

Eastham Conservation Commission

555 Old Orchard Road
Eastham, MA 02642



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Meeting Minutes September 28, 2010

Earle Mountain Room
2500 State Highway
Eastham, MA 02642
7:00PM

Commissioners Present: Chairman Stephen Smith, Steven LaBranche, Sandra Larsen, Linda Haspel, Vivian Cook, Lorraine Giovinazzo.

Staff Present: Amy Usowski

Also Present: Peter Markunas of Woods Hole Group, David Lyttle of Ryder and Wilcox, Theresa Sprague of Wilkinson Ecological Design, Anthony Shoener, Timothy Brady of East Cape Engineering, Attorney Ben Zehnder and Keith Johnson.

7:00PM

Chairman Smith opened the meeting

Approval of Minutes

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

Administrative Review - 22 Asparagus Lane

ALL IN FAVOR of approval.

Administrative Review Mark Kelly, Salt Marsh Way. Removal of limbs from three trees near salt Marsh and it will be done by hand. Amy Usowski said it was not for the benefit of a view.

Linda Haspel **MOVED** to approve, Davie Hoerle **SECONDED**.
ALL IN FAVOR.

7:15PM

Notice of Intent filed by Betty Lucas Friedman. Applicant proposes removal of existing longard tubes and stabilization of the base of a Coastal Bank by bioengineered solution utilizing sand-filled coir envelopes and fiber rolls, maintenance of existing drift fencing, along with sacrificial sand mitigation at property located at 45 Bay Shore Lane, Map 13, Parcel 136D.

Peter Markunas of Woods Hole Group represented the project and explained the bank is a sediment source and that it is a vertical buffer and explained that the applicants received approval for installation of longard tubes in the later 1990s lasted ten years. He then explained that two rows of sand drift fencing would be installed as well. He said the fiber rolls are breaking right now, and the owners want to ensure they can get and they are planning to do the work in two phases so they can join with the parcel to the north. He proposed a quantity of 296 yards of sand nourishment per year and said the adjoining property has a requirement of 212 yards per year and monitoring and to be provided annually. Amy Uswoski asked about the use of PVC on the wiring. Sandra Larsen expressed concern about the wiring as it can pose a hazard to wildlife and the coastal environment and monitoring after big events may be too late. Peter Markunas offered an alternative wire but said he was concerned it would not be strong enough and mentioned a property two houses north with did not have wire and the system is failing. Alternatives to the project were discussed and the commission determined the project is a soft solution but wanted to see other options. Amy Usowski confirmed they will need a monitoring report.

Stephen Smith asked if there is any public comment, and closed the hearing.

Peter Markunas requested a continuance for two weeks
ALL IN FAVOR of a continuance.

7:30PM

Request for Amended Order of Conditions, Adams/Yuen, DEP SE 19-1297.

Applicants request Amended Order of Conditions for submission of new planting plan for property located at 1755 State Highway, Map 18, Parcel 310.

The applicant agreed all the members present could vote. The applicant requested adding rock retaining walls to level the parking area and said all the plantings are from the approved Conservation Commission list. It was agreed ¾" crushed stone could be used for the walkway and parking area and they want to have more than one exit point from the house and no extra footings would be added to the deck and there would be a privacy fence for the parking area. Amy Usowski said there is a slight change in the footprint of the driveway.

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

Notice of Intent filed by Anthony P. Shoener. Applicant proposes construction of a single-family dwelling; installation of a septic system and utilities; construction of a handicap board walk and ramp; installation of a driveway; grading and landscaping within 100' of and on a Coastal Bank and Land Subject to Coastal Storm Flowage at property located at 16 Keene Way, Map 19, Parcel 043-H.

David Lyttle of Ryder and Wilcox, Theresa Sprague of Wilkinson Ecological Design and Anthony Shoener represented the project. David Lyttle said in January in 2009 he came before the commission for the roadway and they went through Natural Heritage (NHESP) and a biologist did not find any diamondback terrapin turtles however they found a box turtle and Natural Heritage issued a no take letter with restrictions and conditions are required for approval including conservation restrictions. He continued to say they can only develop 16,000 sq ft. of the property, Wilkinson Ecological plan and they will sweep the property looking for turtles and they will prepare a land management plan. He continued to say every lot must have an alternative septic system which is almost 170' from the top of the coastal bank. He continued to say a significant portion is not within

the Conservation Commission and 70% of the property is going to be within the natural state and they propose a boardwalk to go down across the property with a series of ramps to allow a wheel chair. Theresa Sprague said their major goal is to preserve the vegetation that is currently and they want to disturb as little vegetation as possible and they propose to excavate the ground cover including soil and roots and then store it on-site and re-plant it and re-plant them after the construction project is over and then replant them upon construction completion and fill in the voids with native vegetation.

