

AGENDA

Monday

June 06, 2016

**TOWN OF EASTHAM
AGENDA
BOARD OF SELECTMEN
Monday, June 6, 2016
5:00 p.m.**

Location: Earle Mountain Room

I SELECTMEN/PUBLIC INFORMATION

II PUBLIC HEARINGS – LICENSING

(Public comment, discussion, & vote required for license)

5:05 P.M. SEASONAL WINE AND MALT PACKAGE STORE LIQUOR LICENSE
John Duble, Tides Landing, 49 Campground Road, Map 7, Parcel 366A

III. LICENSING

A. Action (Vote Required)

1. Transient Vendor Permits – Various Vendors
2. License to Cross Town Owned Land (Crest Ave) for The Beach Association Stairs – Sarah Turano-Flores, Attorney for Association

IV. ADMINISTRATIVE MATTERS

A. Action (Vote Required)

1. Request for approval - Windmill Weekend Road Race, Sunday, September 11, 2016 Nauset Regional High School start through Cape Cod National Seashore to Nauset Regional High School end.
2. Accept resignation Kate Alpert from Old Town Centre Historic District Commission
3. Timothy Smith Loan Applicant Approval – Elizabeth Loranger, University of Maine
4. Announcement Orleans Firebird Eastham Night, July 8, 2015 at 7 p.m. Eldredge Park Orleans. Firebirds vs Cotuit Kettleers.

V. APPOINTMENTS

A. Discussion/Presentation

- 5:20 p.m. Update Children's Place Expansion and Renovation – Update of Proposed Site Changes – Cyndi Horgan, Director Children's Place
- 5:30 p.m. Progress Update Municipal Water Project – Mark White, Principal Environmental Partners
- 5:45 p.m. Purcell Property Affordable Housing RFP & Recommendation of Award – Jacqui Beebe

VI. TOWN ADMINISTRATOR'S REPORT

Short Term Bond/Borrowing Activity
Other Announcements of Weekly Activities

VII. OTHER BUSINESS

Upcoming Meetings

June 8, 2016	3:00p.m.	Timothy Smith Room	Work Session
June 20, 2016	5:00p.m.	Earle Mountain Room	Regular Session
June 22, 2016	3:00p.m.	Timothy Smith Room	Work Session

The listing of matters includes those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion to the extent permitted by law.

This meeting will be video recorded and broadcast over Local Access Channel 18 and through the Town website at www.eastham-ma.gov

Public Hearing
5:05 pm.

Town of Eastham
Board of Selectmen

The Board of Selectmen will hold a public hearing at the Town Hall, 2500 State Highway, Eastham, MA on Monday, June 6, 2016 at 5:05 pm to hear a petition for a new Seasonal Wine and Malt Package Store Liquor License by John Duble, Manager of Tides Landing, LLC dba Tides Landing located at 491 Campground Road, Map 7, Parcel 366A.



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508-240-5900 • Fax 508-240-1291
www.eastham-ma.gov

Memorandum

TO: Board of Selectmen

FROM: Planning Department

DATE: May 25, 2016

RE: Tide's Landing - New Seasonal Wine and Malt Package Store Liquor License

Please find enclosed a request for a new seasonal wine and malt package store liquor license from Tide's Landing (John Duble, Manager). Mr. Duble did not renew his license last year as the store never opened due to flood damage. This application is essentially a renewal of the license previously held for 491 Campground Road, Map 7, Parcel 366A.

Please note:

- Completed application has been submitted
- State application fee has been received
- A public hearing has been advertised in the Cape Codder 5/6/16 issue
- Abutters have been notified via certified mail of the hearing
- A current Massachusetts CORI report check on the proposed manager John Duble has been provided by the state with no convictions reported.

The Building Inspector, Fire Chief, Police Chief and Health Agent have been notified regarding this application. The applicant is currently in the process of obtaining his Food Establishment and Common Victualler licenses. Health, Building and Fire Department inspections will be required prior to opening.

Should you approve this request, please sign the Form 43 and common victualler license where indicated. Thank you.

enc. ABCC license application
ABCC Form 43
Common Victualler license



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508 240-5900 Fax 508 240-1291
www.eastham-ma.gov

III. A.1.

June 6, 2016

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

Re: Transient Vendor Permits

Hands on the Arts- June 18 & 19, 2016

SPAT- July 20, 21, 2016

Windmill Weekend- September 10 & 11, 2016

Please find below the Transient Vendor applicants for approval by the Board of Selectmen.
In each case, the \$20.00 fee has been received.

The following permits are valid as stated below.

Vito Marotta 28 Hamblins Hay Way Marstons Mills, MA 02648 Valid: June 6, 2016- June 6, 2017	Daphne Frampton 131 Clay Street #206 Central Falls, RI 02863 Valid: June 6, 2016- June 6, 2017
Joseph Forjan 690 Hay Road Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017	Willow B. Shire 1380 Samoset Road Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017
Mary Anne Tessier 14 Halyard Road Yarmouth Port, MA 02675 Valid: June 6, 2016- June 6, 2017	Karen Kollar P.O. Box 1818 North Eastham, MA 02651 Valid: June 6, 2016- June 6, 2017
Elizabeth Embler 79 Pheasant Cove Circle Yarmouth Port, MA 02675 Valid: June 6, 2016- June 6, 2017	Robert Bylanka 250 Corliss Way Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017
Ron Edson 25 Split Rail Fence Road Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017	Meg Schmidt 1545 Bridge Road Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017
June S. Havens 2 Arrowood Drive Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017	Jack Kitson P.O. Box 691 Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017

Doris Greenleaf 5 Great Pond Place Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017	Pat Nickerson 80 Northwinds Lane West Barnstable, MA 02668 Valid: June 6, 2016- June 6, 2017
Elaine Lobay 4 Settler's Trace Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017	Donna Knight P.O. Box 642 North Eastham, MA 02642 Valid: June 6, 2016- June 6, 2017
Robin Wessman 44 Maple Street Norfolk, MA 02056 Valid: June 6, 2016- June 6, 2017	Patricia Kelly P.O. Box 1183 North Eastham, MA 02651 Valid: June 6, 2016- June 6, 2017
Bill Feeney 1 Ace Street Fall River, MA 02720 Valid: June 6, 2016- June 6, 2017	Ann Lovald 120 Old Truro Road Wellfleet, MA 02667 Valid: June 6, 2016- June 6, 2017
Matt Campell 42 Lowell Drive Orleans, MA 02653 Valid: June 6, 2016- June 6, 2017	Mitchell S. Turner 60F Munson Meeting Way Chatham, MA 02633 Valid: June 6, 2016- June 6, 2017
Richard N. Toas 705 State Road Westport, MA 02790 Valid: June 6, 2016- June 6, 2017	Latham Centers 14 Lots Hollow Road Orleans, MA 02653 Valid: June 6, 2016- June 6, 2017
Melissa Rocklen 97 Wachusett Street, #1 Jamaica Plain, MA 02130 Valid: June 6, 2016- June 6, 2017	Fizz LLC 345 Fore Street Portland, ME 04101 Valid: June 6, 2016- June 6, 2017



KOPELMAN AND PAIGE, P.C.
The Leader in Public Sector Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

III. A. 2.

June 1, 2016

Vicki S. Marsh
vmarsh@k-plaw.com

Hon. Elizabeth Gawron and
Members of the Board of Selectmen
Eastham Town Hall
2500 State Highway
Eastham, MA 02642

Re: Crest Avenue License Agreement – The Beach Association, Inc.

Dear Members of the Board of Selectmen:

Enclosed please find for your review the License Agreement between the Town of Eastham and The Beach Association, Inc. (the "Licensee"), requested by the Licensee, for use of a portion of Crest Avenue for the purposes of access over Crest Avenue and the erection, maintenance, and repair of stairs on Crest Avenue leading to the beach. The Licensee is a Massachusetts corporation comprised of owners of certain lots ("Lot Owners") in subdivisions shown on a plan entitled "Plan of House Lots for S.S. Higgins, Eastham, Mass." dated June 20, 1899 and recorded with the Barnstable County Registry of Deeds in Plan Book 26, Page 127 (the "Higgins Plan") and on Land Court Plan No. 20438-A (the "Lynch Plan"). Upon my review of the title research of the properties in question, delivered by Licensee's attorney, Sarah Turano-Flores, and the Decisions rendered by the Land Court and Barnstable Superior Court, it is my opinion that the Town owns the fee in Crest Avenue and the Lot Owners have the right to use Crest Avenue and the beach, and also the right to erect the stairs on Crest Avenue to access the beach.

The Licensee also has obtained an Order of Conditions from the Town of Eastham Conservation Commission and a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection, which was upheld by the Barnstable Superior Court. This License Agreement, in my opinion, will set the terms and conditions of the Licensee's use of the Town-owned Crest Avenue, and will protect the Town from liability for the Licensee's use of Crest Avenue for purposes described in the License Agreement, by among other conditions, requesting Licensee to obtain insurance coverage and to indemnify the Town as set forth in the License Agreement.

The Town's ownership of the fee title in Crest Avenue derives from the Stipulation between parties in the registration proceedings of Case No. 20438 and 38551 in which the petitioners relinquished any claims of ownership they have or may have in Crest Avenue, and to the land lying between Crest Avenue and Cape Cod Bay. The Land Court in its Decision in the case of Ahern v. Dunes Beach Associates, Inc., et al., Misc. Case No. 98220 (Land Court, June 29, 1982), affirmed by Mass. App. Ct., Case No. 82-1008, June 13, 1983, rev. denied by Supreme Judicial Court, 389 Mass. 1105 (1983) concluded that the Town of Eastham owned the fee title in Crest Avenue and the beach.

Hon. Elizabeth Gawron and
Members of the Board of Selectmen
June 1, 2016
Page 2

In addition, the Land Court decided that the Lot Owners of lots shown on the Higgins Plan and the Lynch Plan have the right to use Crest Avenue and the streets and ways shown on the Plans, including Eastham Avenue. Furthermore, the Court stated that in order to enjoy the benefit of their easement, the Lot Owners have "the right to employ all necessary means to enjoy it fully, and the erection of stairs is permissible under this principle." See, Sullivan v. Donohoe, 287 Mass. 265, 267 (1934). Therefore, the Lot Owners have the right to use Crest Avenue and the beach and to erect stairs for access to the beach.

In order to exercise their right to construct the stairs from Crest Avenue and Eastham Avenue to the beach, the Licensee applied for and was granted an Order of Conditions by the Town of Eastham Conservation Commission, and a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection, filed with Barnstable Registry District of the Land Court as Document No. 129104 (the "Orders"). The decision awarding the Order of Conditions was appealed claiming that the Conservation Commission was in error in determining that there was "no technically demonstrated feasible alternative to the project", and that the Commission was arbitrary and capricious in finding that there were no feasible alternatives to the Eastham Avenue stairway, which is referenced in this letter as the "Crest Avenue stairs." After a lengthy discussion of the alternatives presented to the Eastham Avenue stairway as proposed, the Court concluded that there was sufficient evidence in the record presented that these alternatives proposed were not "technically demonstrated feasible alternatives" to the construction of the stairs at Eastham Avenue. The Superior Court upheld the Conservation Commission's issuance of the Order of Conditions to construct the stairways.

Since the Lot Owners have the right to use Crest Avenue and the streets and ways shown on the Plan, and to erect the stairs in Crest Avenue, and the Conservation Commission and DEP have issued the Order of Conditions for this project, which was upheld by the Superior Court, the License Agreement provides the framework for the Town to govern the Licensee's use of Town property. In my opinion, the License Agreement enables the Licensee and their contractors, agents, invitees and licensees to also enter Town property to construct, maintain and repair the stairs and to set the conditions for compliance by the Licensee. In addition, the License Agreement specifically provides for liability insurance coverage as described and in the amounts required, and in Section IV, obligates the Licensee to indemnify, defend, and hold harmless the Town from any and all claims and liabilities which may be incurred or asserted against it.

Therefore, in my opinion, the License Agreement provides terms to govern the Licensee's right to use the Town property and the beach, and to erect the stairs to the beach.

KOPELMAN AND PAIGE, P.C.

Hon. Elizabeth Gawron and
Members of the Board of Selectmen
June 1, 2016
Page 3

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Vicki S. Marsh".

Vicki S. Marsh

VSM/ekh

Enc.

cc: Town Administrator

556158/EAHM/0229

LICENSE AGREEMENT

This LICENSE AGREEMENT (hereinafter referred to as the "License") is executed this ____ of June, 2016 by and between the TOWN OF EASTHAM, a Massachusetts municipal corporation, acting by and through its Board of Selectmen (hereinafter referred to as the "TOWN") having an address of Eastham Town Hall, 2500 State Highway, Eastham, Massachusetts, and THE BEACH ASSOCIATION, INC, having a mailing address of P.O. Box 1620, North Eastham, Massachusetts 02651(hereinafter referred to as "the LICENSEE").

The TOWN is the owner of record of Crest Avenue, by Stipulation of the Land Court dated October 16, 1958 filed with the Barnstable Registry District of the Land Court as Document No. 62050 (hereinafter "the Property").

The LICENSEE is a duly incorporated Massachusetts non-profit corporation, whose members are property owners of lots in a subdivision abutting and off Crest Avenue, Eastham and who have the lawful right to use Crest Avenue and the beach, for purposes of access to the beach and to erect a stairway on Crest Avenue pursuant to the above-referenced Stipulation and the Decision by the Land Court in the case of Ahern v. Dunes Beach Associates, Inc. et al, Miscellaneous Case No. 98229 of the Land Court, dated June 28, 1982, affirmed by the Mass. App. Ct., Case No. 82-1008, June 13, 1983, review denied by the Supreme Judicial Court, 389 Mass. 1105 (1983), and who are responsible for the construction and maintenance of private stairs and associated facilities for the use and enjoyment of the beach off Crest Avenue. The LICENSEE obtained an Order of Conditions from the Eastham Conservation Commission and a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection to construct an elevated wooden stairway across a portion of the Property, both of which Orders were upheld on appeal and registered with the Barnstable County Registry District of the Land Court as Document No.1,291,104 ("the Orders").

The TOWN hereby consents to such entry and license to use a portion of the Property to the LICENSEE, subject to the following terms and conditions:

I. USE, PURPOSE, TERM

Entry and use are limited to the portion of the Property proposed to be developed with a "Proposed Stairway" (hereinafter referred to as the "Licensed Premises", described and shown on a plan entitled, "Showing Proposed Stairway," by East Cape Engineering, Inc. (hereinafter referred to as "the Plan"), which is on file with the Eastham Conservation Commission and is dated July 24, 2012, as well as the portion of the Property extending ten (10') on either side of the "proposed stairway" to allow room for access during construction, maintenance and repair, all in accordance with the terms and conditions herein.

Entry and use are specifically, but not exclusively, granted to the LICENSEE, its contractors, agents, representatives, employees, invitees, permittees and licensees, solely for the purpose of installing and using a wooden stairway, and for all purposes and uses incidental to the purposes stated herein, including but not limited to, the construction, maintenance, and repair of the stairway and all necessary appurtenances, at its sole cost and expense, provided all improvements are done in accordance with the Plan and Orders, and approved prior to construction by the Conservation Commission.

Such entry and use by the LICENSEE, its contractors, agents, representatives, employees, invitees, permittees, and licensees, shall be exercised from the date of the execution of this license and shall continue until May 1, 2026 and shall be subject to renewal for additional five year terms, as may be granted by the Board of Selectmen, unless sooner terminated in accordance with the provisions of Section VIII below. Such entry and

use shall be further limited by the provisions of Section VII. The LICENSOR expressly agrees to restore the Licensed Premises to its original condition, as nearly as possible, upon the termination of the rights granted hereunder.

II. CONSIDERATION

The consideration for this License shall be a fee of \$1,000 paid to the TOWN at the time of the execution of this License, the payment of all costs and expenses associated with the exercise of the rights granted hereunder, together with the observation and performance by the LICENSEE of all the obligations and covenants set forth within this agreement to the reasonable satisfaction of the TOWN. Renewal fees shall be \$500 unless changed by the Board of Selectmen at a public meeting, with notice to the LICENSEE.

III. INSURANCE

The LICENSEE shall maintain during the term of this License public liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of the LICENSEE under the terms and conditions of this License to indemnify, defend and hold harmless the Town: General Liability: \$1,000,000 per occurrence; Bodily Injury liability \$1,000,000 per occurrence; and Property Damage Liability or a combined single limit of \$2,000,000 annual aggregate limit. The insurance coverage required hereunder shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and have a Best's rating of B+ or better.

Prior to entering upon the Licensed Premises, and thereafter on or before January 1 of each year of the term of this License, LICENSEE shall provide the TOWN with a certificate of insurance in each case indicating the TOWN is an additional insured on the policy and showing compliance with the foregoing provisions. LICENSEE shall require the insurer to give at least thirty (30) days' written notice of termination, reduction or cancellation of the policy to TOWN.

