

Eastham Conservation Commission

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**Eastham Conservation Commission
2500 State Highway
Earle Mountain Room
June 23, 2015 (Postponed to June 30, 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: David Lyttle of Ryder & Wilcox Engineering, John Schnaible of Coastal Engineering, Lindsay Strode of Cape Organics, Tim Brady of East Cape Engineering, Shawn Shea of Misty Hill Landscaping & Design, Ron Peterson of Atlantic Well Drilling, Attorney Ben Zhender, Michael Moniz, Curt Cutting, Ray Schuster, Jorie Fleming, Gail Bedoukian, Joanne Scott, Tom Cimillo, William and Lorraine Chase, Gary and Marc Bluestein.

6:00 PM

Chair Smith opened the hearing.

Notice of Intent Filed by Rosamond Thomas Estate, c/o Frances Dodd. After the fact filing for the installation of fiber rolls at the property located at 255 Mary Chase Road Map 18, Parcel 80A.

David Lyttle of Ryder & Wilcox Engineering and Lindsay Strode of Cape Organics represented the project. Mr. Lyttle said it was an honest misunderstanding. Shana Brogan said that she had a copy of the old plan. Mr. Strode noted there was a misunderstanding and there was always a narrow walkway with a ramp going to the marsh. He noted the stairway washed away. Michael Harnett said there are plenty of ramps in town to launch a motorboat and no boats should be launched from this property. Steven LaBranche suggested all the plants should be planted to create a four foot pathway. Chairman Smith said if they called the conservation office they would not have gotten confused. They will re-plant the shrubs from the original list.

Mary Zdanowicz **MOVED** to approve the installation of fiber rolls, 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 they tried to address all the commissioner's questions from the previous hearing. He noted there was a question about the location of the septic system in front of the property, and said there is a well too close to allow for that location. Mr. Brady reviewed the project and the history of the property.

Chairman Smith said it comes down to the commission's personal decision as to whether the house is new or not. He noted the living space is increasing in the buffer zone and he does not see how it can not be considered a new house. Attorney Zhender said the decision is whether the house existed before or as prior structure. He noted the question he is concerned about is if the revetment is necessary to protect the structure, and the commission should not penalize the applicant for trying to protect their house. Attorney Zhender said the question is whether the revetment is necessary at this point given the distance to the house.

Chairman Smith noted he is not arguing that the revetment did not exist, but it does not exist now, and the house as it sits now is not in danger of storm activity and probably will not be for at least fifty years. The bank is a sediment source. He noted if this is a pre-1978 house with the septic system placement there is still more time before the house is in danger. He noted there are alternatives that have not been attempted yet. Attorney Zhender questioned whether the reconstruction of the house prevents the owner from putting in a revetment in the future. Attorney Zhender does not want to impose the condition now.

Chairman Smith said there are construction techniques that could be used to do reconstruction of an existing house. He said by exceeding the building's footprint it becomes a new structure. Chairman Smith said he understands the need to protect the septic system and there are methods that could be explored for this and there is a lot of time before disaster strikes.

Attorney Zhender mentioned the Warner case and said new construction means not having existing there before. He also noted there is no definition of new construction in the bylaw. Chairman Smith said they go by the building code. James Baughman noted that reconstruction is allowed in the Wetlands Protection Act and asked Attorney Zhender what is his view of "not reconstruction". Attorney Zhender said reconstruction is a very broad term. Chairman Smith said reconstruction would be that the house has storm damage or neglect so the house can no longer be maintained. Attorney Zhender noted he thinks reconstruction means alteration of a single family dwelling as a different structure and in a different location.

Mary Zdanowicz mentioned the Glass case where the Department of Environmental Protection required the owner to move the house back from the coast rather than to allow a revetment. She noted this project is asking to move the house closer to the bank.

Mr. Brady noted he does not feel they are moving closer to the top of the bank. He said they could put the deck on pilings.

Chairman Smith noted the house is moving closer to the top of the coastal bank. Whether it is new or old it is moving closer to the top of the bank and that will put it danger sooner than expected. Mary Zdanowicz said the application needs to be complete and looked at as a whole and it is not fair to just look at one part of the project. Chairman Smith noted the easiest way to move forward is to stay in the footprint and then request an unconditioned space where the deck is. He noted he does not feel the house in danger from storm danger at this point in time and the bank is supposed to erode as it is the natural process of the coast. Chairman Smith noted he does not see approving a revetment at this time.

