

Eastham Conservation Commission

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**Eastham Conservation Commission
2500 State Highway
Earle Mountain Room
May 12, 2015
Public Hearing
MINUTES**

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

Commissioners Not Present: All commissioners present.

Staff Present: Shana Brogan.

Also Present: Jay Norton of Coastal Engineering, Tim Brady of East Cape Engineering, Gordon Peabody of Safe Harbor, Russ Holden of Ryder & Wilcox, Shawn Shea of Misty Hill Landscaping, Kurt Carlson, David Hawk of Hawk Design, Leslie Simmons, Karol Alexander, Theresa Sprague of Blue Flax Design, Ron Slewak of Ambrose Homes, Attorney Sarah Torano Flores and Attorney Ben Zhender.

6:00 PM

Chair Smith opened the hearing.

Notice of Intent filed by Christina Lawson. Applicant proposes Construction of addition/garage, porch, walkway deck and relocation of driveway, installation of septic tank at property located at 145 Cole Road, Map 13, Parcel 070.

Tim Brady of East Cape Engineering was present to speak to the project. Michael Harnett said this application is missing so much information that he would like for the applicant to request a continuance or have the commission vote to deny the project based on lack of information. Mr. Harnett asked about the alternatives analysis and went over the missing information. Mr. Brady said he had addressed the alternatives in his cover letter and wants to know what the commission needs to move the hearing forward. Chairman Smith noted if they discuss the information and what they would like it makes the commission consultants and said their job is to decide if the project meets the rules and regulations. Mr. Brady said square footage is not in the commission filing requirements. He noted the project is simple and wants input on what the commission would like to see. Chairman Smith noted the filing should include a planting plan and a performance standard analysis. Mr. Brady said it is not obvious to him that a planting plan is needed. Steven LaBranche requested an inventory of the trees that are to be removed. Mary Zdanowicz

noted that Mr. Brady may want to address the abutter's letter that the commission received. Shana Brogan said she will send the letters to Mr. Brady.

Steven Kleinberg **MOVED** to continue to May 26, 2015, Michael Harnett **SECONDED**.
ALL IN FAVOR.

Notice of Intent filed by Amy Gussack and Kermit Moyer. Applicant proposes vista pruning and maintenance and removal of invasive vegetation at property located at 50 Van Dale Circle, Map 15, Parcel 080.

The applicant requests a continuance until May 26, 2015.

Mary Zdanowicz **MOVED** to continue to May 26, 2015, James Baughman **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.

Jay Norton of Coastal Engineering and Karol Alexender were present to speak to the project. Mr. Norton noted since the last hearing on February 24, 2015 they have submitted a lot of material for the commission along with a work history. He noted there was also information submitted concerning the imminent danger. He said they have submitted a sketched plan for the one hundred and twenty-four foot long revetment and the information on it meeting the performance standards. Mr. Norton also noted they planned to raise sand nourishment to one hundred and twenty yards. He went over the performance standards and submitted information on the most feasible location. He noted the house is in danger from being threatened by future erosion. Mr. Norton noted most of the houses along this coastline have revetments and does not understand why the commission is having a problem with it.

Chairman Smith noted he was expecting a new plot plan and he needs proof that the house is in actual danger. Chairman Smith noted that the commission looks at each Notice of Intent on their on merit, not what happened to a house close to it. He said looking at the projects creates a constant learning curve for the commission. He noted that as the commission learns of outcomes of appeals they have a better understanding of what necessitates danger to the house. Chairman Smith noted he sees this house as more than a couple of storms away from being in danger. Mr. Norton noted the commission is charged with being fair and consistent and this is the exact same shoreline that another revetment was approved on.

Michael Harnett **MOVED** to deny the project, no one **SECONDED**.

MOTION FAILED.

James Baughman **MOVED** to approve the revetment, Steven LaBranche **SECONDED**.

James Baughman and Steven LaBranche voted **In FAVOR**.

Stephen Smith and Michael Harnett **OPPOSED**.

Steven Kleinberg and Mary Zdanowicz abstained.

2 voted in favor, 2 voted to deny and 2 abstained.

Mary Zdanowicz said she would like to change her vote and voted to approve the project.

3 voted in favor, 2 to voted to deny and 1 abstained.

MOTION CARRIED.

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.