LICENSEE or the LICENSEE'S contractors shall maintain worker's compensation insurance during any construction, maintenance or repair of the Licensed Premises, as required by law. LICENSEE agrees that any contractor performing work on behalf of the LICENSEE at the Licensed Premises shall carry liability insurance in amounts satisfactory to the TOWN, and shall name the TOWN as an additional insured party. Prior to any construction performed by LICENSEE or any contractor on behalf of LICENSEE on the Licensed Premises, LICENSEE shall provide TOWN with a copy of the contractor's insurance certificate indicating liability insurance coverage as herein specified, and copies of any approvals, including any permits, necessary or obtained to conduct said construction.

IV. INDEMNIFICATION

LICENSEE shall indemnify, defend and hold harmless the TOWN from and against any and all claims, demands, suits, actions, costs, judgments, whatsoever, including reasonable attorney's fees and expenses, which may be imposed upon, incurred by, or asserted against the TOWN or its agents, employees, successors and assigns by reason of (a) any failure on the part of LICENSEE to comply with any provision or term required to be performed or complied with by LICENSEE, its agents, employees, contractors, representatives or invitees under this License, or (b) for the death, injury or property damage suffered by any person on account of or based upon the act,

omission, fault, negligence or misconduct of any person whomsoever, other than the TOWN relating in any way, to the LICENSEE'S exercise of its rights under this License.

V. RISK OF LOSS

LICENSEE agrees that it shall use and occupy the Licensed Premises at its own risk, and the TOWN shall not be liable to LICENSEE for any injury or death to persons entering the Licensed Premises pursuant to the License, or loss or damage to vehicles, equipment or other personal property of any nature whatsoever of the LICENSEE, or of anyone claiming by or through LICENSEE, that are brought upon the Licensed Premises pursuant to the License.

VI. CONDITION OF THE PREMISES

LICENSEE acknowledges and agrees that it accepts the Licensed Premises in "AS IS" condition for the purpose of this License, and that the TOWN has made no representation or warranty regarding the fitness of the Licensed Premises.

VII. CONDUCT

The LICENSEE shall procure all necessary permits before undertaking any work on the Licensed Premises. The Proposed Stairway and all related appurtenances shall be constructed by a licensed contractor in a good and workmanlike manner and in accordance with all laws, by-laws, regulations and permits. LICENSEE, and its contractors, employees and agents, shall be responsible, at its sole expense for maintaining the Proposed Stairway in good condition and repair. LICENSEE'S responsibilities shall include the restoration or repair of the Proposed Stairway by LICENSEE, its agents, employees, contractors, invitees and permittees. During the exercise of the rights hereby granted, the LICENSEE shall at all times conduct itself so as not to unreasonably interfere with the operations of the TOWN, and observe and obey applicable laws, statutes, ordinances, regulations and permitting or licensing requirements. The LICENSEE shall at all times comply with (i) plans and specifications (which shall be prepared by and at the expense of the LICENSEE and approved by the TOWN); (ii) all applicable local, state and federal rules, regulations, statutes and by-laws; and (iii) Orders.

The LICENSEE shall not permit any mechanics' liens or similar liens, to remain upon the Licensed Premises for labor and material furnished to the LICENSEE or claimed to have been furnished to the LICENSEE in connection with work if any character performed or claimed to have been performed at the direction of the LICENSEE and the LICENSEE shall cause any such lien to be released of record forthwith without cost to the TOWN.

The TOWN shall not, under any circumstances, be liable for the payment of any expenses incurred, or for the value of any work done or material furnished to the Licensed Premises or any part thereof, but all such improvements and alterations shall be done and materials and labor furnished at Licensee's expense, and the Laborers and materialmen's furnishing labor and materials for the work shall release the TOWN from any liability.

The provisions of this Section shall survive the expiration or termination of this License.

VIII. TERMINATION and REVOCATION

This License shall be revocable by either party upon written notice of revocation at least thirty (30) days prior to the termination date stated within said notice.

In the event that this License is terminated by revocation of either party pursuant to this section, then the LICENSEE, at its own expense, shall if requested by the Town, remove the fence from the Licensed Premises¹, and restore the Licensed Premises to its original condition as at the commencement of this License, as nearly as possible. This obligation shall survive the termination of this License.

IX. MODIFICATIONS and AMENDMENTS

Modifications or amendments to this License shall be in writing and duly executed by both parties hereto to be effective.

X. NOTICE

For purposes of this License, the parties shall be deemed duly notified in accordance with the terms and provisions hereof, if written notices are mailed to the following addresses:

Town: Town of Eastham
Board of Selectmen
Eastham Town Hall
2500 State Highway
Eastham, MA 02642

With a copy to: Kopelman and Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110
ATTN: John Giorgio, Esq.

Licensees: The Beach Association, Inc.
P.O. Box 1620
N. Eastham, MA 02651

With a copy to : Sarah Turano-Flores, Esq.
Nutter, McClennen & Fish, LLP
1471 Iyannough Road
P.O. Box 1630
Hyannis, MA 02601

These addresses are subject to change, and the parties hereto agree to inform each other of such changes as soon as practicable.

XI. RIGHTS OF THE TOWN TO ENTER

¹ Conditions for restoration shall be established and inspected after completion, by the Conservation Commission, approved by the Board of Selectmen, if so ordered.

The TOWN reserves the right and the Licensee shall permit the Town to enter upon and use the Licensed Premises at any time and for any and all purposes at the Town's sole discretion, and the Licensee's use shall not interfere with the Towns' use of the Licensed Premises.

XII. NO ESTATE CREATED

This License shall not be construed as creating or vesting in the LICENSEE any estate in the Licensed Premises, but only the limited right of possession as hereinabove stated.

XIII. EXHIBITS and ATTACHMENTS

Any and all exhibits and attachments referenced herein or attached hereto are duly incorporated within this agreement.

XIV. SURVIVAL of TERMS and PROVISIONS

All appropriate terms and provisions relating to the restoration of the property affected hereby, shall survive the termination of this License.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed as a sealed instrument and signed in duplicate by their duly authorized representatives, on the date first indicated above.

TOWN OF EASTHAM
By its Board of Selectmen

John F. Knight, Chair

Date: _____

William O'Shea, Vice Chair

Linda Burt, Clerk

Wallace Adams, II

Elizabeth Gawron

LICENSEE:
The Beach Association, Inc.

By: _____
Alexander H. Pratt, Jr., President

Date: _____

By: _____
Babette Bierman, Treasurer



Sarah A. Turano-Flores
Direct Line: (508) 790-5477
Fax: (508) 771-8079
E-mail: sturano-
flores@nutter.com

June 3, 2016
0111941-00001

Ms. Sheila Vanderhoef
Town Administrator
Town of Eastham
2500 State Highway
Eastham MA 02642

Re: Beach Association License - Crest Avenue

Dear Ms. Vanderhoef:

With his letter of May 16, 2016, Attorney Zehnder seeks to procure the votes of the Board of Selectmen by offering the Town a deed for an easement over the "McKeown's beach" on the condition the Selectmen "not grant the subject license" to my clients. Mr. Zehnder's offer is as disingenuous as it is irrelevant to the License Agreement proffered by my clients to the Town for the purpose of constructing and maintaining an elevated stairway within the layout of Crest Avenue.

As an initial matter, Mr. Zehnder's clients do not own Crest Avenue; it is owned by the Town of Eastham by virtue of a Stipulation of the Land Court dated October 16, 1958, and filed with the Barnstable Registry District of the Land Court as Document No. 62050. A copy of this Stipulation is attached hereto as Exhibit A. While the McKeowns contend they own the portion of Crest Avenue that extends from the seaward side of their property, the registered Land Court Plan depicting their lot clearly shows it as bounding on Crest Avenue and not by the waters of Cape Cod Bay. See copy of Land Court Plan 38549A attached hereto as Exhibit B. Thus, their offer to sell the Town (for the Selectmen's vote) an easement over that land is specious. The beach is already owned by the Town.

Even if the McKeowns did own that portion of Crest Avenue (they do not), my clients are not seeking to construct the stairway in that location; they are seeking to construct it to the South of the McKeown property, on land clearly owned by the Town within Crest Avenue. The McKeown's proffer of a deed, therefore, is wholly irrelevant to the discussion before the Selectmen.

In fact, *none* of the issues raised by Mr. Zehnder have any relevance whatsoever to the License that has been presented to the Selectmen. My clients seek only to memorialize their agreement to assume responsibility for the construction and maintenance of the stairway within

Ms. Sheila Vanderhoef

June 3, 2016

Page 2

the layout of Crest Avenue, where they have *deeded* easement rights. The Town has entered into similar license agreements with several other property owners along this same stretch of shoreline. Indeed, the Dunes Beach Association and the Williamsons obtained licenses from the Town in 2011 related to their own private staircases and rock revetment wall – all of which were then constructed within the layout of Crest Avenue. *See*, copies of the minutes from the Selectmen meetings in 2011 attached hereto as **Exhibit C**. The Williamsons' and McKeowns' objections to my clients' request typify the worst kind of "NIMBY" behavior.

Importantly, each of Mr. Zehnder's purported reasons for denying the subject license have already been discounted as infeasible alternatives by the Eastham Conservation Commission in a decision that was later upheld by the Barnstable Superior Court. *See*, copy of Barnstable Superior Court Decision in the matter of *Lucetta Williamson, et al. v. Conservation Commission of Eastham, et al.*, Barnstable Superior Court C.A. No. 2012-00729A, a copy of which is attached hereto as **Exhibit D**. As the Court already determined, *none* of the alternatives proffered by Zehnder now, here, for the third time, are feasible and his repeated insistence to the contrary does not make them any more feasible. *See*, Decision (**Exhibit D**).

Additionally, the suggestion that the Beach Association staircase is a "new" staircase is absurd. The staircase is proposed in the exact same footprint and building envelope as a staircase that has existed in this location since at least 1971; it will be used by the same people and to the same extent as it has been used for almost 45 years. *See*, Decision (**Exhibit D**). It is the Williamsons' staircase that is new, having only been constructed in 2011, and in a location where no staircase was ever previously constructed.

Finally, Mr. Zehnder's suggestion that the Board should refuse the License due to the proximity of Thumpertown Landing is equally absurd in light of the fact that Thumpertown Landing directly abuts the McKeowns' lot and is only one lot removed from the Williamson's lot. If proximity to a public landing factored into the Selectmen's decision making process, then the McKeowns and Williamsons should never have received their own Licenses from the Town back in 2011.

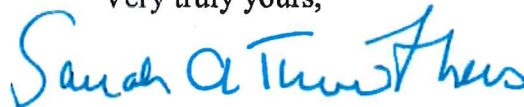
In short, my clients seek only to memorialize their agreement with the Town to assume responsibility for the construction and maintenance of the stairway within the layout of Crest Avenue, where they have deeded easement rights. By rebuilding the staircase in the exact same footprint where it has existed since at least 1971, they are restoring the status quo to what it has been for almost 45 years. To that end, I am writing to ask that you kindly place this matter back on the Selectmen's agenda for June 6th and, on behalf of my clients, I respectfully ask that the Selectmen vote to execute the License.

Ms. Sheila Vanderhoef
June 3, 2016
Page 3

After reading the foregoing, please let me know if you have any questions.

Thank you, and I remain,

Very truly yours,

A handwritten signature in blue ink that reads "Sarah A. Turano-Flores". The signature is written in a cursive, flowing style.

Sarah A. Turano-Flores

cc: Assistant Town Administrator Jacqui Beebe
Attorney Benjamin E. Zehnder

3188282.1

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

Land Court
No. 27333

HARVEY C. NEWTON, ET UX
Petitioners

vs.

THE INHABITANTS OF THE TOWN OF EASTHAM
Respondent

STIPULATION BETWEEN THE PETITIONERS AND THE INHABITANTS
OF THE TOWN OF EASTHAM

In the above entitled Petition for Registration it is hereby agreed between the Petitioners and its Selectmen acting for The Inhabitants of the Town of Eastham, as follows:

FIRST: That the petitioners agree to waive and relinquish any claims of ownership they have or might have in Great Avenue as shown on original plan filed with their petition for registration, and to the premises lying between said Great Avenue as shown on the above referred to plan, and the waters of Cape Cod Bay.

SECOND: That the petitioners shall enjoy in common with the public, The Inhabitants of the Town of Eastham and all persons deriving said right by ownership of lots shown on a plan entitled, "S. J. Higgins Plan" said plan being recorded in the Barnstable County Registry of Deeds, Plan Book 28, Page 127, the right to the use of said Great Avenue and the premises between it and the waters of Cape Cod Bay, all as shown on petitioners' plan heretofore referred to, for purposes of travel on foot or by vehicle and for bathing, boating, fishing and kindred purposes, subject only to such rules and regulations as may now be in force and effect or may from time to time be set up or enacted by The Inhabitants of the Town of Eastham, or their duly elected or appointed representatives.

THIRD: That the exercise by the petitioners, their guests or assigns, of the right to the use of said Great Avenue and the premises between it and the Waters of Cape Cod Bay, all as shown on petitioners' plan heretofore referred to, as set forth in the second section of this stipulation, shall be without liability on the part of the Inhabitants of the Town of Eastham, other than is usual and recognized in accordance with the law or statutes as in effect at the time or times of said use or uses.

FOURTH: That the respondent The Inhabitants of the Town of Eastham by its duly authorized and elected Selectmen does hereby agree that in consideration of the acceptance and signing of this stipulation by these petitioners, to withdraw its appearance and opposition to the allowance of petitioners' petition for registration in this case.

IN WITNESS WHEREOF, we the undersigned, hereunto set our hands and seals
this 16th day of October 1958.

Harvey C. Newton
Petitioner

Edna C. Newton
Petitioner

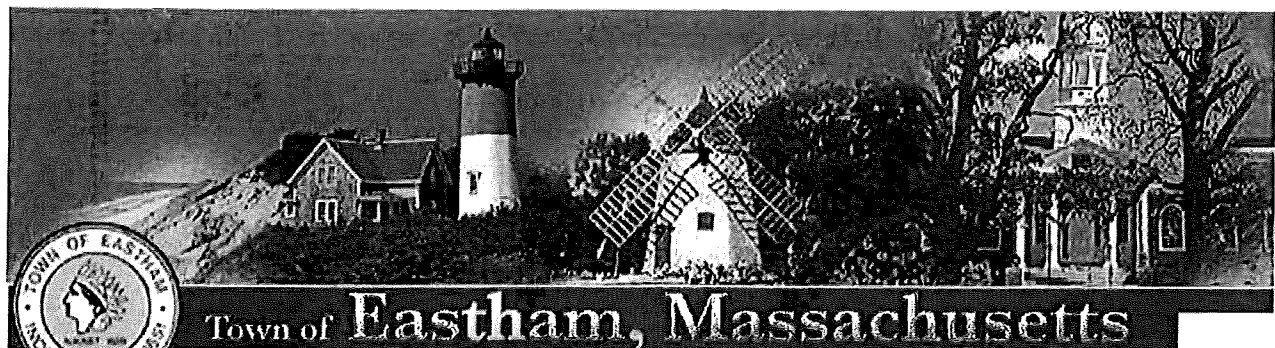
William A. Davis
Selectman, Inhabitants of the Town of Eastham

William J. Smith
Selectman, Inhabitants of the Town of Eastham

Edward P. McPherson
Selectman, Inhabitants of the Town of Eastham

Exhibit B

Exhibit C



On Our Site
A History of Eastham
Town Departments
Boards & Commissions
Town Calendars
Emergency Services
Assessment Data
Tax Payment History
Paying Your Taxes
Video on Demand
CH18 Schedule
Public Documents
Frequent Questions
Useful Links
Subscribe to News
Comments & Questions
Employees Only
Home Page



Advanced Search

Selectmen's Meeting Minutes 02/22

[Printer-Friendly Version](#)

MINUTES

Tuesday, February 22, 2011

Regular Session - 5:00 p.m.

Location: Earle Mountain Room

Selectmen Present:

Selectman Linda S. Burt, Chair; Selectman Aimee J. Eckman, Vice-Chair;
Selectman Martin F. McDonald, Clerk; Selectman John F. Knight
and Selectman Wallace F. Adams II

Sheila Vanderhoef, Town Administrator

Selectman Burt called the meeting to order at 5:00 p.m.

I. PUBLIC/SELECTMEN INFORMATION

Selectman Eckman noted that NStar has announced that they are going to spray herbicides this spring way. She also noted that *Cape Cod for a Truly Green NStar* has been distributing flyers around town to contact CEO/President/Chairman Tom May of NStar to reconsider. The public can call Mr. Tom 2527 to express their support to prevent the spraying of herbicides by NStar on rights-of-ways. Addi can look at the *Cape Cod for a Truly Green NStar* website for more information (www.greencaps.org).

II. APPOINTMENTS

Modification of Staging Permits Policy

Town Administrator Vanderhoef reviewed the Staging Permit Fee charged to "contractors who work property owners, but use town beaches to set up operations." Ms. Vanderhoef had received a request Conservation Agent, Amy Usowski, to see if the Board of Selectmen would grant extensions to the: "no contractor could use a single location for more than thirty (30) consecutive days," as she has recd for such extensions.