Steven Kleinberg **MOVED** to continue to July 28, 2015, Mary Zdanowicz **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by Anthony Mancini. Applicant proposes reconstruction and enlargement of a second floor deck, reconstruction of an outdoor shower and construction of walkway at property located at 340 Salt Works Road, Map 04, Parcel 001.

Tim Brady of East Cape Engineering was present to speak to the project. Mr. Brady noted the sonotubes were in place and the deck will expand three feet larger than it is now. He noted they would like to put a walkway in adjacent to the house. Mr. Brady said the limit of work is established and they will need some concrete pilings that will be installed by hand. He purposed Alaskan yellow cedar and kumara, and will not use pressure treated wood. Mr. Brady noted the walkway would be four feet wide and would be natural timber. He noted he is unsure what the commission would like him to do for vegetation, because the site is natural vegetated now. He said wider deck spacing does not work well, because it can impact the use as it is a main entryway. Chairman Smith said they need to know what the increase will be so future members will know what they are looking at. Chairman Smith noted it would be good to know where the shadow lines will be from the deck. He would like to see if the increase in deck width will increase shading. Chairman Smith noted the deck is about nine feet high and would like to know what the width and cross sections of the deck and walkway will be. Michael Harnett clarified that the deck is the same as the lower walkway. Mr. Brady noted the deck will be on concrete pilings.

Michael Harnett **MOVED** to continue to July 28, 2015, Mary Zdanowicz **SECONDED. ALL IN FAVOR.**

Continuation of Notice of Intent filed by Gary and Marc Bluestein. Applicant proposes repairing and heightening 140 linear feet of rock revetment at property located at 5 and 6 Nan's Way, Map 07, Parcel 517 and 514A.

Tim Brady of East Cape Engineering was present to speak to the project and noted the project was filed many months ago. He said the property is located off of Turnip Road and that overtopping has happened with the present revetment. His proposal is to extend the revetment about four feet higher. Mr. Brady noted the proposal includes disassembling the top portion of the revetment wall and the project is not a total wall rebuild. He noted the bank is in pretty good shape and is well vegetation. Shana asked for clarification on the bank. The area is going to keep sand for the abutters at the return area

and there is a constant flow of sand. Ms. Brogan mentioned that the filing should be sent to the Division of Marine Fisheries. There was discussion about the revetment return. Mary Zdanowicz **MOVED** to continue to July 28, 2015, Steven Kleinberg **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 & Design were present to speak to the project. Mr. Brady said the project started out for the driveway and the owner will continue to maintain the current driveway as they have now. The project now just includes planting native and non native plants. Shana Brogan said no fertilizer, no permanent irrigation or hardened edging and survivability should be in the Orders of Conditions.

James Baughman **MOVED** to approve the planting plan, Michael Harnett **SECONDED**. **ALL IN FAVOR.**

Continuation of Notice of Intent filed by Sharen Shipley. Applicant proposes installation of a new septic system and well at property located at 1 Nycoma Way, Map 10, Parcel 323.

John Schniable of Coastal Engineering was present to speak to the project. It was noted that Greg Berman identified the project is in a coastal dune not a coastal bank. Mr. Schniable said there is a smaller machine that can be used to drill the well. He noted the planting protocol will include beach grass in the leaching area. Mr. Schniable said this plan shows the only place the septic can go on the property. Ron Peterson of Atlantic Well Drilling noted there is a tri-pod that will be used, and everything is pushed in by hand and walked in. Shana Brogan asked for the limit of work to be moved in. Mr. Schniable noted the cesspool could be filled by hand. Mr. Peterson said they need an area six square feet wide to be dug and filled with a bentonite. Mr. Schniable will revise plan to show access for well. Chairman Smith is concerned that they are introducing beach grass and said work limit needs to stay tight to eliminate excavating. There was discussion about the limit of work.

Mary Zdanowicz **MOVED** move to approve pending the redrawn plans, Steven Kleinberg **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 July 14, 2015.

Michael Harnett **MOVED** to continue to July 14, 2015, Mary Zdanowicz **SECONDED**. **ALL IN FAVOR.**

Continuation of Request for Certificate of Compliance filed by Gary and Coleen Wolf for DEP SE 19-1398 for proposed relocation of an existing dwelling at property located at 500R Ocean View Drive, Map 24, Parcel 007.

