

Eastham Conservation Commission

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**Eastham Conservation Commission
2500 State Highway
Earle Mountain Room
April 28, 2015
Public Hearing
MINUTES**

Commissioners Present: Chair Stephen Smith, Michael Harnett, Steven LaBranche, Steven Kleinberg, Mary Zdaowicz and James Baughman.

Commissioners Not Present: All commissioners present.

Staff Present: Shana Brogan.

Also Present: David Lyttle of Ryder & Wilcox, Shawn Shea of Misty Hill Landscaping, Catherine Ricks of Coastal Engineering, Tim Brady of East Cape Engineering, Attorney Duane Landreth, Mark Burgess of Shorefront Consulting, Josh Piper, Tony Schoener and Mary Moniz.

6:07 PM

Chair Smith opened the hearing.

Notice of Intent filed by Katherine A. Mouchantat Trust. Applicant proposes 15' linear foot extension of rock revetment constructed up to elevation 16' at property located at 405 Shurtleff Road, Map 07, Parcel 145.

Catherine Ricks of Coastal Engineering presented the project. Shana Brogan asked why there was no return constructed when the revetment was built. She also noted that usually when a return is built it is to end on the owner's property so that it does not have an adverse effect on the abutter's property. Ms. Ricks said they would have had to excavate the bank to install it at the time and at that time the bank was stable. Now the bank is unstable and they want to add it. Steven Kleinberg asked what the impact would be to the abutters. Ms. Ricks said it would hardly increase, because the return is at an angle so the return will absorb most of the energy.

Chairman Smith asked for the distance from the corner of the house foundation to the coastal bank and what other options for this have been tried. Ms. Ricks said there was a sand fence, but it was blown away this winter. She noted they thought about coir envelopes, but said they would not be able to add nourishment when they were covered with snow and ice. She said they also have added nourishment and that they would add additional volume of annual nourishment. Ms. Ricks noted that the distance from the

house foundation to the top of the bank is forty-one feet. Shana Brogan noted the survey plans have the distance as fifty feet. Shana Brogan noted there is no record of a sand fence ever being installed or any records since 2007. Chairman Smith noted the house has about twenty five to thirty years according to the calculations, before it is in imminent danger.

James Baughman asked what would happen if the revetment eroded from behind. Ms. Ricks replied the revetment would fall down. Ms. Ricks said the owner does complete the annual nourishment, but not sure if they have completed extra. Chairman Smith noted there are some hurdles to prove that this is the only feasible alternative including the house is above the flood zone. Shana Brogan suggested that they re-adjust the rocks that are there and possibly add more sand. Mary Zdanowicz noted that it is too soon to distance the top of the house to the top of the bank. Chairman Smith said there has not been enough time and due diligence. He also asked for more information on the sand drift fence since 2007 and asked if anything else other than nourishment had been added. Mary Zdanowicz asked for more information on how the building is in danger or at risk. James Baughman **MOVED** to continue until May 12, 2015, Michael Harnett **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by Elizabeth Simmons. Applicant proposes construction of an 124' long rock revetment to a height of elevation 19' and reconstruction of a beach access stairway at property located at 385 Shurtleff Road, Map 07, Parcel 163.

The applicant requested a continuance until May 12, 2015.

Mary Zdanowicz **MOVED** to continue until May 12, 2015, James Baughman **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by Ken and Tara Mitchell. Applicant proposes construction of an 103' long coir envelopes to a height of elevation 19' and reconstruction of beach access stairway at property located at 365 Shurtleff Road, Map 07, Parcel 764.

The applicant requested a continuance until May 12, 2015.

Mary Zdanowicz **MOVED** to continue until May 12, 2015, James Baughman **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by Edward Holleran. Applicant proposes installation of an in-ground swimming pool and pergola, associated masonry deck and fence, and proposed resurfacing of impervious patios and planting non-native and native plants at property located at 210 Sunset Ave, Map 19, Parcel 042.