After a brief discussion, the Board agreed that they had seen visible improvements as a result of this and noted that although inclement weather may delay work, the window of opportunity from October 15 if adhered to, should allow for flexibility in scheduling work. The Board would also like to review it for daily use fees, as the present fees appear minimal. It was also noted that a contractor's work is re individual address, so it is possible that there are several jobs at one location with thirty consecutive each job, with permits and fees for each. Work on the beaches in preparation for the upcoming seas complete by no later than April 15. The Board did state their willingness to review individual requests.

The Board, at this time, by consensus, agreed not to make any policy change related to Staging Permit. Board emphasized their willingness to review individual requests.



Dunes Beach Associates - Use License for Crest Avenue Stairs - Tom Lewis

— Mr. Tom Lewis and Mr. David Meehan were here today as representatives from the Dunes Beach Associates and stated that they are anxious to commence with the proposed stairway at this location and understand that their request is currently being reviewed by Town Counsel.

Selectman Burt noted that this request had been previously reviewed by the Board, and that the Town will issue the license as soon as it is completed by Town Counsel.

Mr. Lewis and Mr. Meehan thanked the Board of Selectmen for their continuing consideration of this request.

— **Discussion - Use License Request for Stone Revetment - 25 Eastham Avenue**
(adjacent to Thumpertown Beach)

Mr. Bob Williamson noted that he was here representing his mother, Lucy Williams, to request permission for a license to build a stone revetment at 25 Eastham Avenue. He noted that the house, on a cliff, is in imminent danger due to erosion. They have received permission from the Commission to construct a stone revetment, in concert with a neighbor, and are requesting permission of Selectmen to construct the same on the town-owned portion of Crest Avenue.

A discussion followed with a review of plans. The Board asked if they had considered moving the house, as it appears there is sufficient property in back of the house to do so. Mr. Williamson responded that they would like to leave the house where it is and protect it with the revetment. He also stated that Conservation had approved the plans.

Selectman McDonald suggested that as these types of situations keep presenting themselves, it might be a good idea to create a policy, rather than dealing with numerous requests individually. Selectman Adams thought the uniqueness of each lot could not necessarily be covered by one policy.

Various other options were discussed and included placement of the revetment, exhausting options of nourishment, concerns related to Thumpertown beach, etc.

Town Administrator Vanderhoef noted that this is the first time Mr. Williamson had come before the Board. He noted that a good set of plans is needed, as well as the creation of a draft license and review by legal counsel. He would then bring this back to the Board in a couple of weeks, and not necessarily in time for them to meet on the deadline of April 15.

The Board asked to review the Order of Conditions, as well as aerial photographs, feedback from the neighbors regarding a septic upgrade if the house is moved, and the opportunity to see the site first-hand.

The Board will look into these matters as expeditiously as possible, and thanked Mr. Williamson for coming before them this day.

Salt Pond Algae Sediment Resuspension Study
David Kulis, Woods Hole Oceanographic Institution

Town Administrator Vanderhoef noted that Mr. Kulis, expected here this evening, had called to cancel his appearance due to a personal emergency. We have worked with Mr. Kulis before at Salt Pond and he has reassured us that his work will not adversely impact our ability to use the facilities.

Mr. Kulis, in a project narrative, has described his project as follows:

"The overall objective of this project is to investigate the potential of sediment resuspension as a bloom suppressant for *Alexandrium fundyense*, a harmful algal bloom (red tide) species that is responsible for closing shellfish beds with the Nauset Estuary on an annual basis."

On a motion by Selectmen Eckman, seconded by Selectman Adams, to approve his request to conduct a Salt Pond Algae Sediment Resuspension Study as presented, the Board voted 5-0 in favor.

Town Administrator Vanderhoef noted that Mr. Kulis will be invited to update the Board of Selectmen on this study and its results later in the season.

Affordable Housing Restriction Amendment - Brackett Road

Town Administrator Vanderhoef noted that at the request of the Community Development Partnership, the Board was asked to review and sign "Deed Amendment to Affordable Housing Restriction documents for Brackett Landing.

On a motion by Selectman Eckman, seconded by Selectman McDonald, to sign all of the "Deed Amendment to Affordable Housing Restriction" documents as presented, the Board 5-0 in favor.

Affordable Housing Mortgage Refinance Acceptance - Sandy Meadow Way

Town Administrator Vanderhoef asked the Board of Selectmen to consider signing the Acceptance of two holders of an affordable housing deed restriction on property located at 6 and 7 Sandy Meadow Way. After review, the Board agreed to sign the documents with one minor address correction.

On a motion by Selectman Eckman, seconded by Selectman McDonald, to sign the Acceptance of two documents for the two holders of an affordable housing deed restriction on property at 6 and 7 Sandy Meadow Way as presented, and with a minor address correction as noted, the Board voted in favor 5-0.

III. ADMINISTRATIVE MATTERS

1. Transient Vendor Permits

On a motion by Selectman Eckman, seconded by Selectman Knight, to approve the Transient Vendor Permits request as presented, the Board voted 5-0 in favor.

2. Acceptance of Finance Committee Resignation - Judy Cannon

Selectman Burt noted Ms. Judy Cannon's letter of resignation from the Finance Committee to be effective immediately. Ms. Cannon's term was due to expire on June 30, 2011.

The Board expressed their regrets in accepting Ms. Cannon's resignation and expressed appreciation for her service.

On a motion by Selectman Knight, seconded by Selectman Adams, to accept with regrets the resignation from Ms. Judy Cannon from the Finance Committee, and to write her a letter of thanks for her service, the Board voted 5-0 in favor.

3. Warrant Articles - Meals Tax

Town Administrator Vanderhoef, in preparation of the Draft Warrant, asked the Board if they would like to have the local meals excise tax of .75 percent placed back on this year's warrant.

Selectman McDonald noted that although the meals tax (Article 19 - ATM May 3, 2010) was defeated, it was the only town that does not have the meals tax, and this could be an opportunity for needed revenue. A short discussion followed, with concerns related to the impact of the economy on restaurants. Selectman Burt recommended leaving the issue off the Warrant for another year.

On a motion by Selectman McDonald, seconded by Selectman Knight, to place the local meals excise tax of .75 percent on the Warrant for ATM May 2, 2011, the Board voted in favor 1 and opposed 4. Selectman Knight moved to table the motion. The motion failed.

4. Warrant Article - Limitation on Future Use of Town Owned Land (Roach Property)

A discussion followed related to a Petitioned Article "To see if the town will limit the use of the remaining town-owned land known as the Roach Property for open space and passive recreation."

The Board discussed developing an Article restricting uses on a portion of the Roach Property that co Crowberry. Town Administrator Vanderhoef will prepare a draft article for the Board of Selectmen's review.

5. Amend Charter - Term Limits-Petitioned Article

Town Administrator Vanderhoef said a Petitioned Article had been received to amend the Town of E (Charter C5-2D) by deleting the section related to term limits and replacing it with language that req "shall give preference to new candidates when appointing members to town boards and selectmen."

After discussion, the Board agreed that they would like to have an Article amending the same section D) but replacing it with language that would allow the Board of Selectmen to use its discretion in rep volunteer/committee/board members who have served three consecutive terms when special skill or c required which would mandate their reappointment.

Town Administrator Vanderhoef will draft said language for their further review.

6. General Warrant Discussion

General discussion followed related to an Article authorizing the Library Expansion funding; authorizing the creation of a Vehicular Fuel Sales Revolving Account to facilitate the sale of bulk gasoline and diesel to the school district or other municipalities; the Conservation Preser will be presenting three articles, the Visitor's Service Board (\$10,000) and the Chamber of Commere both in, and a petitioned article for noise/dogs barking, are what have been received thus far.

7. Elected Positions Available

Town Administrator Vanderhoef noted that the Town Clerk has listed the following elected positions

Moderator	One three-year term
Board of Selectmen	Two three-year terms (vote for Two)
Treasurer/Collector	One three-year term
Town Clerk	One three-year term
Library Trustee	One three-year term
Housing Authority	One five-year term (vote for One)
	One one-year unexpired term (vote for one)
Elementary School Committee	Two three-year terms (vote for two)

There are two questions to be placed on the ballot at this time: general override and Library expansi exclusion.

Annual Town Meeting will be May 2, 2011 at 7:00 p.m. at the Nauset Regional High School and Town Elections will take place at Eastham Town Hall on Tuesday, May 17, 2011, with Polls Op a.m. and Closing at 8:00 p.m.

OTHER ITEMS:

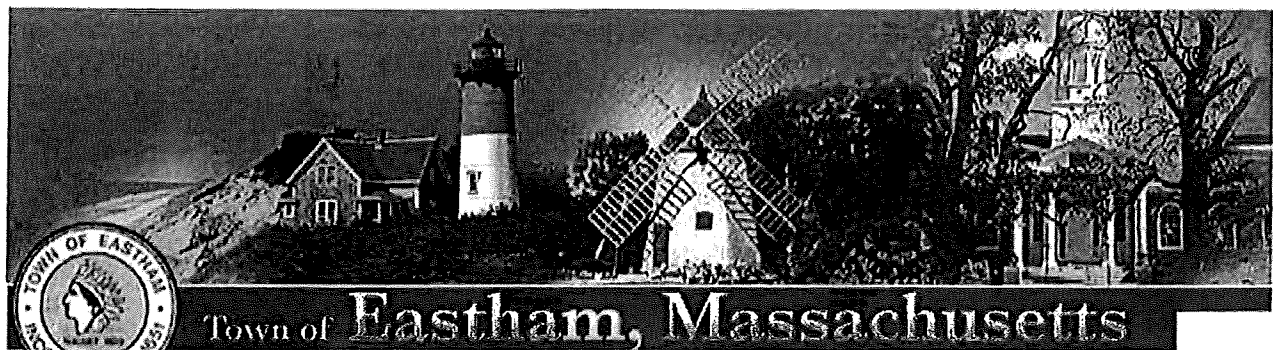
- * Town Administrator Vanderhoef noted that at tomorrow's meeting an update on the next s Road/Hoffman Lane is on the agenda, with Neil Andres, DPW Superintendent present discussion. There will subsequently be a public hearing on this matter.
- * Selectman McDonald, Eckman and Adams noted that they will be away on vacation during April.
- * A Board of Selectmen's meeting previously scheduled for Monday, February 28, 2011 at moved to Wednesday, March 2, 2011 at 2:30.

- * Town Administrator Vanderhoef noted that she had received an invitation to participate in Meals Campaign sponsored by the Elder Services of Cape Cod and the Islands, to be held in 2011. She remarked that Selectman Eckman had participated in this event last year, and asked her to volunteer this year as well. Selectman Eckman stated that she enjoyed her participation in this event last year and expressed her interest in doing so again this year.
- * Several photos were reviewed for the Annual Town Report 2010 cover. However, the selectmen expressed their interest in having the Town of Eastham Plag displayed on the cover. Photos reflecting this interest will be prepared.
- * Town Administrator Vanderhoef noted that she has been in touch with Matthew Kolva, C Transit Authority Facilities Project Manager, on moving forward with placement of a bus shelter at Eastham. Mr. Kolva stated that he has gotten approval to place one near Seaman's Bay to place one here at Town Hall. The Board had no objection to placing a bus shelter at Eastham with details to be worked out for the exact placement.
- * Town Administrator Vanderhoef noted that an advertisement related to Request for Proposal Remediation will be placed in the Cape Codder March 4, 2011 with a deadline of March 3:00 p.m. for receipt of RFP's.
- * Town Administrator Vanderhoef noted that the Construction Grant Application for the Library is available to the Board of Selectmen and the Finance Committee via flash drives.
- * The meeting scheduled for tomorrow, Wednesday February 23, 2011, will begin with a tour of the Council on Aging, and continue after the tour at the Council on Aging Library Room.

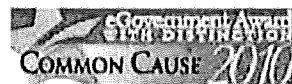
All matters having been discussed, on a motion by Selectman Knight, seconded by Selectman Eckman, the meeting at 6:36 p.m., the Board voted in favor 5-0.

Respectfully submitted,

Lorraine Speros



On Our Site
A History of Eastham
Town Departments
Boards & Commissions
Town Calendars
Emergency Services
Assessment Data
Tax Payment History
Paying Your Taxes
Video on Demand
CH18 Schedule
Public Documents
Frequent Questions
Useful Links
Subscribe to News
Comments & Questions
Employees Only
Home Page



Advanced Search

Selectmen's Meeting Minutes 03/07

[Printer-Friendly Version](#)

MINUTES
BOARD OF SELECTMEN
MONDAY, March 7, 2011- 5:00 pm
 Regular Session

Location: Earle Mountain Room

Present: Selectman Linda Burt, Chair; Selectman Aimee J. Eckman, Vice-Chair;
 Selectman Martin F. McDonald, Clerk; Selectman Wallace F. Adams; Selectman John P. Knight;
 Sheila Vanderhoef, Town Administrator

Chairman Linda Burt called the meeting to order at 5:00 p.m.

PUBLIC/SELECTMEN INFORMATION

Selectman John Knight stated that his next Let's Talk session will take place Wednesday, March 16, 2011 from 10:00 to 11:00 a.m. in the Timothy Smith Room.

APPOINTMENTS

→ **25 Eastham Avenue – Request for License for Revetment – Bob Williamson**

Mr. Bob Williamson was present to request the Board approve a revetment on his property. The Board was informed the Conservation Commission previously approved the project. The Board informed Mr. Williamson they wish to see a site plan and a professional engineer. They also stated that the proposed plan be reviewed, and the property staked.

It was agreed that Mr. Williamson come before the Board again on Monday, March 21, 2011.

Warrant Article Review

Article CPA General Reserve Set Aside
 Article-CPA Administrative Expenses
 Article CPA Affordable Housing Trust Grant
 Article CPA Historic Committee Grant
 Article CPA Open Space Committee

Ms. Lucy Cookson, Community Preservation Committee Chair, was present to discuss the CPC Warrant Articles.

Ms. Cookson informed the Board that \$20,000 of the needed \$40,000 to fund the Historic Committee Grant will be paid by the town and the rest paid by matching state funds for which the Town will be reimbursed. With regards to the Affordable Housing Grant, Ms. Cookson stated the \$345,000 will be used to purchase a specific property within a specific budget. The town will be in reserve if the purchase of the property does not go through.

Petitioner – Roach Property – Daniel T. Clark

Mr. Daniel T. Clark was present to discuss the Roach property petitioned article, requesting to see if the town will be willing to purchase portions of the town owned land known as the Roach property for open space and passive recreation.

Selectman John Knight stated he is not in favor of restricting the use of the land. The Board discussed the article and adding the acreage of the property in the article.

Bay Side Beaches Update – Neil Andres, DPW Superintendent

Neil Andres, DPW Superintendent, was present to give an update and presentation on the detrimental effect erosion has on Eastham's bayside beaches. Mr. Andres stated that at this point there is no long term solution to the problems, they keep putting down sand. He informed the Board that the Volpe center is doing a study on this issue.

The Board discussed possible alternatives. They agreed to notify Representative Sarah Peake to brief her about the support early on and also include other towns in the discussion.

PUBLIC HEARING**Hay Road and Hoffman Lane – Access Improvements**

Ms. Vanderhoef stated that the Town mailed out notices to the 125 homes abutting Hoffman Lane and Hay Road at this meeting so that they might attend to voice their concerns. Neil Andres, DPW Superintendent, presented a video of the Hoffman Lane and Hay Road areas and spoke about concepts for the project. Mr. Andres stated that when the subdivision was created in 1965, the Town Clerk certified that Hay Road was a public road.

Also present was Ms. Elizabeth Lane, Town Counsel. Mr. Andres stated that the proposal is the following: Take Hay Road and make it a higher type gravel road. The beginning of Hay Road would be made narrower and the end of the road would be dealt with. Past Deacon Paine, the grade of the road would need to be changed and fill brought in and improved gravel road with a crowned center and run it all the way up to Deacon Paine. From Country Lane to Woodhull Lane, the one lane section, would be a change in the character of the road.

Chairman Linda Burt opened up the meeting for public comment.

Timothy Towle- 10 Hoffman Lane

Mr. Towle read his letter recently mailed to the Town. He stated the proposal is unacceptable, and that all are most concerned with the proposal. It would decrease property values, road traffic would increase and trees would need to be cut. He agreed the road is deteriorated and needs to be improved. He would agree to the improvement if no widening is done, no trees cut down removed. He stated that his neighbors are against the widening of the road. He informed the Board that if the proposal goes through, he would send out a petition.

Mary Beth O'Shea- 855 Hay Road

Ms. O'Shea stated the reason the issue has never been resolved, because the residents didn't want it done. She stated that when she bought her home she was under the impression the road was private and residents are responsible for the maintenance of the road. She stated the town would handle the expense if Hay Road were to be changed.