Attorney Sarah Torano Flores, Tim Brady of East Cape Engineering, and Theresa Sprague of Blue Flax Design were present to speak to the project. Attorney Flores went over the information submitted. She addressed concerns the commission had at the last meeting and also a letter sent from Shana Brogan concerning the work area at the property. Attorney Flores noted that the owners installed a new trash box with pressure treated wood and it was removed. She said that the weekly progress reports were not done, but now have been retroactively provided. She said you can see the benefit of the work through the pictures. Attorney Flores addressed the concerns of spacing in the decking by showing pictures where the sunlight shines through the decking.

Ms. Sprague noted that Ambrose Homes took over the turtle monitoring from her during the construction phase. She noted when Ambrose Homes took over the site was in generally good condition. Ms. Sprague noted the silt fence was in disrepair, but all vegetation outside of limit of work was in tact and healthy and had not changed. She said it was holding the dune at this point. A beach plum that was moved for the septic installation would have to be replaced as it did not survive the winter. Ms. Sprague said debris on the site included concrete and rusty nails were cleaned up. She said the raising of the dwelling was to benefit the landward and lateral movement of the dune and it has accomplished that goal. Now the dune is moving and it will be more evident once the silt fence is removed.

Shana Brogan noted that the approved three foot beach access walkway was built as a six foot walkway. She noted that the area between the house and the garage was original a large dune and now it is completely level. She noted it was about eleven to twelve feet high. Chairman Smith said the weekly monitoring reports were not supplied and were needed to see if anything was not in compliance or needed to be corrected. Chairman Smith asked why the planting plan was not started and noted it should have been started last year. He asked where the sand of the dune went. James Baughman noted that the Blue Flax restoration plan proposed that sand would be taking off site and then returned once the work is done. Mr. Baughman noted the monitoring reports are so important and if they were turned in on time the commission could see exactly what happened to the dune. Mr. Brady noted there were no significant changes to the contouring between the house and the garage. He said no sand was taken away or out of the site. James Baughman asked if it was not taken out where is the sand. Ms. Sprague noted the proposed sand removal involved the area where the septic system was installed. She noted there was some disturbance of sand and there could be some shifting of sand. She noted that they did not remove the sand from the site as proposed in the plan. Mr. Brady said the house was lifted up and the sand could have filled in under the house. Steven Kleinberg asked to hear from the Ambrose Company, because they were used in the construction project. Chairman Smith noted the commission was expecting the site to be restored after the construction was completed. He said he realizes that materials were used in the construction and the house was raised, but this does not explain the change in the landscape of the area. Attorney Flores said they have not done the mitigation project and the commission is premature asking for it, because they do not have a completed project yet. Chairman Smith noted some of the restoration work should have started last

summer. Attorney Flores asks the commission to wait until the work by Ms. Sprague is complete. Steven Labranche noted that once the silt fence comes out the sand will move in. Ms. Sprague said they should plant the site first and then remove the silt fence for the Natural Heritage Endangered Species Program for turtle's protection.

Chairman Smith noted the stairway and walkway for beach access should be three or four feet wide as on the approved plan. The commission then discussed the elevated walkway. Mr. Brady said the idea of the walkway is to have traffic walking on it and not walking through the dune. James Baughman noted the elevated walkway sounds like a good idea. Ms. Sprague noted the walkway will be covering the path that people are using to get to the beach. The walkway will protect the dune and beach grass. Michael Harnett asked if the planting will start now. Ms. Sprague said yes the planting will start now. Chairman Smith noted that the planting must happen now, because they have already missed one complete planting season in a very sensitive area. He also noted that the beach access walkway does appear to be larger than the proposed size. He will take a look at it and the approved plan and see if it needs to be altered or rebuilt to the approved size. Attorney Flores asked for a check in period after the walkway is built and the plantings are in, at which point they can address the size of the beach access walkway. The commission will schedule a site visit in July.

Steven Kleinberg **MOVED** to approve the amended walkway, Mary Zdanowicz **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.

Tim Brady of East Cape Engineering and Shawn Shea of Misty Hill Landscaping were present to speak to the project. Mr. Brady noted the applicant has changed the plan to use pervious concrete in place of previous asphalt. He noted that the asphalt does leach hydrocarbons and oils and that concrete is not known to have these concerns when leaching. Mr. Brady said they can do pervious concrete and it is relatively available. He noted the concrete is more pervious than coarse sand. It was noted that Cape Cod Ready Mix makes it coarse and that under the concrete is a stone bed. Cape Cod Ready Mix has videos on their website showing how this product performs.