David Lyttle said they will save oak trees and they will try to develop the house in a sensitive manner and they will transplant five or six cedars which are in the location of the proposed house. David Lyttle then submitted the land management plan. Keith Johnson was there to speak to the transplanting process. David Lyttle said the driveway would be permeable material; silt fence will remain until disturbed areas are vegetated as detailed in his construction protocol. David Lyttle said they are close to 16,000 sq. ft. to be developed but when they are finished it will be less and would give them the exact number at their next meeting. Amy Usowski said Natural Heritage identified broom crowberry as a species on the lot and asked Theresa Sprague about it who responded that she did not think it existed on the lot. She continued to say there is a lot of beach heather.

Amy Usowski requested a description where the vegetation is, and a step by step construction protocol, and an alternatives analysis. David Lyttle said they are working very closely with NHESP for the development of the site. Stephen Smith said there is no work limit on the ramp for the plan. David Lyttle said the area on the side will be fully restored where they intend to store the plants. Amy Usowski said she is obtaining an outside opinion to determine the plantings currently on-site. Stephen Smith asked for a detailed foundation plan and asked the footprint of the foundation calculation for the next meeting. Stephen Smith said the mitigation may take place outside of their jurisdiction and was concerned about the full foundation. David Hoerle was skeptical on the survivability of the cedar trees and asked for clarification which was explained. Sandra Larsen and Amy Usowski asked for an alternatives analysis wondering how they achieved the design. The architect said the project would probably not occur in the winter, and would take place over the spring and summer. Stephen Smith asked for the re-planting windows are and knowing how long the bare ground is going to remain.

David Lyttle requested a continuance to October 12, 2010.

ALL IN FAVOR of a continuance.

Notice of Intent filed by Gary and Barbara Sable. Applicants propose replanting within 100' of a Coastal Bank to replace vegetation removed without approval at property located at 105 Shurtleff Road, Map 10, Parcel 237.

Gary Sable was present and explained the proposed a plan and would like to move forward and plant the beach plum, bayberry and beach grass. Amy Usowski requested the wood chips be taken back up, and told the applicant to manage the bittersweet on the site so it does not take over the new plantings and cut it once or twice a year.

Chairman Smith opened the hearing to public comment and there was none. He then closed the hearing.

David Hoerle **MOVED** to approve, Vivien Cook **SECONDED**.

ALL IN FAVOR.

The commission informed the applicant conditions for no herbicides to be used.

Notice of Intent filed by W. John & Dolores Fucci. Applicants propose beach nourishment and sand-drift fence at property located at 29 Bayberry Lane, Map 13, Parcel 156.

Jason Norton of Coastal Engineering represented the project and there is an existing rock revetment constructed in the early 1980s which had no ongoing conditions for nourishment and there is currently end scour occurring and they proposed 75' of drift fencing and nourishment for protection as well as plantings and they are willing to add 15 yards nourishment per year. Amy Usowski suggested adding a benchmark to monitor the erosion at the site. Jay Norton said once the benchmark is exposed it will trigger for adding 150 yards more. Sandra Larsen asked about the timing of the nourishment and Jason Norton replied it would be done in the fall and their intent is to stabilize the bank however they are not sure if the plantings will survive on the bank or not.

David Hoerle **MOVED** to approve, Vivien Cook **SECONDED**.

ALL IN FAVOR.

Notice of Intent filed by Gregory deLissovoy. After-the-fact filing for the installation of an electric line to the existing shed. Project also includes restoration of native plants within the Buffer Zone as mitigation for clearing vegetation without Conservation Commission approval at property located at 185 Mill Road, Map 15, Parcel 026.

Theresa Sprague of Wilkinson Ecological Design was present for the project and said they intend to mitigate the area that was cut of 800 sq. ft. and they will replant and add additional buffer plantings for a total of 45 shrubs 276 plugs for a total of 2500 sq. ft. Theresa Sprague continued to go over the plantings and the plan he also said the area that was cut is already growing in. She also said they are proposing to remove two shrubs because they do not want them to spread and they intend to plant the remainder in the fall of 2011, but will plant near the pond area in the fall of 2010. Amy Usowski said there is a large area on the plan there was cutting done in the corner of the house which has not been proposed to be replanted. Theresa Sprague replied the owner hoped to plant a vegetable garden in the area and it is as far out of the buffer zone as you can get. No vote could occur because there was no issuance of a DEP file number.

Sandra Larsen said she had concerns and said the tree and the herbicides and adding a toxin to the pond and herbicides cannot eradicate invasive species. Stephen Smith questioned the effectiveness of getting rid of the trees of heaven on the lot if the lot is surrounded by other parcels who have trees of heaven and asked how much product and how often would need to be used and the other plants may not survive because of the applications. Theresa Sprague said that eliminating the larger trees on the lot would help the specific area. He then continued to say the two trees that are there are probably nearing the end of their life. Sandra Larsen asked about the two large trees and removing them she thought was best in June and July and since the effectiveness and said they already have issues with their ponds. David Hoerle agreed with Sandra Larsen and said he has avoided herbicides while on the commission he has advised removal by hand. Theresa Sprague suggested their options as keeping the tree of heaven or, continually cutting it back until it dies and she was not sure how long it would take and a neighbor is removing a tree of heaven and they will do the planting as proposed and not touch the tree of heaven. Stephen Smith said there is a question of installation of electric line in the wrong place and it should be cut at the panel and said eliminating it would be mitigation. Amy Usowski said the applicant can install above ground electric line and the applicant confirmed he had removed the toxic chemicals from inside the shed to keep them from

the pond. Theresa Sprague asked if there was some other mitigation the owner could do as the line has been installed and inspected and approved, to avoid the work that was already done. David Hoerle said the commission may not approve an electric line 3' from the pond. Stephen Smith said they would not have allowed this project in the first place. The commission spoke to the alternative of the applicant using an extension cord. Stephen Smith opened the hearing to the public for which there was no comment. The applicants requested a continuance
Lorraine **MOVED** to continue to October 12, 2010, Vivien Cook **SECONDED**.
ALL IN FAVOR.

