barnstable Conservation Commission Forms A and B shall be completed and returned to the Commission Division prior to the start of work.
4. General Condition Number 10 (sign requirement) shall be complied with.
5. The Conservation Commission shall receive written notice one (1) week in advance of the start of work.
6. Prior to the start of Work, the applicant and Conservation Agent shall perform a pre-work site meeting to review agricultural work and wetland/wildlife enhancement work.
7. An erosion control barrier [hay bales, siltation fence, and/or alternative acceptable with the Conservation Commission] shall be installed between the cranberry bog renovation (“Bog”) area and the adjacent wetland area (“BVW”). The erosion control barrier shall also serve as the Work limit line, except for Work within the BVW allowed by the referenced plans.

III. The following additional Conditions shall govern the project once work begins.

1. General Conditions, Numbers 13 and 14 (changes in plan) shall be complied with.

2. The Conservation Commission, its employees and its agents shall have a right of entry to inspect for compliance the provisions of this Order of Conditions.
 3. Unless extended, this permit is valid for three years from the date of issuance.
 4. An Amended Order does not change the original date of expiration of this Order of Conditions.
 5. The Bog shall be managed as a certified organic facility. It is recognized that it may take some time for produce generated at the Bog to be brought to market as “organic”, but all farming practices shall be consistent with and in furtherance of such eventual designation. The Bog shall also be managed in a way that meets the guidelines of the publication referenced as “Organic Cranberry Management”, dated 2010 and issued by the UMASS Amherst Extension. Such operation shall also follow the provisions of the Conservation Plan referenced above.
 6. The Wetland and Wildlife Enhancement Schematic dated July 2020, revised July 20,2020 shall be implemented upon completion of the designated cranberry farmed areas.
 7. The wetland and wildlife enhancement plan shall supervised by ECR. If another consultant/contractor is sought by the applicant, the consultant / contractor must first be approved by the Agent/Commission on the basis of his/her qualifications, expertise, and documented experience in such projects. The commission reserves the right to interview the prospective contractor / consultant prior to making a determination.
 8. The areas shown as Wetland Preservation areas (Area 1B, 7, 8, 9) shall remain undisturbed with the exception access to the bog to remove the slash and wetland and wildlife enhancement activities. Any disturbed areas shall be revegetated.
 9. No pesticides or fungicides are permitted in the wetland and wildlife enhancement area.
 10. Any maintenance related to designated cranberry farming areas (1A, 2, 3, 4, 5, and 6), including tree removal, shall be conducted in accordance with 310 CMR 10.04; Agriculture (a) through (c).
 11. Willows may be thinned, in enhancement area to allow for additional planting, however Red Maple shall remain undisturbed.
 12. Annual reports for three years shall be submitted for the wetland and wildlife enhancement area by ECR.
 13. Irrigation shall be an above ground system with the inlet pipe going into Lovell’s Pond.
 14. If the farmed area lies fallow more than five (5) years, with no maintenance being conducted, the irrigation system shall be removed, upon request by the Commission’s agent with 60 days of such request. The area shall be allowed to revert to wetland habitat.
- IV. After all work is completed the following condition must be promptly met:
1. At the completion of work, or by the expiration of this Order, the applicant shall submit an “AS-BUILT” plan prepared by a Registered Professional Engineer along with a request in writing a Certificate of Compliance for the work herein permitted. Barnstable Conservation Commission Form C shall be completed and returned, along with the request for a Certificate of Compliance and appropriate fee. Where a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional shall be submitted, certifying substantial compliance with the plans, setting forth what deviation(s), if any, exists with the record plans approved in the Order. This statement shall accompany the request for a Certificate of Compliance and fee.
 - There was further discussion on signage.
 - A question was raised if the 8” pipe and materials in the wildlife enhancement area should be removed or left in place.

There was no public comment.