The applicant requested a continuance until July 28, 2015

Michael Harnett **MOVED** to continue to July 28, 2015, James Baughman **SECONDED**. **ALL IN FAVOR.**

Continuation of Request for Certificate of Compliance filed by John and Eileen Oslund for DEP SE 19-1469 for proposed construction of an addition and vegetation management at property located at 80 Lawton Road, Map 14, Parcel 045.

The applicant requested a continuance until July 28, 2015.

Michael Harnett **MOVED** to continue to July 28, 2015, James Baughman **SECONDED**.
ALL IN FAVOR.

Request for Certificate of Compliance filed by CLE Engineering, Inc. Applicant request Certificate of Compliance for the Dredging of Rock Harbor property located at Lot 2 Plan 288883-A , Certificate 24690.

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

ALL IN FAVOR.

Request for Determination of Applicability filed by Kenneth Reeves. Applicant proposes to repair septic tank that is root bound and replant disturbed area property located at 49 Longstreet Map 10, Parcel 343.

Shana Brogan noted they want to take septic tank out and repair it. Chairman Smith noted concern if the tank can be removed without breakage. The applicant noted there are four tanks on the property and this tank has a root mat. There were questions about the actual septic system. Chairman Smith said if it breaks then it has to be upgraded to a fifteen hundred gallon tank. He would like more details to see if this falls within a Notice of Intent filing. He can see the potential for more work. Chairman Smith said if they can wait they should file a Notice of Intent. The owners proposed to file the Request for Determination of Applicability and if there is a problem, they would come back and file a Notice of Intent. They will wait until the fall to do the repair and the septic tank will stay in place.

James Baughman **MOVED** to approve a negative determination for reason # 3, Mary Zdanowicz **SECONDED**.

ALL IN FAVOR.

Liaison Reports

Steve LaBranche reported for the 1651 Forest Advisory committee. He noted the blue spruce are to be removed and white pine to be planted in their place.

Administrative Reviews

Sunken Meadow and Boat Meadow - Request to evaluate the effectiveness of removing tidal restrictions in restoring salt marsh habitat.

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

ALL IN FAVOR.

300 Samoset Road- Vista pruning shrub and plant areas adjacent to gravel driveway located at Map 14, Parcel 135.

James Baughman recused himself. Applicant proposes planting Russian sage and other native plants.

Steven Kleinberg **MOVED** to approve, Michael Harnett **SECONDED**.

ALL IN FAVOR.

175 Mary Chase Road – light pruning of trees and shrubs to maintain view of marsh and Fort Hill located at Map 18, Parcel 85.

Shana Brogan noted they could require the applicant to file an Amended Order of Conditions for vista pruning. James Baughman said they need more details on the project. Chairman Smith said they already have a good view. Mr. Baughman noted there were no details on what light pruning is. Chairman Smith noted the commission needs to determine their answer based on the filing as an Administrative Review. Chairman Smith said this is not an Administrative Review or trimming of one limb.

Steve LaBranche **MOVED** to deny the pruning, Michael Harnett **SECONDED**.

ALL IN FAVOR.

65 Piper Lane – Cut three dead oak trees and replace with native bushes located at Map 12, Parcel 265.

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

ALL IN FAVOR.

100 Ellis Road – Reset two dock pilings and reattach dock walkway and access stairway, located at Map 22, Parcel 013.

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

ALL IN FAVOR.

50 Bain Road – Removal of dead tree located at Map 10, Parcel 392A.

Steven Kleinberg **MOVED** to approve, Michael **SECONDED**.

ALL IN FAVOR.

1295 Herringbrook Road – Refurbish shell driveway with shells located at Map 13, Parcel 058.

Michael Harnett **MOVED** to approve, Steven Kleinberg **SECONDED**.

ALL IN FAVOR.

Approval of Minutes

May 12, 2015 – On-Site

May 26, 2015

June 9, 2015 – On Site

June 9, 2015

Michael Harnett **MOVED** to approve all minutes, Steven Kleinberg **SECONDED**.

ALL IN FAVOR.

Chairman Smith said he was not reappointed to the commission and there was a discussion about the chairman and commission moving forward.

9:15

Adjournment

Steven LaBranche **MOVED** to adjourn, Steven Kleinberg **SECONDED**.

ALL IN FAVOR.

Respectfully Submitted as prepared by,

Teena Tilton

Teena Tilton

A handwritten signature in blue ink, appearing to read "Michael Harnett", is written over a horizontal line. The signature is stylized and somewhat abstract.

Michael Harnett, Chairman
Conservation Commission