Chairman Smith noted since there is a change in materials they need information on the new materials. Mr. Brady noted there is a concrete driveway in Wellfleet that is steeper than Mr. Jasper's driveway and the pervious concrete works well on it. Chairman Smith asked Mr. Brady to obtain the address and ask the homeowner's permission to look at the driveway in Wellfleet. Michael Harnett would like permission to pour a bucket of water on the concrete to test the driveway. Mr. Brady noted the driveway will need to be vacuumed to maintain it. The homeowner will need to go out with a shop vac and vacuum it. James Baughman wants to make sure there is an enforceable obligation that it is maintained going forward. Chairman Smith noted that the entire surface of the driveway needs to be excavated to coarse sand. Shana Brogan noted the driveway is within the resource area and within the Area of Critical Environmental Concern. She noted the driveway is larger than normal and the commission will have to make a finding that the work on the driveway is maintained, because the Area of Critical Environmental Concern does not permit new paving.

Mary Zdanowicz **MOVED** to continue to May 26, 2015, Steven Kleinberg **SECONDED.**

ALL IN FAVOR.

Continuation of Request for Amended Order of Conditions filed by Eric and Jennifer Lammers. Applicant proposes maintenance of vista corridors at property located at 500 State Highway, Map 21, Parcel 077.

Gordon Peabody of Safe Harbor Environmental was present to speak to the project. Mr. Peabody noted the area is small for pruning and is open to additional ways to maintain the area. Shana Brogan said the vista area does not need to be pruned much. Mr. Peabody noted the plants in the wetlands have not been touched. Chairman Smith suggested coming back with an Administrative Review if something needs to be pruned. Mr. Peabody noted that the pruning is minimal. Mary Zdanowicz requested one photograph be included with filing.

Mary Zdanowicz **MOVED** to approve based off of pictures from April 2015 and that vista gets no larger than what is shown in the pictures, Steven Kleinberg **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

Russ Holden of Ryder & Wilcox and David Hawk of Hawk Design were present to speak to the project. Mr. Holden noted he submitted the information the commission requested. Shana Brogan went over the information that was required with Mr. Holden and it was more than he submitted for the hearing. James Baughman said they need the information and they spend a lot of time continuing hearings. He suggested that Mr. Holden go back and watch the tape of the meetings. Mr. Hawk asked if there was a question concerning the proposal and said he does not believe that the invasive removal was part of the proposal. Chairman Smith said they are looking to see if the project will be a benefit for the resource area. He noted that the house has extensive porches and patios around it and asked for alternatives analysis. David Hawk noted they took out the fence and cut down the coverage. He said their intent was to add native species.

Steven Kleinberg **MOVED** to continue to May 26, 2015, Michael Harnett **SECONDED.**

ALL IN FAVOR.

Continuation of Request for Amended Order of Conditions filed by the Town of Eastham. Applicant proposes vehicular access over South Sunken Meadow Beach and tidal areas to shellfish aquaculture growing sites from October through May at property located at South Sunken Meadow Beach, Map 01, Parcel 097.

Michael Harnett **MOVED** to continue to May 26, 2015, James Baughman **SECONDED.**
ALL IN FAVOR.

Continuation of Request for Certificate of Compliance filed by Frank and Margaret Vangeli for DEP SE 19-1248 for installation of fiber rolls and drift fence at property located at 27 Longstreet Lane, Map 10, Parcel 333.

Mary Zdanowicz **MOVED** to approve, Michael Harnett **SECONDED.**

ALL IN FAVOR.

Continuation of 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.

The applicant requested a continuance until May 26, 2015.

Steven Kleinberg **MOVED** to continue to May 26, 2015, Michael Harnett **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.

Mary Zdanowicz **MOVED** to May 26, 2015, Steven Kleinberg **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.

Tim Brady of East Cape Engineering and Attorney Ben Zhender were present to speak to the project. Mr. Brady noted he did not have any new information to submit to the commission, because he was waiting on decisions from with the Planning Board and the Health Department concerning the property. He also noted that both neighbors on either side are in favor of the new revetment to ensure there is no gap on the shoreline. Shana Brogan noted that the commission did request additional information and it was not submitted. Mary Zdanowicz noted she would like the additional information so she can look at the whole project not just a piece of it. Michael Harnett requested in writing proof that the property owner owns up to the midway mark on the right-of way beach access road and beach stairs. Attorney Ben Zhender said he can provide that statute for the commission. Ms. Brogan noted that the commission requested that the wells be put on the proposed plans. Attorney Zhender noted that before he or Mr. Brady spends time on submitting additional information their client needs to know if they buy the house they will be able to build a revetment and rebuild the house. Attorney Zhender noted that unless they get an idea if the commission is going to allow those two requests to happen the other question of planting plans and wells would be mute.