Notice of Intent filed by Anthony Julian, MAF Realty Associates. Applicant proposes construction and maintenance of a stone revetment to replace existing sand bags at property located at 15 Shurtleff Road, Map 10, Parcel 231.

Tim Brady represented the applicants. Ben Zehnder was running behind and Tim Brady said he could wait until he arrived and they agreed to wait. The hearing continued with attorney present. Tim Brady described the project and the site and said they will match the revetment to the north and there are revetments to the north and this is the last property with sandbags in the area. He continued to say the town property will never have a stone revetment and they will continue to add sand and they would like to extend down to the center of Seaview Avenue. And there is a large erosion area and it is getting close to the deck on the house. He said they propose annual nourishment of 60 cubic yards he said the intention is to put it where the sand is now and there is question as to where the ownership of crest avenue is and he anticipates there will be an onsite meeting prior to construction.

Tim Brady addressed a letter from the Eastham DPW opposed to the project due to construction on town property. Ben Zehnder said the permit does not give the applicant permission to trespass on property, and issuing an Order of Conditions shows they have overcome the burden of proof the project can continue. He said he submitted a letter and he doesn't think the commission should worry about the land, however Town Counsel and the Town Administrator should decide. Tim Brady said the ownership is not in question. Stephen Smith asked about the return on the south and Tim Brady said they added to give both the town and the owner the best protection. Amy Uswoski said there should be a construction protocol regarding staging and the sizing of the rock and the type of filter fabric to be used and they want proof the house is old enough to qualify for a hard solution. Ben Zahnder said the property has been in the same configuration since the 1930s and it has not changed ownership and there is a derelict fee statute saying that roads are owned by people and someone must own the road. He said they did a title search and found that the ownership did not have the centerline meaning that MAF owns across Crest Avenue and he provided information showing that Thumpertown does not connect to Crest Avenue and the and showing that the public has rights to walk on Crest Avenue. He said that owners have a right to get to the lot that you own he continued to say there was no plan of the developer to give owners the rights to pass over the beach. He continued to say there is no record showing town ownership of the beach and the revetment is not going to inhibit the enjoyment of the beach any more than the sandbags do. Ben Zehnder said the plan shows a taking to mean high water so people can enjoy the beach there should be some record of some municipal action that shows the beach continuing to the sides. Tim Brady said they do not have intentions to change how people use the beach, they just intend to put in a stone revetment they do not want to deny people to use the beach.

Stephen Smith closed the hearing.

Tim Brady requested a continuance to October 12, 2010.

Steven LaBranche **MOVED** to continue to October 26, David Hoerle **SECONDED**.
ALL IN FAVOR.

Administrative Review filed by Whispering Pines Condominium Association.

Amy Usowski said she spoke with the owners about brush should stay and she wants to talk to him about the mowing down there and she would like to work with him more on property management.

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

Other Business

Beverly Johnson - Erosion problem on property would like the commission to address however Amy Usowski said they cannot give input until there is a proposal in front of them. Steven LaBranche suggested a strip drain.

Rienhardt - Plan change they would like to change their plans and they would like to keep the ramp and still build a garage and they want to keep the walkway the commission said they should eliminate. Amy Said it does not require a change in plan it is in the same footprint as what they approved. No comments were provided by the commission.

Melchiori - 1140 Kingsbury Beach Road

Amy Usowski commented that the project is beginning construction.

Mancini - Amy Usowski said Mr. Mancini will be asking for an extension for work on their revetment which has been completed.

Paul Dinto - 1 West Shore Drive

Amy Usowski said she gave an emergency order to Mr. Dinto for 10 feet of erosion which occurred behind the revetment so they could put down 1000 cubic yards of sand down over the top of the bank and any damaged area would be replanted.

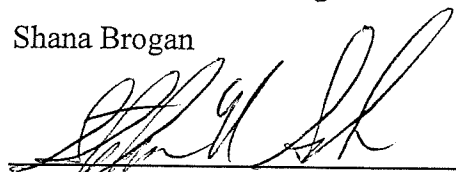
Adjournment

Lorraine Giovinazzo **MOVED** to adjourn, Vivien Cook **SECONDED**.
ALL IN FAVOR.

Respectfully submitted as prepared by,



Shana Brogan


2/13/2013
Stephen Smith, Chairman
Eastham Conservation Commission