

Lawsuit against Darby, Barnstable PB upheld by court

by Claudia Mahoney

Osterville resident Amy Shillady, who filed a law suit against Darby Realty and the Barnstable Planning Board, got a favorable ruling on two motions in Barnstable Superior Court last week.

The suit against Darby Realty Corporation headed by Stephen Smith, Senator Edward Kennedy's brother-in-law, was filed August 20, the last day of the appeal period after the Barnstable Planning Board approved a 204-lot subdivision on Darby's 106 acres of land in Osterville. Mrs. Shillady's suit claims that the board did not take into account serious threats to the village's water supply and ponds in its decision. The 106-acre Kennedy property is located between Bumps River Road and Old Mill Road, and surrounds both Joshua's and Micah's Ponds.

Shillady's attorney, John Shea of McGregor & Associates, a Boston law firm that has a reputation for expertise in environmental issues, said Monday that a motion to dismiss the case filed by Darby attorney Michael Ford had been denied by Superior Court Judge Augustus Wagner. Another motion, filed by Shea for Mrs. Shillady, adds Donald Coombs, an abutter to the Kennedy land, who owns cranberry bogs that could be directly affected by the proposed development, to the lawsuit as a co-plaintiff. That motion was allowed by Judge Warner.

Shea said that the suit alleges that the Barnstable Planning Board "exceeded its authority" by failing to include in its decision to approve the Darby subdivision six conditions written by the Board of Health after their review of the proposal. The Board of Health had stated in a written report to the planners that the development of the property "may adversely affect the water quality in Osterville." Included in the board's recommendations were that the development increase lot size to 40,000 square feet, that no variances be granted within the subdivision, that specifics on septic system placement be included, and that statements should be made that the subdivision is within a zone of contribution for the village's public water supply.

Shea said that he had been following with interest press reports on the implementation of the town's open space acquisition plan instituted by the town's Conservation Commission. The Kennedy property was one of the top priorities in the proposal that identifies land that should be

preserved as open space. He said he hoped the town would continue negotiating to preserve the Kennedy property.

Attorney Ford, representing Darby, has said consistently that the owners have no immediate plans to develop the property and that the subdivision approval was sought merely to protect the owners' options. A letter was sent to the town from Darby indicating that the trustees would notify the town before any construction plans were initiated. According to Selectman Jeffrey Wilson, no further communication with the Darby principals or attorneys has occurred.

Mrs. Shillady, an Osterville summer resident since the 1950s, has lived in the village year-round since her retirement. Mr. Coombs, of Old Mill Road, protested the subdivision at several planning hearings preceding the final decision, voicing concern for his cranberry bogs, some as close as 12 feet from the Kennedy house lots. He wrote in a letter to selectmen urging an environmental impact study of the area, "If this pond (Micah's) should ever get polluted, this agricultural land will be in a very bad situation, and so will the town..."