David Lyttle of Ryder and Wilcox was present to speak to the project. The pool has been removed from the project. There will be a small skid steer to bring in large patio stones. The patio will be installed on a natural surface. Mitigation is in excess of the 2:1 that is required. Mr. Lyttle asked about transplanting the prickly pear cactus and the sand plain heathland. It was noted that it could be transplanted on bare areas seaward of the patio. They will also try to transplant lichen and would like to introduce the prickly pear cactus and lichens to bare areas. Mr. Lyttle noted very minor grading is anticipated. Shana Brogan suggested they do no pruning on the cedar trees. She also asked him to relay that to the owners. Chairman Smith said there is a two foot depression on the site and that is not minor grading. Mr. Lyttle said there will be some grading. Chairman Smith noted the

patio is bigger than the spaced proposed for the swimming pool. He said the planting area to the northeast of the house is established and fine although there are some established non- native plants. Chairman Smith was not sure if is wise to manage that area of the property.

Chairman Smith noted that there was no Order of Conditions for pruning for this property, so the pruning is a violation. Mr. Lyttle said yes the vista pruning has been going on without a permit, but there was some language in the Conservation Restriction that allowed pruning and he does not have control of what happened in the past. Chairman Smith asked for the Conservation Restriction language and he also noted the pruning is about six to-eight inches below the three foot height. He said that unless the language in the Conservation Restriction states in perpetuity, they need to pick some vantage points and then they need to let the rest naturalize. According to Smith this location will not promote tall growth. Mr. Lyttle said he included the language of the Conservation Restriction in his original filing and the new owners will not want to give up the existing panoramic vista. Mr. Lyttle requested a height to be determined for the pruning and disagrees that that there should be view corridors. Chairman Smith said this is a Notice of Intent and last meeting they were considering a pool and hardscaping. Mr. Lyttle noted the owners would like a patio. Chairman Smith noted that cedar trees have been trimmed and this is going to be a windy site. He said under the same Notice of Intent we are looking at a completely different project than what was original submitted. Steven Labranche suggested looking into the Conservation Restriction for the vista pruning. Mr. Lyttle said he would come back to address the vista pruning. Mary Zdanowicz noted if they want to continue to prune they would need another filing. Chairman Smith noted it is a large patio and asked for it to be staked out. He also asked how the grading will be accomplished. Mr. Lyttle noted that plantings could go on the slope. Michael Harnett asked for details on the grading and would like to know where and how many prickly pear plants will be moved. Mary Zdanowicz asked for information on how the patio would be constructed. Mr. Lyttle said they would use a landscaping company with a lot of wheel barrows to carry the large stones. Ms. Zdanowicz said it would be good to know who would be doing the work and to make sure they have experience in this kind of resource area. Chairman Smith noted they need to know what the invasive are and the protocol for the removal.

Steven Kleinberg **MOVED** to continue until May 12, 2015, Michael Harnett **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by James Arnold. Applicant proposes construction of an addition and deck at property located at 725 Bridge Road, Map 19, Parcel 002.

David Lyttle of Ryder & Wilcox and Shawn Shea of Misty Hill Landscaping were present to speak to the project. The main question from the commission concerned the plantings. Mr. Shea went over the plantings and Shana Brogan noted the proposed plantings should do well in the proposed locations. Chairman Smith suggested adding gravel under the deck for run off. Mr. Lyttle said they were fine with that additional condition.

Mary Zdanowicz **MOVED** to approve the addition and deck, Steven Kleinberg **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by Daniel and Donna McCormick. Applicant proposes removal of a privet hedge and treatment with herbicide, clearing approximately 7,000 sq ft of vegetation on and adjacent to a coastal bank and Salt Marsh and application of herbicides, removal of two trees and pruning of a maple tree, and native plant restoration and removal and replacement of decks and walkways at property located at 30 Richard Lane, Map 21, Parcel 062D.

Tim Brady of East Cape Engineering was present to speak to the project. He noted there were a few questions remaining to move the project forward. Mr. Brady noted there is no new lawn proposed in the hedge area and there would be a densely vegetated grass area. There would be straw waddles at the top of the bank and mid-way down the bank.

Mr. Brady noted herbicides are not going to be an ongoing process, but they will use spot treatments as time goes by on individual plants. Chairman Smith noted that it is his feeling that herbicides can be beneficial, but said one condition for this property that should be added is that there should be no more use of herbicides. Chairman Smith noted it is possible to come back to the commission for continued herbicide use and possibly add it to the Order of Conditions as an ongoing condition. They would have to come back to the commission to review the type of herbicide and possibly limit the use to individual plants. Mr. Brady noted the project is to look just like the photo and the hedge area is going to have grasses and vegetation like the bank. Chairman Smith noted they will need monitoring reports with pictures while the work is going on until the bank is stable.