Mr. Brady said that the heart of the issue is the revetment and the size of the house, and that he is still waiting to hear from two other boards so there is no new information to submit. He noted his client will not buy the property if he can not rebuild the house and revetment and he will not spend more money to submit additional information if he can not get past those two issues.

Chairman Smith noted that there are three hurdles the applicants must look at. The first is if the applicant can prove that the existing revetment is an approved revetment. The second hurdle is that according to the Massachusetts Building Code this is going to be a new house and a house built after 1978 are not allowed to have a revetment. The third hurdle is that the revetment is there to protect the house from storm damage and at this time there is enough distance between the coastline and the house so the house is not in

danger Shana Brogan noted that the house is seventy five feet from the top of the coastal bank and it is not a huge erosion site. She noted that the rocks are not serving as a revetment now due to their placement and location on the beach not the bank. She said the most that the rocks are doing is breaking up some wave energy and that the commission should look at how it relates to the performance standards.

Attorney Zhender asked the commission if his client decides not to pursue the rock revetment at this time would they be comfortable with the new size and location of the proposed house. Mary Zdanowicz noted the house would then be considered a new house and they do not allow revetment on new houses. Attorney Zhender noted they could come back and address the revetment and appeal that condition at a later date. Chairman Smith noted it is not possible for the commission to ponder an idea without a written plan and request in front of them.

Michael Harnett **MOVED** to continue to June 23, 2015, Steven Kleinberg **SECONDED**.
ALL IN FAVOR.

Administrative Reviews

215 Mary Chase Road – topping or pulling out of groundsel bushes blocking path near Town Cove

Steven LaBranche **MOVED** to approve, James Baughman **SECONDED**.
ALL IN FAVOR.

40 Nickerson Road- Remove 3 dead oaks, 1 pine tree and brush pile

The commission deferred until May 26, 2015.

Steven Kleinberg **MOVED** to continue to May 26, 2015, Michael Harnett **SECONDED**.
ALL IN FAVOR.

3160 State Highway– Patio repair

Chairman Smith will do a site visit to look at the patio and the area around the pond, before signing the approval.

James Baughman **MOVED** to approve the patio repair, Mary Zdanowicz **SECONDED**.
ALL IN FAVOR.

94 Old State Highway – Level 5 pilings using no machinery

Mary Zdanowicz **MOVED** to approve, Steven LaBranche **SECONDED**.
ALL IN FAVOR.

70 Ellis Road – Level 2 pilings 10 inches using no machinery

Mary Zdanowicz **MOVED** to approve, Steven LaBranche **SECONDED**.
ALL IN FAVOR.

19 Marion’s Way – Replace part of deck and replace pressure treated wood with ipe.

The commission deferred until May 26, 2015.

Steven LaBranche **MOVED** to continue to May 26, 2015, Michael Harnett **SECONDED**.

ALL IN FAVOR.

650 Bridge Road – Installation of paved entrance walkway and removal of plants

The applicant was not aware they needed a permit and filed an after the fact Administrative Review. The commission noted that most of the work is not in the buffer zone.

Steven LaBranche **MOVED** to approve, Steven Kleinberg **SECONDED**.
ALL IN FAVOR.

410 Windjammer Lane – removal of brush

The commission will allow a three to four foot corridor around the house. All other pruning will require an Administrative Review to be filed.

Mary Zdanowicz **MOVED** to approve, Steven LaBranche **SECONDED**.
ALL IN FAVOR

Other Discussion

Courtesy Dock at Rock Harbor

Chairman Smith noted he looked into the pressure treated wood and it is a whole new variety of “green” pressure treated wood that is designed to stop the rot and mold spores. Michael Harnett noted that all state marine docks are allowed to use pressure treated wood.

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

105 Bay View Drive - enforcement order for construction materials used

Michael Harnett **MOVED** to issue an enforcement order and require that the PVC is painted, Steven Kleinberg **SECONDED**.

ALL IN FAVOR

Approval of Minutes

April 28, 2015

Steven LaBranche **MOVED** to approve, Mary Zdanowicz **SECONDED**.
ALL IN FAVOR.

9:15

Adjournment

Steven LaBranche **MOVED** to adjourn, Steven Kleinberg **SECONDED**.
ALL IN FAVOR.

Respectfully Submitted as prepared by,



Teena Tilton



Stephen Smith, Chairman
Conservation Commission