Susan Fischer-505 Hay Road

Ms. Fischer expressed that a gravel road would not solve the problem as it causes cars to spin out and the road would require more maintenance. She takes exception to the fact that Hay Road has been determined a town road as she believes it is a private road. She would like to see the character of the road maintained and expressed concern about the expense the town would have to pay if the road were to be changed. She stated that Hoffman Lane was taken care of by the previous DPW Superintendent at the time it was changed.

Kathryn Olson-300 Country Lane

Ms. Olson expressed that a left turn onto Hay Road from Route 6 is very dangerous, and a motion sensitive signal at that intersection would make the road much safer. She expressed that some just want Hoffman improved, but she is of the opinion that this is the problem.

In response to this, Selectman Aimee Eckman informed her that the Cape Cod Commission has studied the area and recommended a light at that intersection. There is the slight possibility however, of a trip light being implemented for the road.

Peter Earle 70 Joshua's Way

Mr. Earle expressed his thanks to the Town for the upkeep of the road. He asked whether the road can't be kept as is or at least upgraded to the point where it is safely passable. He suggested that neighbors and the town split the cost of the blacktop. He also stated that the road is not wide enough for emergency vehicles and that truck traffic is insane. A need to be well enforced on the road and the road not widened.

Lorraine Giovannazzo- 35 Lucinda Court

Ms. Giovannazzo stated that long before Mr. Andres became DPW Superintendent, Hoffman Lane was deteriorating and that emergency vehicles have difficulty getting through and making a left hand turn onto Hay Road from Route 6.

Larry Perry- 835 Hay Road

Mr. Perry expressed he is in favor of perhaps graveling Hay Road and repaving Hoffman Lane.

Maggie Colquhoun-660 Hay Road

Ms. Colquhoun would like to see Hay Road maintained and Hoffman Lane paved. She expressed concern about roads.

Paul Fleming- 555 Hay Road

Mr. Fleming clarified that at the last meeting concerning Hay /Hoffman, he had stated that no trees should be cut, development must have proper access and the Town consider adding speed bumps. He said the road should be pay people.

Jane Fischer- 25 Deacon Paine Road

Ms. Fischer stated she is of the impression Hay Road is private. She informed the Board that a while back, she cal complain about go carts on the road, the police department informed her they do not have jurisdiction over the roa She added that if the road were to be widened, her well would be impacted.

Jorie Chesney-40 County Lane

Ms. Chesney would like the road to remain a dirt road. She stated that if were to be gravelled, it would be noisy an on gravel is difficult and dangerous. She stated that Hoffman Lane should be tarred but not widened. She expresse roads not become a highway.

Shell Kimmey- 30 Uncle Nate's Way

Ms. Kimmey stated she wants the road kept as is. The only option being to improve the dirt road section of Hay R the Town no longer maintains the road.

Mr. Andres answered that residents complained and therefore the Town no longer maintains it. The Town is atten: solution to the problem of access.

Henry Fischer-25 Deacon Paine Road

Mr. Fischer requested the Board postpone their decision until the issue can be discussed further and a plan agreecal finalized.

Ms. Vanderhoef expressed that the current option under discussion is to improve the dirt section of Hay Road whi with the Board's approval, out of the Town's ordinary road maintenance funds. Chapter 90 funds can only be used repair/improve paved roads. The last time the issue went to Town Meeting the option was to pave the roads, but it due to funding. At this time, the Town is once again attempting to resolve the issue so that proper access can be h Vanderhoef explained that if the Board decides to take Hay Road, it needs be voted at Town Meeting and homeov need sign off that they agree to this. As well, paving of the road must also be decided by Town Meeting.

It was explained that the Board can make a decision relative to the dirt section of Hay Road. The question at Town regard funding.

The Board agreed that a decision on this issue needs to be made.

Selectman John Knight made a motion to verify the legal necessities required to enable the Town to pave Hoffman taking of said road and to provide access to those properties needing safe passage to and from Route 6. The motion Selectman Martin McDonald, and so voted 5-0.

With this motion made it needs to go to Town Meeting.

ADMINISTRATIVE MATTERS

SEMASS -Municipal Representatives

Sheila Vanderhoef, Town Administrator, Alternate & Neil Andres, DPW Superintendent, Rep

Selectman Aimee Eckman made a motion to appoint Neil Andres, DPW Superintendent, as Eastham's SEMASS re, Sheila Vanderhoef, Town Administrator, as an Alternate. The motion was seconded by Selectman John Knight, an

ADJOURNMENT

Selectman John Knight made a motion to adjourn the meeting at 7:30 p.m. The motion was seconded by Selectman Aimee Eckman, and so voted 5-0.

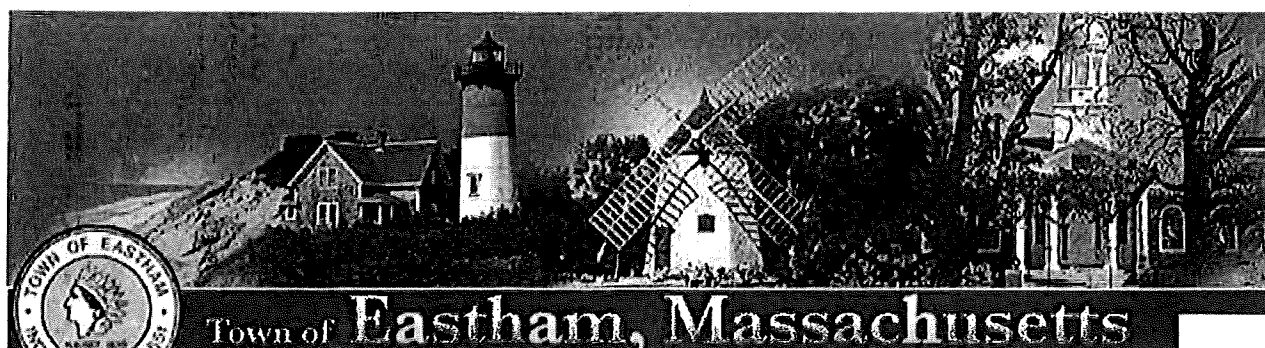
Respectfully submitted,

Lisa Shaw

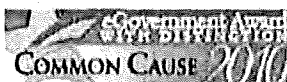
EASTHAM, MASSACHUSETTS

2500 State Hwy, Eastham, MA 02642 PH: 508.240.5900 Hours: 9AM - 4PM, Mon - Fri.

Virtual Towns & Schools Website



On Our Site
A History of Eastham
Town Departments
Boards & Commissions
Town Calendars
Emergency Services
Assessment Data
Tax Payment History
Paying Your Taxes
Video on Demand
CH18 Schedule
Public Documents
Frequent Questions
Useful Links
Subscribe to News
Comments & Questions
Employees Only
Home Page



<input type="text"/>	Search
----------------------	--------

Advanced Search

Selectmen's Meeting Min

Printer-Friendly Version

MINUTES

BOARD OF SELECTMEN

MONDAY, March 21, 2011- 5:00 pm

Regular Session

Location: Earle Mountain Room

Present: Selectman Linda Burt, Chair; Selectman Aimee J. Eckman, Vice-Chair; Selectman Martin F. McDonald, Clerk; Selectman Wallace F. Adams; Selectman J Sheila Vanderhoef, Town Administrator

Chairman Linda Burt called the meeting to order at 5:00 p.m.

PUBLIC/SELECTMEN INFORMATION

Selectman John Knight stated that at his most recent Let's Talk session, there were Road and Hoffman Lane. Selectman Knight also stated one person called him to q available for the public. It was noted by Selectman Martin McDonald that meeting of the meeting.

APPOINTMENTS

State Representative Sarah Peake was present to discuss issues related to the State. Peake stated that she filed the three bills and people are able to follow the progress www.malegislature.gov. The Room Occupancy Tax bill is assigned #H787. The c #H3257. The Charter Amendment change bill is assigned #H3256. She said she w Ms. Peake also spoke about issues related to the local option taxes, noting that the she will keep us apprised of the issues.

Mr. Lance Lambros, District Representative for Congressman William R. Keating, Senator Keating is working on and to inform the public that Senator Keating has a Keating is able and willing to help constituents with any government issues he/she

Public Hearing:

- Aquaculture Lease Expansion of Existing Grant: Kevin Power, Bill Van Norman
- Aquaculture License Term Extensions: Kevin Power, Bill Van Norman, Brad Kru

Michael O'Connor, Deputy Natural Resources Officer, was present to inform the Board of the status of aquaculture licenses. He informed the Board that all are current with extensions/expansions.

Selectman Aimee Eckman made a motion approve requests from Mr. Kevin Power ½ acre to 1 full acre. The motion was seconded by Selectman John Knight, and so

Selectman Aimee Eckman made a motion approve requests from Mr. Kevin Power, Mr. David Horton to extend their aquaculture licenses for another 10 years, until Mr. Wallace Adams, and so voted 5-0.

AmeriCorps – Update Caroline Walden

AmeriCorps volunteers were present to introduce themselves and update the Board. They are willing to help the Town in any way possible and would welcome the opportunity.

➔ License for 25 Eastham Street Revetment – Bob Williamson

Mr. Williamson and Mr. Bob Perry, Land Surveyor- Schofield Brothers, were present to discuss Williamson's property.

Since the last meeting concerning this issue, Mr. Williamson had the property staked.

Concerns expressed by the Board were the use of Thumpertown Beach as a staging area involving Mr. McQueen. It was stated that if the McQueen case is resolved, Mr. Williamson's concerns would be resolved.

Chairman Linda Burt suggested that a coastal geologist be brought in to speak with Mr. Williamson.

Selectman Martin McDonald made a motion approve the building of the revetment by Selectman Wallace Adams, and so voted 5-0.

Update – Access 500R Ocean View Dr. – Ben Zehnder, Attorney

The Board was informed that Mr. Zehnder was not able to attend the meeting and will be attending the next meeting.

Cape & Vineyard Electric Coop- Approve budget for Cape Light Compact

Selectman Martin McDonald, Eastham's Representative on the Cape & Vineyard Electric Compact, requests the Board's approval of his request for an additional \$300,000 to the Cape & Vineyard Electric Cooperative to help them maintain the Cape & Vineyard Electric Cooperative has until recently been running at a profit.

The Board approved of Mr. Fenlon voting in favor of this proposal.

ADMINISTRATIVE MATTERS

Hay/Hoffman Area Access

Ms. Betsy Lane, Town Council, and Neil Andres, DPW Superintendent, were present to discuss Hoffman Lane. Ms. Vanderhoef explained that the Town needs to take the necessary steps to access Hoffman Lane. She stated that town maps show Hay Road as a public way laid out in 1960. The Board will find the actual town meeting vote on this to try and formalize the layout of the road.

A discussion ensued regarding the status of Hay Road, laws of private roads, and the need for plowing and temporary road repairs. The Board also discussed the establishment of a road.

Selectman Martin McDonald made a motion to establish the status of Hay Road. It so voted 5-0.

Selectman John Knight made a motion to establish a By-law Article regarding Hay Selectman Wallace Adams, and so voted 5-0.

It was noted that the Hay/Hoffman issue will most likely be included in the warrant

FY12 Budget Overview and Warrant Article Recommendations

The Board voted on remaining warrant articles for the May 2, 2011 Town Meeting

Article 12- Operating Budget

Selectman John Knight made a motion approve Article 12 with the amendments. It so voted 5-0.

Article 13- Capital Acquisition Article

Selectman Aimee Eckman made a motion approve Article 13 with the amendments. McDonald, and so voted 5-0.

Article 16- Elected Officials Salary

The Board agreed to vote on Article 16 after union contracts are negotiated.

Article 22- Library Building Project

Selectman Aimee Eckman made a motion approve Article 22. The motion was seconded.

Article 23- Accept Library Grant

Selectman Aimee Eckman made a motion approve Article 23. The motion was seconded.

Article 24- Authorize Library Funding

Selectman Aimee Eckman made a motion approve Article 24. The motion was seconded.

Article 27- CPA- Affordable Housing Trust Grant

Selectman Aimee Eckman made a motion approve Article 27. The motion was seconded.

Article 28- CPA- Historic Committee Grant

Selectman Aimee Eckman made a motion approve Article 28. The motion was seconded.

Article 29- CPA- Open Space Committee

Selectman Aimee Eckman made a motion approve Article 29. The motion was seconded.

Article 30- CPA- Limitation on Future Use of Town Owned Land- Roach Property

The Board agreed to vote on Article 30 at their Wednesday, March 23, 2011 meeting

Article 31- Home Rule Charter

Selectman Aimee Eckman made a motion approve Article 31. The motion was seconded.

Article 34- Petition-Amend Animal Control By-Law- Barking

Selectman Aimee Eckman made a motion approve Article 34. The motion was seconded and opposed.

Ms. Vanderhoef stated that the budget numbers for the school came in higher than than 1st draft warrants.

Ms. Vanderhoef stated she informed Tom Johnson the local comprehensive plan will be included in the Fall 2011 Special Town Meeting Warrant, if scheduled.

FY 12 Override Question

The Board discussed the impact of the \$500,000 override. Ms. Vanderhoef stated that

Selectman Aimee Eckman made a motion approving \$500,000.00 as the override and the motion was seconded by Selectman Martin McDonald, and so voted 5-0.

ADJOURNMENT

Selectman Wallace Adams made a motion to go into Executive Session at 7:40p.m. to return to public session. The motion was seconded by Selectman John Knight. Selectman Martin McDonald, yes; Selectman Wallace Adams, yes; Selectman John

Respectfully submitted,
Lisa Shaw

EASTHAM, MASSACHUSETTS

2500 State Hwy., Eastham, MA 02642 PH: 508.240.5900 Hours: 9AM - 4PM, Mon - Fri.

Virtual Towns & Schools Website

Exhibit D

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss

SUPERIOR COURT
CIVIL ACTION
NO. 2012-00729-A

LUCETTA WILLIAMSON & and others¹

vs.

CONSERVATION COMMISSION OF EASTHAM & others²

MEMORANDUM OF DECISION AND ORDER
ON PLAINTIFFS' MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiffs, Lucetta Williamson, of 25 Eastham Avenue, and Gail, Michael and Keith McKeown, Trustees of GMK Realty Trust, of 215 Thumpertown Road, bring this action seeking certiorari review pursuant to G. L. c. 249, § 4, of a decision by the defendant Conservation Commission of Eastham, allowing the application of co-defendants The Beach Association, Inc., Alice Pratt, and Alexander Pratt, Jr. to construct a stairway from an area between the plaintiffs' properties, within the layout of Eastham Avenue, for access to the public beach below. In addition, the plaintiffs bring a second claim for declaratory judgment that the Commission's approval decision was not authorized by the Eastham Wetlands Bylaw or properly executed by a majority of the then-appointed members of the Commission. The plaintiffs now move for judgment on the pleadings, claiming the Commission erred in determining that there was no technically demonstrated feasible alternative to the project. For the reasons set forth below, the plaintiffs' Motion for Judgment on the Pleadings is **DENIED**.

¹ Gail McKeown, Michael McKeown, and Keith McKeown, as Trustees of GMK Realty Trust

² The Beach Association, Inc., Alexander Pratt Jr., and Alice Pratt

BACKGROUND

The Trustees of GMK Realty Trust (collectively, the "McKeowns") and Ms. Williamson, the plaintiffs, live on either side of a portion of Eastham Avenue that becomes solely a paper road as it approaches the seaside bluffs in Eastham, Massachusetts. Seaward of the plaintiffs' properties lies another paper road, Crest Avenue, that constitutes a public beach. Individual defendant Mrs. Pratt owns a residence nearby, at 145 Maria Road. Individual defendant Mr. Pratt, Jr., is the president, clerk and director of co-defendant The Beach Association, Inc. ("Association"), which represents the interests of the owners of six properties within the surrounding neighborhood. The six properties represented by the Association are all located within two older subdivisions, known as the Lynch and Higgins subdivisions. By prior decision of the Land Court, "the Lynch lots [have] the right to use the streets on the Higgins Plan", including Eastham Avenue. *Ahern v. Dunes Beach Assocs., Inc.*, Misc. Case No. 98220 (Land Ct. June 28, 1982), rev. denied 16 Mass. App. Ct. 1103 (1983), 389 Mass. 1105 (1983). A stipulation includes the Higgins lots in these rights.³

In 2012, the defendants filed a Notice of Intent with the Conservation Commission of Eastham, seeking permission to construct a wooden stairway within the footprint of Eastham Avenue, extending from the top of the bluff to Crest Avenue beach below. The proposed stairway would be located between the abutting properties owned by the McKeowns and Ms. Williamson, over a coastal bank recently armored with a stone revetment. A stairway previously existed at that same location between 1970 and 2010, when it was destroyed by a winter storm.

³ The Lynch subdivision developer, and the predecessor in title to the McKeowns, as the parties in *Lynch v. Schofield*, Land Court Registration No. 20436, agreed by stipulation dated August 9, 1948, that all lots in the Higgins subdivision "have the right to use said ways, on [the Higgins] plan".