Mary Zdanowicz **MOVED** to approve, James Baughman **SECONDED**.

ALL IN FAVOR.

Continuation of Notice of Intent filed by Thomas and Linda Cimillo. Applicant proposes demolition of a dwelling and construction of a new dwelling, installation of a new septic system and construction of a stone revetment at property located at 445 Turnip Road, Map 07, Parcel 491.

The applicant requested a continuance until May 12, 2015.

Mary Zdanowicz **MOVED** to continue until May 12, 2015, Michael Harnett **SECONDED**.

ALL IN FAVOR.

Continuation of Request for Amended existing Order of Conditions filed by Mary Jane and Frans Cramer. Applicant proposes to construct an elevated 4 foot wide walkway from the driveway to the house using cedar framing and mahogany at property located at 325 Harmes Way, Map 1, Parcel 109.

The applicant requested a continuance until May 12, 2015.

Mary Zdanowicz **MOVED** to continue until May 12, 2015, Michael Harnett **SECONDED**.

ALL IN FAVOR.

Continuation of Notice of Intent filed by Larry R. and Jo Ann Jasper. Applicant proposes installing a paved driveway using porous asphalt and planting native and non-native plants at property located at 10 Ben's Way, Map 01, Parcel 074.

The applicant requested a continuance until May 12, 2015.

Mary Zdanowicz **MOVED** to continue until May 12, 2015, Michael Harnett **SECONDED**.

ALL IN FAVOR.

Other Discussion

105 Bay View Drive, Hickey, DEP SE 19-1539, Map 10, Parcel 105, Construction materials

Josh Piper of Kurzhaus Design and Tim Brady of East Cape Engineering were present to speak to the use of certain construction material. Mr. Piper said he has not received the approved materials list. The approved materials list does include composite. He noted they will be using stainless steel decking with ipe and non- pressure treated wood. He said the house has about thirty or forty percent of the Polyvinyl chloride (PVC) material on the exterior trim installed. Mr. Piper noted the dumpster and the cutting station is well outside the buffer zone. Mr. Piper noted the house is mostly sealed and they propose to cut the PVC material in the house. He said they have tried to abide by the Order of Conditions and if they had the material list, they would not be in front of the commission. The material list was part of the file, but not included in the Order of Conditions. Tim Brady said that PVC has been used and noted the site is very clean.

Chairman Smith said he went to the site this morning and it did not look bad, but the limit of work needs to be repaired. He noted he is concerned that the PVC does not degrade and end up in the buffer zone. Chairman Smith said the PVC is not a great product to be used and when the commission allows it must be painted. The PVC will need to be painted in perpetuity. He also noted it could be taken down and they could use High – density polyethylene (HDPE). Chairman Smith also noted that the contractor could have called for the list of approved materials. Mr. Piper said they have never built a house in Eastham and he wishes he had called the Conservation office to get the approved list. He noted they would paint the PVC trim. Chairman Smith noted this is a recurring problem on other projects. Mary Zdanowicz said it is important for the commission to know who is doing the work on the projects. Mr. Brady said the focus of the project when it was proposed was on the revetment and maybe looking at what items are going into the Order of Conditions would be helpful. Chairman Smith said the trim is haphazard and asked what the problem would be to use wood for the rest of the house. Mr. Piper noted the wood would look different painted next to the PVC. He also noted if you google HDPE azeck shows up. Chairman Smith wondered about the paint and enforceability to ensure it is painted. It was decided to issue an enforcement order. Chairman Smith said the PVC will work and to keep a record of it in the file.

James Baughman **MOVED** to issue an enforcement order and to allow the use of the PVC if painted and vacuumed, Michael Harnett **SECONDED**.

ALL IN FAVOR.

16 Keene Way, Schoener, DEP SE 19-1395, Planting and No Mow Zone

Steven LaBranche recused himself from the discussion. Tony Schoener was present to speak to the commission. Shana Brogan noted the area around the north side of the house is bare sand and boats were parked in the no mow zone. She also noted a small boardwalk was constructed that was not on the approved plan and that no monitoring reports were submitted for the project. Mr. Schoener noted he removed the boats out of the no mow zone. He said he followed the plan by Wilkinson and did not understand that a monitoring log was required. He noted that they did plant a few grasses on the north side of the house, but did agree it was mostly bare sand. Chairman Smith noted that they should look at the re-planting plan to see if it says all disturbed areas were to be re-planted. If it does then the property would not be in compliance and would not be given a Certificate of Compliance. Shana Brogan noted the general condition is for all disturbed areas to be re-planted. Mr. Schoener noted that the north side was always bare and was

not disturbed when building the house, but he would be happy to consider planting this area if that is what the commission would like to see happen. Chairman Smith noted that anything inside the limit of work is fair game and is going to be disturbed. He also noted that the bare area in question is so close to the garage and house foundation that it was disturbed and would need to be re-planted. Chairman Smith noted he and Shana Brogan will go over the approved planting plan and see what is required. Shana Brogan noted they will check into the Order of Conditions and see what is required to see if anything needs to be filed to stabilize this area.

550 State Highway, Map 21, Parcel 076B, Amended Order of Conditions filing update

Attorney Duane Landreth noted the applicant misunderstood the process and they immediately filed on Monday. Attorney Landreth apologized and requested a continuation.

Mary Zdanowicz **MOVED** that the AOOC be filed for the May 26, 2015 and the non-native plants be removed by June 1, 2015, Michael Harnett **SECONDED**.

ALL IN FAVOR.

Administrative Reviews

905 Herring Brook Road, Map 13, Parcel 092 - Removal of fallen pitch pine

The fallen pitch pine is a result of the latest snow storms this winter.

Steven Kleinberg **MOVED** to approve the tree removal, James Baughman **SECONDED**.

ALL IN FAVOR.

40 Smith Heights Way, Map 18, Parcel 054 - Removal of three trees

Mary Moniz was present to speak to the tree removal. She noted there is a large tree and the roots are impeding the septic pipe and the front walkway. Ms. Moniz would like to have the roots removed and two cedar trees over the roof on either side of it removed.

A fourth tree is at the bottom of the bank and the roots are exposed. The tree may fall over and take the bank with it. Shana Brogan suggested looking closer at the trees on the bank.

Michael Harnett **MOVED** to approve the removal of three trees by the house and replace with three native plantings, James Baughman **SECONDED**.

ALL IN FAVOR.

The commission will wait to evaluate the trees on the coastal bank.

410 Windjammer Lane, Map 19, Parcel 092 – Clear/prune 30'x 30' area overgrown brush and invasive vegetation

Chairman Smith noted they permitted a garage and there is an isolated wetland. Shana Brogan said they are clearing brush in the area and did not know why. It is not an Administrative Review issue. It does not appear to pose any problem to the dwelling. If they want to manage the area they need to file a Notice of Intent.

Salt Pond, Map 12, Parcel 319 – Removal of fallen tree

Steven Kleinberg **MOVED** to approve, James Baughman **SECONDED**.

ALL IN FAVOR.

Rock Harbor, Map 19, Parcel 120 – placement of riprap, sand cover, and beach grass planting under eroded dock

Michael Harnett **MOVED** to approve, Mary Zdanowicz **SECONDED**.
ALL IN FAVOR.

Lajoie, Schoolhouse Road – Patio repair

The commission deferred this until they can conduct a site visit.

Other Discussion

285 Corliss Way

Mark Burgess of Shoreline Consulting was present to speak to the project. It was noted that the commission did approve the planting plan for the deck. There was only one commissioner that had concerns with the planting plan.

Approval of Minutes

April 14, 2015 on site

April 14, 2015

January 6, 2015

January 20, 2015

March 17, 2015

Mary Zdanowicz **MOVED** to approve the minutes, Steven Kleinberg **SECONDED**.
ALL IN FAVOR.

Other Discussion

The commission discussed the options of enforcement orders for houses in violation of the Order of Conditions and how to handle dealing with different departments that may be involved with the properties.

Adjournment

Steven Labranche **MOVED** to adjourn, Mary Zdanowicz **SECONDED**.
ALL IN FAVOR.

Respectfully Submitted as prepared by,



Teena Tilton


5/12/2015

Stephen Smith, Chairman
Conservation Commission