Due to severe erosion damage caused by the 2010 storm, the plaintiffs armored the surrounding coastal bank shortly thereafter, constructing two new stairways on their properties. However, no replacement stairway was built within the bounds of Eastham Avenue. In the ensuing years, the plaintiffs placed a fence across Eastham Road to block vehicular access, and the top of the bank has filled in somewhat with natural vegetation.

The proposed stairway lies entirely within the buffer zone or coastal bank resource area subject to Section 2 of the Eastham Wetlands Bylaw ("Bylaw"), which states that "[n]o person shall . . . alter or build upon or within 100 feet of any bank, . . . or . . . beach . . . or within 100 feet of any land subject to tidal action, coastal storm flowage, or flooding". The outline of the proposed stairway is approximately 168 square feet, but it is elevated on support posts so that only ten square feet of soil would be disturbed. The majority of the stairway would be placed over the armored coastal bank: approximately 160 square feet over the coastal bank and revetment, and 8 square feet in the buffer zone at the top of the bank. The path through the vegetation would be 4 feet wide: there would be no cutting of vegetation beyond the cleared path as it existed in 2012, and additional plantings would be placed in presently unvegetated areas.

Section 2 of the Bylaw requires that "[n]o permit shall be issued for any activity in the buffer zone, unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the evidence that: 1) there is no technically demonstrated feasible alternative to the project with less adverse effects; and 2) that such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Bylaw." At a public hearing on the stairway application, the defendants presented three possible alternatives to the proposed construction at Eastham Avenue,

urging the Commission to find that none were feasible.

First, the defendants presented evidence of an existing stairway at Liberty Avenue. Liberty Avenue is another street shown on the Higgins plan, located approximately 650 feet south of Eastham Avenue. The Liberty stairway is owned by the Dunes Beach Association ("DBA"), which takes steps to exclude non-members from use of the stairway. The defendants submitted documents from DBA stating that it would not allow the Beach Association members to join its organization.

Second, the defendants presented evidence regarding another street shown on the Higgins plan, Pleasant Avenue. Located approximately 325 feet south of Eastham Avenue, Pleasant Avenue has never had a stairway or path. The defendants presented evidence that the coastal bank in this area is not armored with a stone revetment, and is topped by extensive undisturbed vegetation.

Third, the defendants presented evidence regarding the town landing at Thumpertown Beach, also located south of Eastham Avenue. The defendants presented evidence that the public beach at Thumpertown is separated from Crest Avenue beach by a stretch of private beach, owned by the McKeown plaintiffs. Thus, the defendants concluded, Association members could not access Crest Avenue beach without trespassing on private property. The McKeowns reported to the Commission that they had offered to grant an easement over their property to Association members, but an executed easement was never presented to the Commission during the public hearing process.

On October 9, 2012, the Commission voted to approve the defendants' project and issued an Order of Conditions that contained no specific findings. The plaintiffs appealed the approval

to this court, moving for judgment on the pleadings. On June 18, 2014, the court remanded the matter to the Commission “to enlarge the record to the extent of counsel’s agreed upon supplements thereto and for the [Commission] to issue detailed findings of fact and application of the facts to the law in support of [its] ultimate decision.” (Paper 24). The Commission issued Supplemental Findings of Fact under the Bylaw, dated November 26, 2014. (Paper 25). The parties subsequently filed supplemental memoranda, and appeared at a second hearing. On this updated record and arguments, the court now reviews the Commission’s decision to approve the project.

DISCUSSION

The judicial review of an agency decision in the nature of certiorari established by G. L. c. 249, § 4, is limited to correcting a substantial error of law, evidenced by the record, which adversely affects a material right of the plaintiff. *Carney v. Springfield*, 403 Mass. 604, 605 (1995). Relief in the nature of certiorari is warranted where a plaintiff demonstrates errors that are so substantial and material that, if allowed to stand, will result in manifest injustice to a petitioner who is without any other available remedy. *Johnson Products, Inc. v. City Council of Medford*, 353 Mass. 540, 541 n. 2 (1968); *Tracht v. County Comm’rs of Worcester*, 318 Mass. 681, 686 (1945).

In a certiorari case, the court is not authorized to weigh evidence, find facts, exercise discretion, or substitute its own judgment. If the plaintiff alleges that the administrative agency issued its decision contrary to the evidence appearing in the administrative record, this court applies the substantial evidence test. *New Boston Garden Corp. v. Bd. of Assessors of Boston*, 383 Mass. 456, 466-467 (1981). The court will find that a commission’s decision was based on

“substantial evidence” where the administrative record contains “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 466. When a plaintiff claims that an agency abused its discretion when making its decision, the court will apply the “arbitrary and capricious” standard. *T.D.J. Dev. Corp. v. Conservation Comm’n of North Andover*, 36 Mass. App. Ct. 124, 128 (1994). A commission’s decision will satisfy the “arbitrary and capricious” standard “unless there is no ground which ‘reasonable men might deem proper’ to support it.” *Id.*, quoting *Cotter v. Chelsea*, 329 Mass. 314, 318 (1952).

Importantly, the court must “give due weight to the overall judgment of the commission” and “cast about to discover, if possible, some ground which reasonable men might deem proper on which the action can rest.” *Dubuque v. Conservation Comm’n of Barnstable*, 58 Mass. App. Ct. 824, 828-829 (2003). “If an agency has, in the discretionary exercise of its expertise, made a choice between two fairly conflicting views and its decision reflects reasonable evidence”, the court may not overturn its decision. *Conservation Comm’n of Falmouth v. Pacheco*, 49 Mass. App. Ct. 737, 741 (2000).

Here, the plaintiffs claim that the Commission was arbitrary and capricious in finding that there were no feasible alternatives to the Eastham Avenue stairway.⁴ Accordingly, this court will “cast about to discover, if possible, some ground which reasonable men might deem proper” on

⁴ Prior to remand, the plaintiffs’ Memorandum in Support of Motion for Summary Judgment raised, *inter alia*, the argument that the Commission’s consideration of the July NOI was arbitrary and capricious where the defendants should have been estopped from bringing the July 2012 NOI. The plaintiffs contend that the defendants had no right to consideration of the July NOI because the Commission previously issued a “final judgment” denial in a March 2012 NOI proposing a similar stairway. Thus, the plaintiffs argue, the defendants were required to appeal the denial of the March 2012 NOI, which they did not, instead of simply filing another, nearly identical NOI in July. Second, the plaintiffs claimed that, in light of the previous March 2012 denial, the Commission’s finding that there were no feasible alternatives to the July 2012 NOI was not supported by substantial evidence. In the plaintiffs’ arguments after remand, both at hearing before this jurist and in the Supplemental Memorandum, these issues were not discussed or renewed. As such, these two arguments will not be considered now.

which the Commission's findings can rest. See *Dubucque*, 58 Mass. App. Ct. at 828-829.

A. No Feasible Alternative

In its Supplemental Findings of Fact, the Commission found that the defendants had "demonstrated that no feasible alternatives exist with less adverse impacts to the resource areas than the Project[,] in that the applicant provided a preponderance of information demonstrating that the use of Pleasant Avenue, [DBA] stairway, and Thumpertown public beach were not feasible". The Commission based this conclusion on specific findings related to each proposed alternative.

First, it found that "[n]o stairway exists at Pleasant Avenue and constructing a stairway would result in the removal of vegetation and construction on an eroding Coastal Bank."

Second, as to Liberty Avenue, the Commission found that the DBA "indicated . . . that they would not provide permission to the Beach Association to join their Association in order to use their beach access stairway". Third, it found that the "Thumpertown public beach stairway was not a reasonable alternative access due to the need to cross private property to get to the applicant's beach area and the additional distance from the applicant's property."

After remand, the plaintiffs' arguments briefly touch⁵ on the Commission's findings related to Pleasant⁶ and Liberty⁷ Avenues, but largely focus on the finding related to

⁵ The plaintiffs include skeletal arguments related to the Commission's findings about Liberty and Pleasant Avenues in the "Facts" section of their "Memorandum in Support of Plaintiffs' Supplemental Motion for Judgment on the Pleadings", but, strangely, do not directly address these arguments in their one-page-long "Legal Argument Section."

⁶ The 'Facts' section argument related to Pleasant Avenue is that the Commission's finding (that "[n]o stairway exists" there and that construction of a stairway "would result in the removal of vegetation") is not based on substantial evidence because, in the plaintiffs' view, the construction of a stairway at Eastham Avenue would *also* be construction of a stairway where one does not presently exist, and would *also* require the removal of vegetation at the top of the Coastal Bank. The record evidence clearly demonstrates the reasonable basis for the Commission's distinction between the conditions at Pleasant and Eastham Avenues. There has *never* been a stairway at Pleasant

Thumpertown. First, the plaintiffs argue that the defendants have been using the Thumpertown stairway in the five years since the old Eastham Avenue stairway was destroyed. Second, the plaintiffs note that the McKeowns, owners of the “private property” referenced in the finding, had offered to provide the defendants with an easement to cross from Thumpertown Beach to Crest Avenue Beach. Third, the plaintiffs argue that an easement to cross the McKeown private beach is not even necessary, as the defendants could cross to Crest Avenue beach under the auspices of the Colonial Ordinance of 1641-1647. Fourth and finally, the plaintiffs argue that access to Crest Avenue beach, specifically, is not necessary, since the defendants have no particular rights in that public beach, and could use the public beach at Thumpertown instead.

Avenue; Eastham Avenue has had a stairway impacting the coastal bank and surrounding vegetation for most of the last 45 years. Construction at Pleasant Avenue would impact vegetation along the entirety of the stairway footprint—the full length of the unarmored, eroding Coastal Bank. A stairway over Eastham Avenue would impact only a small amount of vegetation at the top of the coastal bank, while the majority of the bank is covered by a stone revetment; an obviously decreased total impact on vegetation. Accordingly, the Commission’s finding related to Pleasant Avenue was supported by substantial evidence. See *New Boston Garden Corp.*, 383 Mass. at 466-467.

⁷ The plaintiffs’ arguments related to Liberty Avenue are similarly brief, again asserting that the Commission’s finding was not supported by substantial evidence. First, the plaintiffs imply, in a wholly conclusory fashion, that Beach Association members can join the DBA because the DBA president lives next door to a Beach Association member. The plaintiffs provide no further information beyond this mere implication of membership plausibility; the administrative record contains only the DBA’s statement that Beach Association members cannot, in fact, join under current DBA rules. Accordingly, this argument is not properly supported by the administrative record, and therefore without merit. Second, the plaintiffs argue that “the Commission arbitrarily ignored evidence that the [DBA] cannot restrict anyone with similar access rights to pass on their stairs as they are within a public right of way and not private property”. The plaintiffs offer no support, factual or legal, for this assertion; the administrative record contains only the contrary evidence that the DBA erected a sign on the stairway asserting its right to exclusion. The legal determination of the property rights of an unrelated, non-party organization lies entirely outside of this court’s purview, and will not be undertaken here. More importantly, such a determination would also be well outside the Commission’s mandate; the failure to make such a finding cannot be a source of error. The plaintiffs’ final contention is that use of the DBA stairway is a feasible alternative because Beach Association members “do in fact use the Liberty Avenue stairs”, and thus the determination of unfeasibility is not supported by substantial evidence. The plaintiffs rely upon an August 8, 2012 letter from the McKeowns to the Commission, wherein they claim that “recent renters of the Griffith (members of The Beach Association) property were using the [DBA] stairs.” A.R. 34. Even assuming, *arguendo*, that the actions of the single group of renters were permissive, not trespassory, the Commission was still entitled to weigh the conflicting evidence of access and find that the heft lay with the defendants’ inability to use the Liberty Avenue stairs. See *Pacheco*, 49 Mass. App. Ct. at 741.

Thus, the plaintiffs conclude, the Commission's failure to consider these purported facts and reference them in the Supplemental Findings' feasibility determination was arbitrary and capricious.

As an initial matter, this court must note the long-settled principle that the Colonial Ordinance does *not* permit passage on foot across private beaches for the purposes of bathing. *Opinion of the Justices*, 365 Mass. 681, 686-687 (1974) ("An 'on-foot right-of-passage' is not so related to these public rights. The cases interpreting the right of the public in navigation all deal with the use in boats or other vessels of the area below mean high water mark 'when covered with tide water.' Thus, the right of passage over dry land at periods of low tide cannot be reasonably included as one of the traditional rights of navigation."); *Butler v. Attorney Gen.*, 195 Mass. 79, 83-84 (1907) ("there is no reservation or recognition of bathing on the beach as a separate right of property in individuals or the public under the colonial ordinance"). As such, the plaintiffs' argument that the defendants can cross the McKeown beach under the Ordinance is clearly contrary to established precedent.

Second, the administrative record is clear that the proposed McKeown easement, although drafted and held in escrow by the McKeown's attorney, was not executed or recorded at the time of the public hearing on the defendants' application. Supp. A.R. Ex. 2(B) 7, 8 ("In order for us to even consider that as a viable alternative, it would actually have to be in place and at this point its not . . . it's (*sic*) not in reality as of yet"). After remand, the Commission declined to expand the administrative record to include supplements by the parties. Thus, the administrative record upon which the Commission made its decision contained no evidence of an existing legal right to cross the McKeown property held by the defendants. A failure to consider


evidence *outside* the record cannot be a source of error; indeed, the consideration of such non-record evidence would itself likely be arbitrary and capricious. See *T.D.J. Dev. Corp*, 36 Mass. App. Ct. at 128.

Lastly, this court rejects the plaintiffs' suggestion that there was no reasonable basis for the Commission to conclude that using the Thumpertown stairway to access the town landing below, only, was not a feasible alternative to using the defendants' right of passage over Eastham Avenue to reach Crest Avenue beach. The fact that the defendants have so used Thumpertown beach in the five years since the Eastham Avenue stairway was destroyed does not require the conclusion that it is a feasible alternative, rather than an unwilling compromise. As discussed above, the Commission is warranted in choosing between conflicting, but reasonable, interpretations of the record evidence. See *Pacheco*, 49 Mass. App. Ct. at 741.

"Giv[ing] due weight to the overall judgment of the [C]ommission", this court finds that there were ample grounds which reasonable persons could deem proper to support the Commission's finding that the Thumpertown stairway was not a "technically demonstrated feasible alternative" to the construction of a stairway at Eastham Avenue. See *Dubuque*, 58 Mass. App. Ct. at 828-829; Eastham Wetlands Bylaw, Section 2. Further, as noted above, this court finds that there was sufficient evidence in the administrative record that "a reasonable mind might accept as adequate to support [the Commission's] conclusion" that the Pleasant and Liberty Avenue options were also not "technically demonstrated feasible alternatives". See *New Boston Garden Corp.*, 383 Mass. at 466; Eastham Wetlands Bylaw, Section 2. For these reasons, the plaintiffs cannot prevail on their Motion for Judgment on the Pleadings.

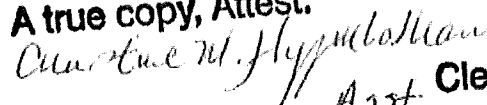
ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiffs' Motion for Judgment on the Pleadings is **DENIED**.


Robert C. Rufo
Justice of the Superior Court

September 30, 2015

A true copy, Attest:


Christine M. Flynn
Asst. Clerk



EASTHAM POLICE DEPARTMENT

2550 State Highway • Eastham, MA 02642
508-255-0551 • Fax: 508-255-5412



EDWARD V. KULHAWIK
Chief of Police

KENNETH J. RODERICK
Deputy Chief

April 19, 2016

Frank & Carol Dobek
Chair, Windmill Weekend Road Race
P.O. Box 623
North Eastham, MA 02651

Dear Mr. & Mrs. Dobek:

I have received your letter advising us of the Windmill Weekend Road Race. This event must be presented to the Board of Selectmen for their approval. I do not see any issues with the event, as it is a long-standing one. However, it must be formally approved by the Board of Selectmen.

I will forward a copy of your letter to the Board, and request that it be placed on an upcoming agenda. I will advise you upon the Board's approval for this road race.

I wish you good luck with the 2016 Eastham Windmill Weekend Road Race.

Sincerely,

Edward V. Kulhawik
Chief of Police

EASTHAM WINDMILL WEEKEND COMMITTEE, INC.
BOX 1331, NORTH EASTHAM, MASSACHUSETTS 02651

April 18, 2016

Mr. Edward Kulhawik
Chief of Police
2550 State Highway
Eastham, Ma. 02642

Dear Mr. Kulhawik:

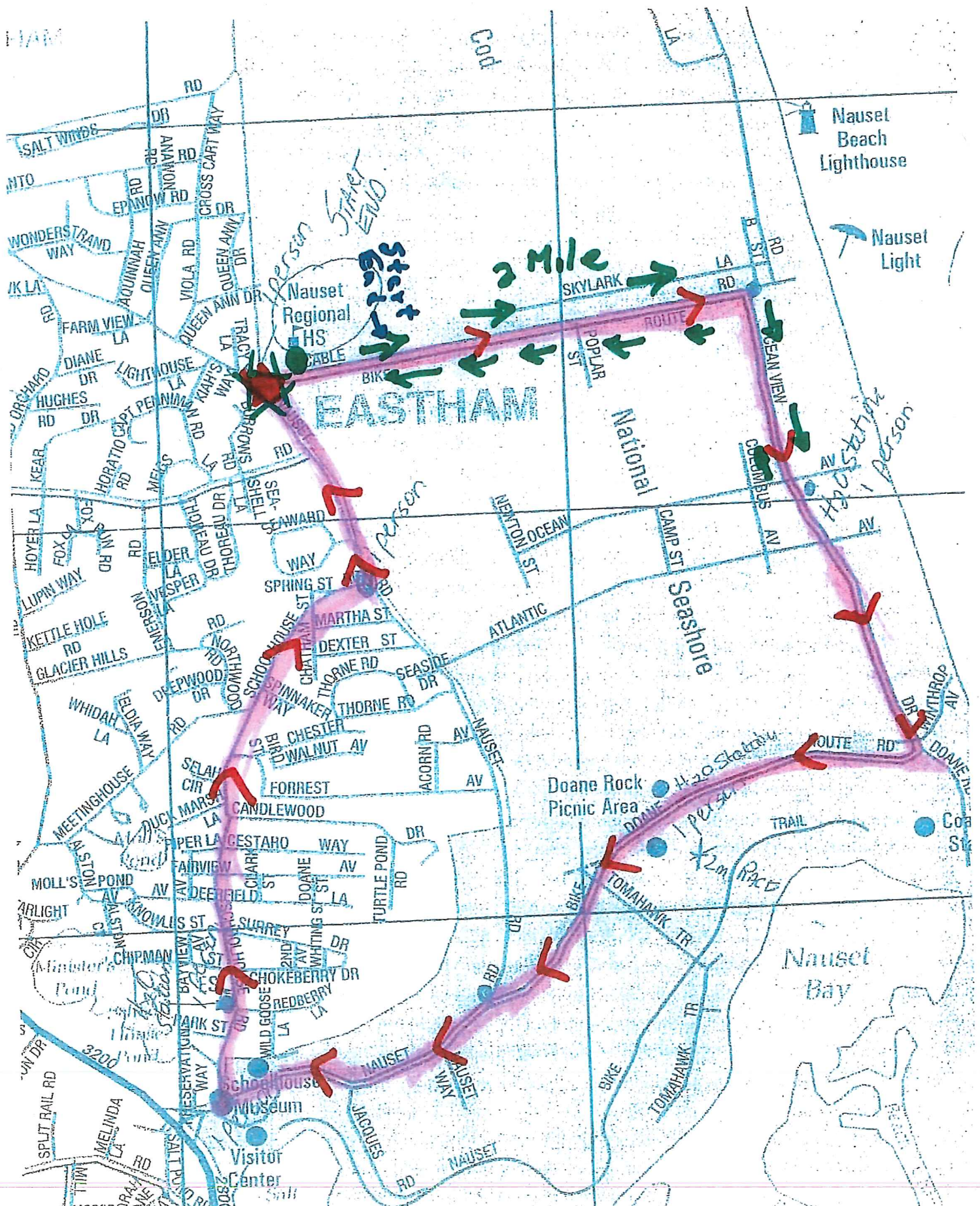
On behalf of the Eastham Windmill Weekend Committee, this letter is to inform you of the Eastham Windmill Weekend Road Race (2 miles/ 5 miles) to be held on Sunday September 11, 2016 at Nauset Regional High School and the National Seashore. Registration begins at 7:00 a.m. and we usually finish by 11:00 a.m. Attached is the route of the Road Race.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank and Carol Dobek", is written over a faint, circular blue stamp or watermark.

Frank and Carol Dobek
Chair Windmill Weekend Road Race
PO BOX 623
North Eastham, Ma. 02651
508-240-0612
dobs-cd-fd@juno.com



IV. A.2

June 6, 2016

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

Re: Committee Resignation: Katherine Alpert/OTCHDC

Please see the attached notification of resignation from Katherine Alpert of the Old Town Centre Historic District Commission and letter from the Board to be signed.



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508 240-5900 Fax 508 240-1291
www.eastham-ma.gov

June 6, 2016

Katherine Alpert
60 Chipmunk Lane
Eastham, MA 02642

Dear Ms. Alpert:

The work that Boards, Commissions and Committees accomplish is reflected by the membership of the group. Eastham is very fortunate to have a wonderful pool of volunteers to choose from and you are one of these chosen people. Thank you for the time and effort you devoted to the Old Town Centre Historic District Commission.

May we express the appreciation of the Board of Selectmen, the staff, and indeed all the citizens of the Town of Eastham for your esteemed service.

Sincerely,

John F. Knight, Chair

William O'Shea, Vice-Chair

Wallace F. Adams II

Linda S. Burt, Clerk

Elizabeth Gawron

BOARD OF SELECTMEN

Eastham Townhall

From: Ronnie Lapidus <rlap050@gmail.com>
Sent: Wednesday, May 18, 2016 8:04 AM
To: Eastham Townhall
Subject: Attn: Jessica Burt, Letter of Resignation
Attachments: Mom_Durable Power Attorney.pdf; RL_Div_Decree Final.pdf

Town of Eastham

Attn: Jessica Burt

Re: Letter of Resignation from Old Town Historic District Commission

Dear Ms. Burt,

I am writing on behalf of my mother Katherine (Kate) Alpert, under the enclosed Power of Attorney and also as her loving daughter. Your letter regarding the Old Town Historic District Commission ("Commission") membership arrived with the news that there is need for the Commission to fill my mother's seat. Unfortunately my mother's health has declined and she is not in a position to respond, therefore under Power of Attorney, I am submitting this as Katherine Alpert's letter of resignation from the Commission.

As a daughter, I am grateful to the Commission for recognizing my mother as an honorary Member Emeritus. The Town of Eastham means so much to her; she was born in Eastham, she had hoped to live out her life in Eastham, and it is a great loss to her that it is not so. I expect she would like to continue to receive information about Commission matters, and that as an honorary member that may be possible through the meeting minutes, or other communication as the Commission sees fit.

Any correspondence can be emailed to her in care of my email rlap050@gmail.com, or posted in care of my address:

Katherine Alpert, c/o Ronnie Lapidus, 28 Grove Lane, Burlington, MA 01803.

Thank you,

Ronnie Lapidus (formerly Bragen) Attorney-In-Fact for Katherine Alpert

Enclosures:

Durable Power naming Ronnie Lapidus (formerly Ronnie Bragen) Attorney-In-Fact



Certificate of Divorce substantiating Ronnie "Lapidus" was formerly known as "Bragen"

”

APPLICATION FOR A STUDENT LOAN FROM THE TIMOTHY SMITH F

IV. A.3.

MAY 13 2016

Date of Application 5.5.2016Name of applicant Elizabeth Loranger SS# Address 70 meadow Drive Phone# 774.722.4898Parent's Name Eileen LorangerStreet Address 70 meadow DriveMailing Address P.O Box 772Co-Signer Eileen Loranger SS# Address and relationship to
applicant Mother

Personal References: (name & address & term of acquaintanceship)

1 Elspeth Hay wellfleet, MA Employer2 Wendy Frazier Eastham, MA Family friend3 Kate Blascio Brewster, MA Teacher of 2 yearsName of school or institution you plan to attend University of MaineEstimated date of graduation May 2020I have read the terms and conditions and am familiar with the policy and procedure for this loan. Yes ☒
No ☐State briefly the reason for applying for this loan This loan is going to
help me pay for my education at University
of Maine.Is this a new loan application? Yes ☒ No ☐Renewal? Yes ☐ No ☐If this is a renewal please include your college transcript.**FOR TOWN OF EASTHAM USE - DO NOT FILL OUT**

Date of interview with

Selectman _____ Action _____

(Failure to fill in all blanks may cause refusal of loan)

Cutoff date for return of this application is July 1.

Reminder

May/June

IV. A.4.

June 9, 2015

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

Re: Eastham Night at Orleans Firebirds

The Orleans Firebird's Eastham Night is set for Wednesday, July 8, 2015 at 7:00pm at Eldredge Park in Orleans. The Orleans Firebirds will be playing the Cotuit Kettleers.

Chairman Elizabeth Gawron has chosen to throw out the first pitch and should expect to be there at 6:30.

The food will be supplied by the Eastham Chamber of Commerce thanks to Jim Russo.
The event will be noted in the Friday, July 3, 2015 Cape Codder on the Eastham page.

Thank you.

FOR EASTHAM PAGE of Friday Cape Codder week before the game

Good Afternoon Carol & Marilyn~ Can you place this info on the Eastham page of the Friday July 3rd paper?

Wednesday, July 8, 2015 at 7:00PM is Eastham Night at the Orleans Firebird's game to be played at Eldredge park in Orleans. The Orleans Firebirds will play the Cotuit Kettleers. Eastham Board of Selectmen Chairman Elizabeth Gawron will throw out the first pitch. Dinner for the baseball players after the game will be supplied by the Eastham Chamber of Commerce businesses thanks to help from Mr. Jim Russo, Chamber Executive Director.

Contact info:

Nancy Nickerson Orleans Firebirds Asst. General Manager
P.O. Box 504 Orleans, MA 02653
OrleansFirebirds.com
Cell: 508-776-4722
nbnickers@comcast.net

BENNETT ENVIRONMENTAL ASSOCIATES

IV. A 5:20pm

LICENSED SITE PROFESSIONALS ♪ ENVIRONMENTAL SCIENTISTS ♪ GEOLOGISTS ♪ ENGINEERS

1573 Main Street - P.O. Box 1743, Brewster, MA 02631 ♪ 508-896-1706 ♪ Fax 508-896-5109 ♪ www.bennett-ea.com

BEA16-10884

May 27, 2016

Eastham Board of Selectmen
C/o Ms. Sheila Vanderhoef, Town Administrator
Town of Eastham
2500 State Highway
Eastham, MA 02642

RE: REQUEST FOR AUTHORIZATION TO ALTER GRADING BALLWIC ROAD
Cape Cod Children's Place Addition/Renovations
10 Ballwic Road – North Eastham, MA [Parcel ID 12-211-B]

Dear Honorable Selectmen,

Bennett Environmental Associates, Inc. (BEA) has prepared the attached Site and Septic Plan (Rev 5/25/16) for the proposed addition and renovations to the Cape Cod Children's Place, including the expansion of the parking area, at the above referenced Town-owned property. As based on the location of the existing building on the subject property and location of the onsite public water supply well and abutting property private wells, the septic system has been designed to occupy the area of the proposed parking lot expansion. To accommodate the expanded parking area and septic system, existing lot topography requires that the area be filled and graded as results in encroachment onto the Ballwic Road layout as shown. As such, we seek an opportunity to present the plans to the Selectmen at the next available meeting to seek permission for this work on Town-owned property.

The use of fill and grading will avoid the placement of structures in the roadway, resolve safety concerns and defer unnecessary costs associated with the use of retaining walls wherein there is an 8' difference in elevation between the existing and proposed grades in the southwest corner of the proposed parking lot expansion. The revised plan reflects the 3:1 grading suggested in preliminary review by the Eastham DPW Director Neil Andres and provides vehicular access to the property at a grade similar to that which exists, albeit a 15-17% slope.

The proposed grading would not preclude additional grading (fill) or use of retaining walls to decrease the slope if future road construction and development of the remaining portion of the property were intended. Additionally, there are two other roads that could access the property or provide additional frontage for development; Acorn Road and Chester Avenue.

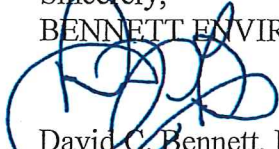
For the reasons stated herein, and to the benefit of the Cape Cod Children's Place in expanding childcare, early childhood education, family support and community engagement services to Eastham and the surrounding communities, we respectfully request permission to fill and grade the property, inclusive of the roadway layout, as shown on the attached plan. Please

MAY 27, 2016
PAGE 2 OF 2

CAPE COD CHILDRENS PLACE/BEA16-10884
REQUEST FOR PERMISSION TO FILL TOWN PROPERTY

advise us as to the time and date of this meeting so that we may prepare our presentation or otherwise call with any questions or need for additional information in the interim.

Sincerely,
BENNETT ENVIRONMENTAL ASSOCIATES, INC.



David C. Bennett, RS
President

- Encl. Plan entitled "Drainage and Subsurface Sewage Disposal System...", Prepared by
Bennett Environmental Associates, Inc. (Rev. 5/25/16)
- Cc. Cindy Horgan, Executive Director – Cape Cod Children's Place
Kathryn Giardi, Project Manager – Brown Lindquist Fenuccio & Raber Architects, Inc.
Paul Lagg, Eastham Town Planner
Thomas Wingard, Eastham Building Inspector

V, 5:30pm.

Eastham Water System

Board of Selectmen Meeting

June 6, 2016



Items

- Phase 1 budget status
- Construction activities
- Coordination with property owners and the public
- Service connection notifications



Phase 1 Budget Status

		Original Budget	Current Budget	Total Completed
TOWN MEETING APPROPRIATION		\$ 45,800,000	\$ 45,800,000	\$ 45,800,000
Construction		\$ 35,670,000	\$ 30,173,038	\$ 15,276,188
Police Details		\$ 2,320,000	\$ 2,320,000	\$ 452,239
Engineering		\$ 5,400,000	\$ 5,400,000	\$ 3,038,019
Additional Items			\$ 3,752,978	\$ 468,107.56
TOTAL		\$ 43,390,000	\$ 41,646,016	\$ 19,234,554
BALANCE, Phase 1		\$ 2,410,000	\$ 4,153,984	

***Total completed to date is through April 30, 2016.*



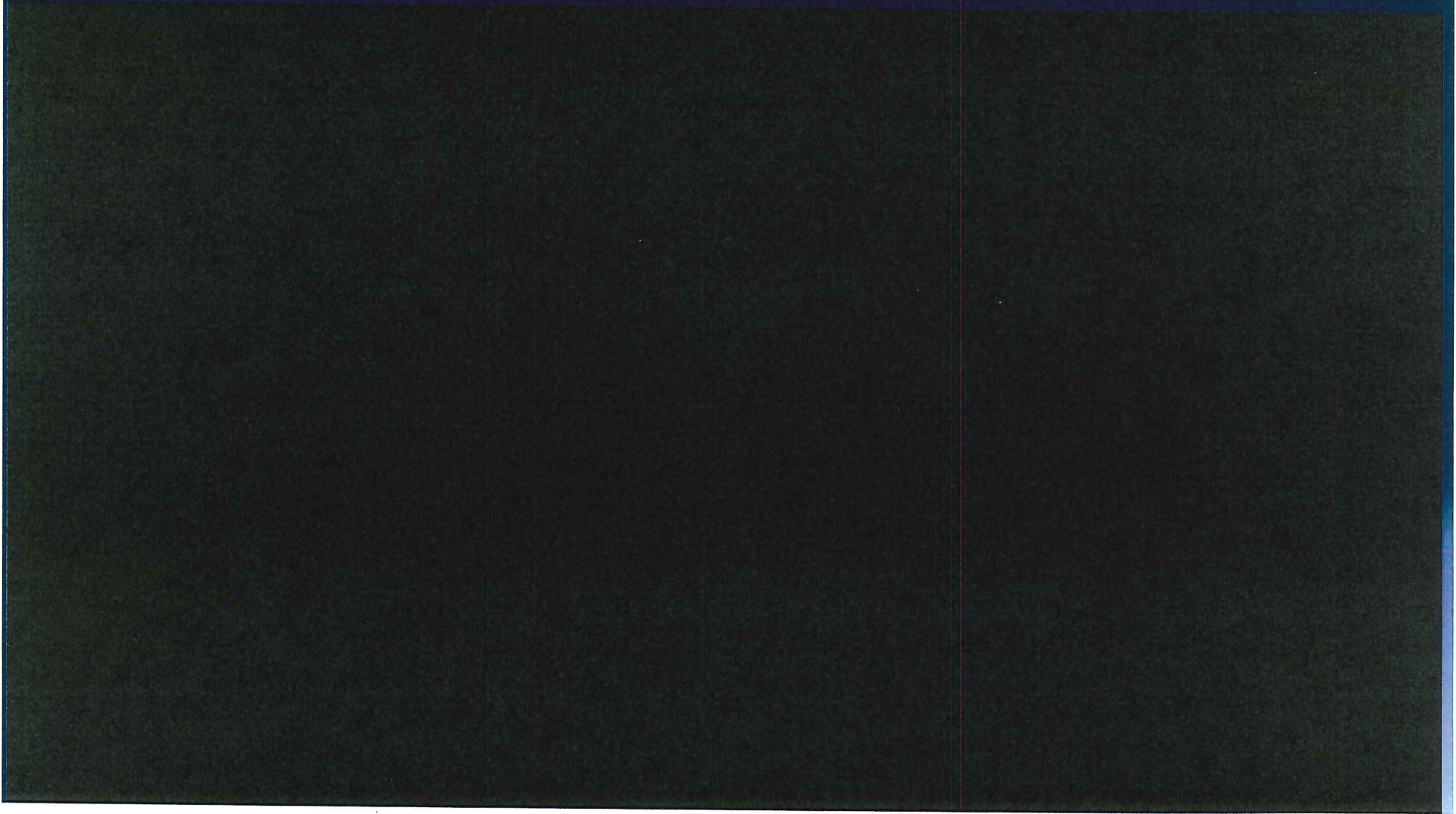
Water Storage Tank

May/June Construction Activities

- Painting of the interior bowl
- Final site work starting soon
(fencing, doors, driveway)
- Filling and testing – late June/early July



District G Raising Time-Lapse Video







Well Fields

May/June Construction Activities

- Eversource
 - Installing electrical lines now
 - Uncertain when transformers are to be installed
- Well Station Buildings delivery: mid-June
- Target for completion: early July
- Startup testing: July



Landfill Area

May/June Construction Activities

- Water main work completed
 - Pavement settlement areas addressed
 - Loam and seeding completed
 - Punch list to be updated during June
- Flushing and testing of water mains: July and August
- Service connections – Fall 2016



Route 6

- Directional drill at Orleans rotary completed
- All water main installation is completed!
- Water main construction suspended until Labor Day
- June & July: water main flushing and testing
- Next fall: directional drills for laterals and services



Route 6

- Return September 2016 to complete services once water is available
- Final paving
 - Entire westbound (south) travel lane to be paved
 - Spring 2017 (mill and overlay)



Route 6 Work Zone – Spring 2016



A partnership for engineering solutions.



Contracts 7 & 8 Construction Coordination

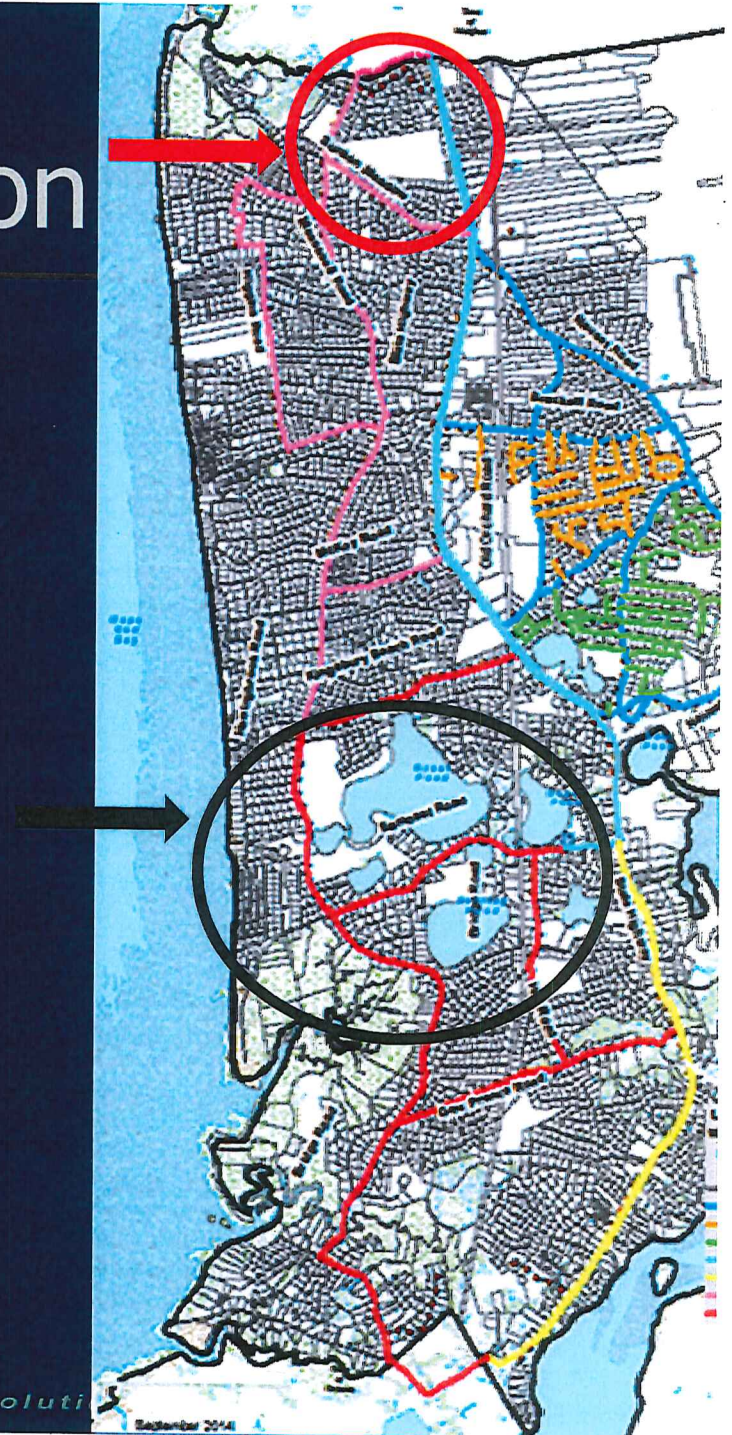
- Weekly meetings with police
- Public notifications
- Detours and street closings will be necessary for construction and public safety
- WEB PAGE for information
easthamwaterproject.weebly.com



Contracts 7 & 8

Construction Coordination

- Work areas – June
- Contract 7
 - Aspinet Road, North Sunken Meadow, Massasoit & Whelpley
- Contract 8
 - Herring Brook Road, Bridge Road, Samoset Road and Kingsbury Beach Road



Service Connection Coordination

- Letters to homeowners tax addresses have been sent to the following streets:
 - Nauset Road (May 6)
 - School House Road (May 13)
 - Brackett Road (May 20)
 - Old Orchard Road (May 27)
 - Meetinghouse Road (June 3)
- Will continue with Contract 4 mailings in June
- Public information sessions



Public Outreach & Information

- Eastham web page

<http://easthamwaterproject.weebly.com>

- Eastham Water Projects Email Address:

easthamwater@envpartners.com

- Eastham Water Project Phone Number

617-657-0279



INFORMATION

agenda

Sheila Vanderhoef

From: Cape Cod Commission <watersheds@capecodcommission.org>
Sent: Friday, May 27, 2016 10:22 AM
To: Sheila Vanderhoef
Subject: OneCape Summit - Registration

Having trouble viewing this email? [Click here](#)



one cape
implementing solutions for clean water

REGISTRATION IS OPEN

June 23 and 24
Resort and Conference Center
Hyannis, MA

Join us as we review progress made towards implementing the Cape Cod Area Wide Water Quality Management Plan Update (208 Plan Update).

AGENDA

Day 1

Keynote Speaker: Curt Spaulding, Region 1 Administrator, EPA

Science, Information and Technology Session:

- Monitoring
- Ongoing Pilot Projects
- Technologies Matrix

Dinner Session: All Cape Selectmen and Councilors Meeting *Public Welcome*

- 208 Implementation and Next Steps
- WMA Progress

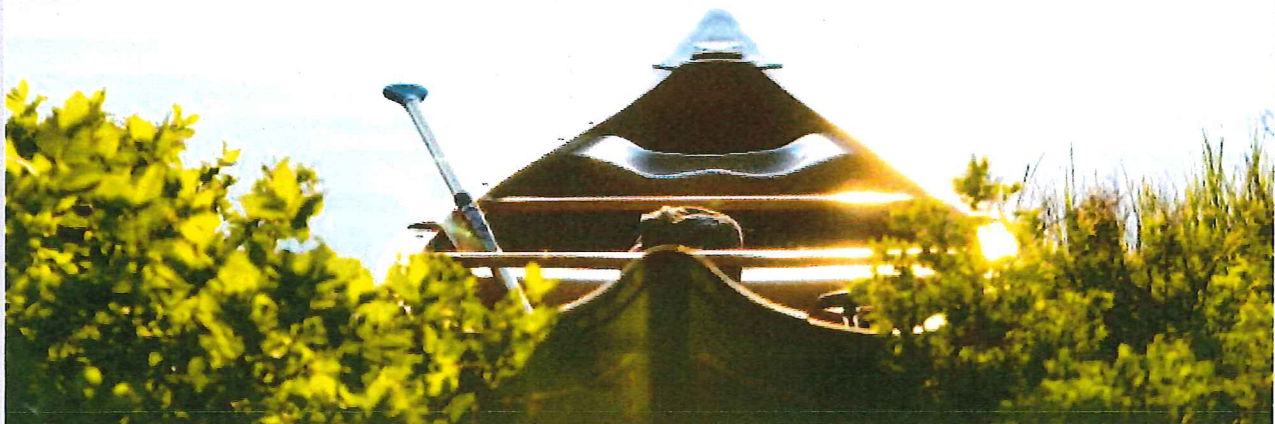
Day 2

Keynote Speaker: Dan Wolf, Massachusetts State Senator

Breakout Sessions:

- Scenario Planning
- Regulation
- Finance
- Community Engagement

Please call 508-363-3828 or email watersheds@capecodcommission.org with any questions.





The Office of State Representative Randy Hunt
5th Barnstable District

Forum on Barnstable County Homelessness and Social Services

Monday, June 6, 2016

10:00AM to 12:00PM

Studio Theater

Tilden Arts Center, Cape Cod Community College

Tentative Agenda

- 1) **Welcome and Introductions-** Establish Framework for the day
 - *State Representative Randy Hunt, 5th Barnstable District*
 - *State Representative Brian Mannal, 2nd Barnstable District*
- 2) **Presentation from Baker-Polito Administration-** Discuss administration's commitment to assisting Barnstable County with its homeless population
 - *Rose Evans- Deputy Undersecretary, Department of Housing & Community Development*
 - *Linn Torto- Executive Director, Interagency Council on Housing and Homelessness*
- 3) **Presentation from Cape & Islands Regional Network to Address Homelessness-** Discuss how Regional Network will support homelessness population
 - *Paula Schnepf, Coordinator*
- 4) **Barnstable Police Department Presentation-** department's plans for how they plan on working with Hyannis' homeless population moving forward
 - *Chief Paul MacDonald*
- 5) **Question and Answer**
- 6) **Open Discussion**

<Rebecca.Rochelleau@mahouse.gov>, "Hunt, Randy - Rep (HOU)" <Randy.Hunt@mahouse.gov>
Subject: REMINDER AND REQUEST: Forum on Barnstable County Homelessness and Social Services

Good Morning Team Cape!

I hope you all had a spectacular Memorial Day Weekend!

Just a reminder, our forum on Barnstable County Homelessness and Social Services is right around the corner, on this coming Monday. Can't believe it's already here.

Randy would like you to pass the word along to the municipal/town officials within your district. It is important that they are aware of the forum so they can send along representatives if they wish. Feel free to forward this email.

The purpose of this forum is to bring Barnstable County's municipal officials, social service organizations, and business groups together and update them on the Baker Administration's, Regional Network's, and Barnstable Police Department's approach to the homelessness issue in Hyannis and on Cape Cod. The goal is to get all parties on the same page and to provoke collaboration between the service organizations and the agencies, so that we can better serve the population and get our arms around the situation.

What: Forum on Barnstable County Homelessness and Social Services

When: Monday, June 6, 2016 from 10am-12pm

Where: Studio Theater, the Tilden Arts Center at Cape Cod Community College

The tentative agenda is attached.

Feel free to give me a ring if you have any questions!

Best,
Matt

Matt Liber, Legislative Aide

State Representative Randy Hunt (R-Sandwich)

5th Barnstable District

State House, Room 136

Boston, MA 02133

(W) 617-722-2800 x8743

(C) 617-939-7347

*Paula Lagg
HSG Trust
P.B.*

Sheila Vanderhoef

From: Peake, Sarah - Rep. (HOU) <Sarah.Peake@mahouse.gov>
Sent: Tuesday, May 31, 2016 11:58 AM
To: Jill R. Goldsmith; cclark@town.harwich.ma.us; John Kelly; Sheila Vanderhoef; Harry Terkanian; rpalmer@truro-ma.gov; dpanagore@provincetown-ma.gov
Cc: Hilliard, Kaelyn (HOU); Liber, Matthew (HOU)
Subject: Fwd: REMINDER AND REQUEST: Forum on Barnstable County Homelessness and Social Services
Attachments: Tentative Agenda for Forum on Social Services and Homelessness.pdf; ATT00001.htm

Good Morning All, I hope you had a good weekend.

As you can see from the email below and the attachment, Reps Randy Hunt and Brian Mannel have organized a forum on homelessness to be held next Monday morning at CCCC. They have asked that I help circulate the information to my communities. Can you please share this with whatever staff, elected or appointed officials, volunteers, etc that you think might have an interest in the topic?

While the issue is not as "in your face" on the outer and lower Cape as it is in Hyannis, it is still a problem in our communities. Also, many of our constituents find themselves having to migrate to the mid-cape to seek the support services they need.

Thank you very much for your help in spreading the word about the forum!

Sarah

Rep Sarah Peake
Leader, 3rd Division
Room 163, State House
Boston, MA 02133
617.722.2040

Sent from my iPad

Begin forwarded message:

From: "Liber, Matthew (HOU)" <Matthew.Liber@mahouse.gov>
Date: May 31, 2016 at 11:41:06 AM EDT
To: "Peake, Sarah - Rep. (HOU)" <Sarah.Peake@mahouse.gov>, "Vieira, David - Rep (HOU)" <David.Vieira@mahouse.gov>, "Whelan, Timothy - Rep. (HOU)" <Timothy.Wheelan@mahouse.gov>, "Mannel, Brian - Rep (HOU)" <Brian.Mannel@mahouse.gov>, "deMacedo, Vinny (SEN)" <Vinny.deMacedo@masenate.gov>, "Wolf, Daniel (SEN)" <Daniel.Wolf@masenate.gov>, "Madden, Timothy - Rep (HOU)" <Timothy.Madden@mahouse.gov>
Cc: "Ferrara, Sarah (HOU)" <Sarah.Ferrara@mahouse.gov>, "Hilliard, Kaelyn (HOU)" <Kaelyn.Hilliard@mahouse.gov>, "Palmer, Kathleen (HOU)" <Kathleen.Palmer@mahouse.gov>, "Hamlin, Rebecca (HOU)" <Rebecca.Hamlin@mahouse.gov>, "Fletcher, Owen (HOU)" <Owen.Fletcher@mahouse.gov>, "Jue, Emily (SEN)" <Emily.Jue@masenate.gov>, "Lambros, Lance (SEN)" <Lance.Lambros@masenate.gov>, "Magnotto, Elysse (SEN)" <Elysse.Magnotto@masenate.gov>, "Rolbein, Seth (SEN)" <Seth.Rolbein@masenate.gov>, "Rocheleau, Rebecca (HOU)"



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

www.eastham-ma.gov

May 24, 2016

Massachusetts State Pesticide Bureau
Michael McClean, Director
Rights-of-Way Programs
251 Causeway Street; Suite 500
Boston, MA 02114-2151

RE: NSTAR/Eversource Yearly Operating Plan (YOP) 2016

Dear Mr. McClean,

We are writing again to restate our concern about the Eversource YOP that continues to focus on chemical vegetation management strategies.

The Board of Selectmen continues to feel strongly that vegetation control techniques in Eastham, and everywhere on the Cape, should be limited to non-chemical applications such as hand-cutting and Integrated Vegetation Management (IVM) techniques.

The Town of Eastham is currently in the process of developing and permitting a public water supply. Currently, all properties abutting the NSTAR/EverSource transmission corridor are served by on-site wells and septic systems. We have reviewed the maps sent with the letter and wells with 50' or less separation are marked on your current maps, but we also want you to be aware of the many wells within the 100' separation. We have located all of these private drinking water wells with GPS coordinates, and will forward those files to you should you want to refine the private locations shown on the map with specific coordinates.

Eastham strongly objects to the state's acceptance of the YOP for the following reasons:

1. The chemicals used are toxins which go into the soil that is covering our sole source aquifer
2. These same toxins have potential adverse impacts on the above ground environment, bee populations and plants
3. MDAR, in continuing to support chemical vegetation control measures, shows a lack of concern for the special environment with the sole source aquifer on Cape Cod

In summary, we hope you are concerned as well, and will do everything possible to ensure that our water supply, our fragile environment, and the health of our citizens, are protected.

Thank you for your consideration.

Sincerely,



Sheila Vanderhoef, Town Administrator
On behalf of the Board of Selectmen

cc: Eastham Board of Selectmen
Representative Sarah K. Peake
Senator Daniel A. Wolf

BENNETT ENVIRONMENTAL ASSOCIATES, INC.

LICENSED SITE PROFESSIONALS ENVIRONMENTAL SCIENTISTS GEOLOGISTS ENGINEERS

1573 Main Street - P.O. Box 1743, Brewster, MA 02631 508-896-1706 Fax 508-896-5109 www.bennett-ea.com
BEA16-10884

May 27, 2016

Mr. Rick Rondeau, Chief -BWR/Drinking Water Program
MA DEPARTMENT OF ENVIRONMENTAL PROTECTION (SERO)
20 Riverside Drive
Lakeville, MA 02347

RE: REQUEST FOR DEPARTMENT REVIEW PWS ID #4086051
Proposed Cape Cod Children's Place Addition/Renovations
10 Ballwic Road – North Eastham, MA [Parcel ID 12-211-B]

Dear Mr. Rondeau,

In accordance with the provisions of 310 CMR 22.21(3), Bennett Environmental Associates, Inc. (BEA), on behalf of the Cape Cod Children's Place is providing a copy of the proposed "Drainage and Subsurface Sewage Disposal Plan" (Rev 5/25/16) for the proposed addition and renovations to the Cape Cod Children's Place, including the expansion of the parking area, at the above referenced Town-owned property. The proposed addition will increase the Title V Sanitary Flow Design to 1,835 gpd as requiring septic system upgrade and the provision of storm water drainage as represented on the attached plan. Notwithstanding, according to the 2012 Sanitary Survey, the Public Water Supply is approved for 2,000 gpd with and approved Zone I Radius of 150' which will remain unchanged. All construction related activities, with the exception of minor grading, will take place outside the Zone I Protective Radius which will remain free of structures and as totally owned and controlled by the property owner as the Town of Eastham.

For the reasons stated herein, and to the benefit of the Cape Cod Children's Place in expanding childcare, early childhood education, family support and community engagement services to Eastham and the surrounding communities, we respectfully request the BWR/Drinking Water Program approval of the proposed work relative to maintaining wellhead protection and control of the Zone I for the Non-Transient, Non-Community Public Water Supply Well as shown on the attached plan. This plan is being filed concurrently under the Eastham Site Plan Review process with meeting scheduled for June 16, 2016. Your review and comments ahead of this meeting would be greatly appreciated. Please call with any questions or need for additional information in the interim.

Sincerely,
BENNETT ENVIRONMENTAL ASSOCIATES, INC.


David C. Bennett, LPG, CGWP, RS.
President

MAY 27, 2016
PAGE 2 OF 2

CAPE COD CHILDRENS PLACE/BEA16-10884
MA DEP BWR/DWP REQUEST FOR APPROVAL OF WORK OUTSIDE ZONE I PWS#4086051

- Encl. Plan entitled "Drainage and Subsurface Sewage Disposal System...", Prepared by
Bennett Environmental Associates, Inc. (Rev. 5/25/16)
- Cc. Cindy Horgan, Executive Director – Cape Cod Children's Place
Kathryn Giardi, Project Manager – Brown Lindquist Fenuccio & Raber Architects, Inc.
Sheila Vanderhoef, Eastham Town Administrator
Jane Crowley, Eastham Health Department

T, A
Report

May 11, 2016

For Immediate Release

For Further Information, Contact:

Joan Plante
Town Treasurer
Town Hall
2500 State Highway
Eastham, MA 02642

**Town of Eastham, MA \$3,455,000 General Obligation Refunding Bonds Net 1.18%,
Net Saves \$510,957**

Joan Plante, Town Treasurer, announced that the Town of Eastham received competitive bids from bond underwriters on Wednesday, May 11, 2016, for a \$3,455,000 10-year refunding bond issue. Fidelity Capital Markets was the winning bidder on the Bonds with an average interest rate of 1.18%. The Town received a total of 5 bids on the Bonds. The Bond proceeds will be used to refinance bonds of the Town originally issued on August 1, 2006 and will generate total net savings for the Town of \$510,957 over the remaining life of the bonds.

Prior to the sale, Standard and Poor's Ratings Services, a municipal bond credit rating agency, affirmed the Town's long-term rating of 'AAA', the highest rating attainable. The rating agency cited the Town's strong economy, strong management with good financial policies and practices, strong budgetary performance, strong budgetary flexibility and very strong liquidity, as positive credit factors.

The bids for the Bonds were accepted at the offices of the Town's financial advisor, FirstSouthwest, a Division of Hilltop Securities Inc., at 54 Canal Street in Boston, Massachusetts.

-end-



David E. Pierce
Director

Commonwealth of Massachusetts

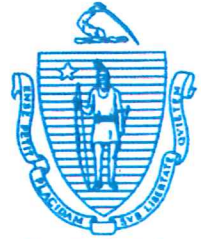
Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617)626-1520

Fax (617)626-1509



Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

George N. Peterson, Jr.
Commissioner

Mary-Lee King
Deputy Commissioner

ADMINISTRATION

May 18, 2016

MAY 23 2016

RECEIVED

Eastham Board of Selectmen
2500 State Highway
Eastham, MA 02642-2544

Dear Selectmen:

I have received a few letters from Cape Cod town officials – notably Boards of Selectmen – asking me to extend the “existing near coastal protection zone” out to the 12-mile territorial seas line from south of Boston, along the outside of Cape Cod, around Nantucket, and south of Martha’s Vineyard to our border with Rhode Island. You and others request a minimum 6 ½-inch mesh-size restriction for mobile gear with your intent being ecosystem protection.

Like you and your supporters, the Division of Marine Fisheries continues to be a strong advocate of ecosystem protection. We pursue that objective through management rules and regulations we help develop through our involvement with the New England and Mid-Atlantic fishery management councils and the Atlantic States Marine Fisheries Commission. Independent of these organizations, we have our own initiatives carried out with the support and encouragement of the Commonwealth’s nine-person Marine Fisheries Advisory Commission.

I anticipated your request because this suggestion was made to me by Peter Kaiser of Nantucket months ago. I advised Mr. Kaiser to pursue his objective on behalf of Nantucket by becoming formally involved as an industry advisor to one or more of the aforementioned organizations. His suggestion and your identical request are best handled by the councils and ASMFC, but primarily through the councils.

There continues to be the mistaken belief that DMF can extend its fisheries management jurisdiction out to 12 miles. Federal law (Magnuson-Stevens Fishery Conservation and Management Act or MSA) controls fishing activity in the EEZ (Exclusive Economic Zone) with an outer limit shown on NOAA charts (200-mile limit) and with an inner boundary of the coastal states’ being at three nautical miles. Our “coastal waters” extend out from shore to three nautical miles from a baseline. The 12-mile line only comes into play during discussion of U.S. jurisdiction in our nation’s foreign affairs.

According to the MSA, whatever we enact through state regulation should strive to be consistent with federal fishery management plans and federal regulations for the fishery in which the vessel(s) is operating. Therefore, for example, we could not prohibit small-mesh fishing for squid or sea herring out to 12 miles because federal plans don’t prohibit that activity. [Note the Magnuson Act exception making it clear that Massachusetts controls fishing in all of Nantucket Sound.]

I’m addressing our shared sea herring forage concerns through the New England Council’s current debate about different sized buffer zones from shore that would prohibit small-mesh sea herring fishing (e.g., mid-water trawlers and purse seiners). A 12-mile buffer zone is one option being considered and analyzed. Please note that DMF does not allow small-mesh, mid-water trawling for sea herring in state waters. Your letter suggests you believe this trawling occurs in state waters.

Different distance-from-shore zones are being resisted by mid-water trawlers wanting to maintain fishing grounds for sea herring, e.g., 3-12 miles. Our important lobster fishery/industry has a great demand for sea herring as bait; therefore, we must consider the impact of different buffer zones on bait supply. We'll know what the New England Council intends to do about buffers before the end of summer or early fall.

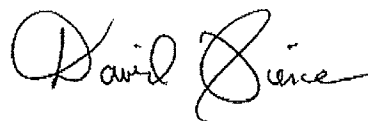
DMF does allow squid fishing in the sounds during the spring. However, this important fishing opportunity is seasonally restricted and is pursued primarily by smaller, inshore vessels. These clearly are not the "industrial-size fishing boats" for which you have expressed concern. Moreover, although the mid-water trawlers are much larger than typical day-boat vessels, they are far smaller than vessels of the foreign fishing fleets that roamed our coasts in the 1960s and 1970s. It's a misnomer to call the mid-water trawlers "industrial sized." Foreign vessels processed and froze on board whatever they caught and, therefore, were "industrialized."

You and others have stated: *"Small-mesh gear, used by mid-water trawlers and otter trawlers, often engages and disrupts the seafloor, causing indiscriminate killing, significant bycatch and destruction of our natural resources at a massive scale."* You also say that regulators *"should no longer turn a blind eye."* Be assured that DMF's "eyes" are wide-open, and my staff and I continue to monitor these fisheries on our own and with federal assistance to be informed about actual sea floor impact and amounts bycatch.

Although you are quite correct to highlight these concerns, I suggest we all be careful about "massive scale" and "irreversible damage" characterizations not entirely supported by research and monitoring data. I continue to be ready to respond to any science-based assessments of impacts preventing sustainable use of our near-coastal natural resources whether my response is state-specific or through the NEFMC on which I am a voting member.

In summary, I cannot extend the Commonwealth's jurisdiction out to 12 miles. However, your request does provide me with further evidence that cities and towns heavily invested in the future of their fisheries will continue to urge proactive conservation stances in the context of ecosystem-based fisheries management. Those stances will help my efforts to do the same.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David E. Pierce". The signature is fluid and cursive, with the first name "David" and last name "Pierce" clearly distinguishable.

David E. Pierce, Ph.D.
Director

cc

Marine Fisheries Advisory Commission

George N. Peterson, Jr.

Mary-Lee King

Daniel McKiernan

Michael Armstrong

Kathryn Ford

Nichola Meserve

Melanie Griffin

Cate O'Keefe

Douglas Christel



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

www.eastham-ma.gov

May 26, 2016

Eastham Chamber of Commerce
Jim Russo, Executive Director
P.O. Box 1329
Eastham, MA 02642

Re: Request for Variance of Windmill Green Policy

Dear Mr. Russo,

At their meeting on Monday, May 16, 2016, the Eastham Board of Selectmen reviewed and discussed your request for a variance to their Windmill Green Policy. At that time, the Board declined to allow the exception.

The Board, however, has scheduled a review of this and other policies later in the summer. They may consider a change at that time.

For now, the current Windmill Green policy is the policy to be followed. A copy is enclosed for your convenience.

Respectfully,

Sheila Vanderhoef
Town Administrator



Town of Eastham
2500 State Highway
Eastham, MA 02642
508.240.5900
fax 508.240.1291
www.eastham-ma.gov

USE OF THE EASTHAM WINDMILL GREEN AND BANDSTAND POLICY

1.0 Authority

The Board of Selectmen hereby adopts a set of guidelines for the use of the Town of Eastham's Windmill Green and the Bandstand.

2.0 Purpose

It is the intention of the Board of Selectmen of the Town of Eastham to make the Windmill Green and Bandstand available to all qualified applicants as per the regulations described further in this policy.

3.0 Applicability

This policy shall apply to eligible individuals or organizations wishing to use the Windmill Green and/or the Bandstand for any event and/or program.

4.0 Definition

The Windmill Green and the Bandstand is the area known as the facility across from the Town Hall.

5.0 Responsibility

The Board of Selectmen or their designee is responsible for ensuring that this policy is upheld and that policy guidelines are followed.

6.0 Standards/Rules and Regulations

6.1 Eligibility

Eastham residents, Eastham based non-profits, and Town sponsored groups shall be eligible to apply to use the Windmill Green and/or the Bandstand.

Applications shall not be considered from groups or individuals who discriminate in their membership, programs or philosophy on the basis of sex, race, color, creed, national origin, disability, marital status, veteran status, age or sexual orientation.

Repeat use may be denied to groups or individuals who fail to abide by this and other policies, rules and regulations pertaining to the use of town property.

6.2 Use of the Windmill Green/Bandstand shall be governed by the following rules and regulations:

6.2.1 Events shall be scheduled during daylight hours, and no event shall continue past 8:00 p.m. The applicant may set up for the event after 4:00 p.m. the day previous to the event (when the area is available), and must have the Windmill Green cleaned up by noon of the day following the event. Event shall not exceed more than three (3) days.

6.2.2 The applicant is responsible for set up and clean up of the Windmill Green after the event, including the picking up of all litter, taking away of recyclable materials, and the removal of any display material and signage. The applicant is required to provide the necessary containers for recyclable materials. (Check with the town for a full list of recyclable items)

6.2.3 Signs, notices or other items may not be attached to any structure, tree, or trash recycling bin on the Windmill Green. (Permits are required for signs)

6.2.4 No activity may charge a fee for the event. Items may be sold if permitted by the Board of Selectmen or their designee, and state and local license requirements are met.

**6.2 Use of the Windmill Green/Bandstand shall be governed by the following rules and regulations:
Continued**

- 6.2.5 The use or sale of alcoholic beverages is prohibited on the Windmill Green.
- 6.2.6 Pursuant to M.G.L. Ch 270, §22(j), and the Town of Eastham's policy Prohibiting Smoking in Workplaces and Public Places, Smoking is prohibited on the Windmill Green, a town owned park.
- 6.2.7 Motor Vehicles may be allowed on the Windmill Green if requested on the application and a \$25 per event fee is paid.
- 6.2.8 There shall be no discharge of firearms except for ceremonial purposes and as approved by the Police.
- 6.2.9 There shall be no fires permitted, with the exception of candles which may be held by individuals participating in ceremonies, such as weddings, etc. Candles may not be placed along or attached to any structure on the Windmill Green.
- 6.2.9.1 For any event utilizing the Bandstand, a single noise complaint shall be sufficient to permit the police to order discontinuance of the noise portion of the event. A second complaint shall be sufficient for the police to order the end of the event and the clearing of the entire Windmill Green.
- 6.2.9.2 Amplified music shall only be allowed by special permission of the Board of Selectmen or their designee.
- 6.2.9.3 No additional lighting may be installed, on either a temporary or permanent basis, without the explicit approval of the Board of Selectmen.
- 6.2.9.4 Dogs are prohibited on the Windmill Green during events.
All other times dogs are allowed on Windmill Green only on a leash.
- 6.2.9.5 The applicant must agree to indemnify and hold the Town of Eastham harmless against any and all claims which may be made against the Town for property damages and personal injuries sustained by any person including the user which may result from the use of said property by the user. The applicant must also furnish proof of general liability insurance naming the Town as additional insured. Liability Limits as follows: **Comprehensive General Liability-Bodily Injury~\$1,000,000 Aggregate**

7.0 Procedure

All applicants shall be required to complete and sign the Application for Use of the Windmill Green and/or Bandstand. Applications and fees must be turned into the Town designee no less than eight weeks prior to the requested event date. A \$200 refundable damage deposit check is required, and must be submitted 3 days before the event.

Should two (2) or more applicants request the same day(s), preference shall be given to events sponsored by the town.

7.1 Fee Schedule

The following must be submitted and paid by the applicant at the time of application submittal:

- 1. A certification of current/valid insurance coverage.
- 2. A peddler's permit if anything is being sold on public property.
- 3. The appropriate use fees as follows:
 - \$100 per day use fee
 - \$25 per event fee if you intend to provide portable toilets.
 - \$25 per event fee for vehicle access for set up and take down only.
(Vehicles not being actively loaded or unloaded may not be parked on the Green.)
 - \$25 per event fee if you intend to use/provide tents.

A \$200 refundable damage deposit check is required, and must be submitted 3 days before the event.

8.0 The Board of Selectmen or their designee reserves the right to reject any and all requests.

9.0 Effective Date

This policy is effective as of September 15, 2008.

-This policy was adopted by the Board of Selectmen at a public meeting on September 15, 2008.

-This policy was revised and adopted by the Board of Selectmen at a public meeting on January 4, 2016.

Benjamin E. Zehnder LLC

177 Route 6A
Orleans, Massachusetts 02653

From Ben
Zehnder
RE: Crest Ave
License

U.S. Postal Address:
P.O. Box 2128
Orleans, MA 02653
Tel: (508) 255-7766
Fax: (508) 255-6649

Benjamin E. Zehnder, Esq.
bzehnder@zehnderllc.com

May 18, 2016

Eastham Board of Selectmen
Town of Eastham Town Hall
2500 State Highway
Eastham, MA 02642

Re: The Beach Association, Inc. / License Application / Crest Avenue

Dear Members of the Board:

This will follow up the license hearing the other night. I have attached for the Board's consideration a proposed easement to the Town over land of the McKeown family. I ask that you submit this to your Town Counsel for review and comment as to form. I am authorized to represent that the McKeowns (as trustees) will execute and deliver an easement in this form to the Town for registration with the Barnstable Registry of Deeds upon reasonable assurance that the Board will not grant a license for construction of a starway over Crest Avenue at the terminus of Eastham Avenue. This easement was offered to the applicants during the Conservation Commission process when they stated that using the Thumpertown landing was not viable due to the McKeown's ownership of the parcel between Thumpertown landing and the Crest Avenue beach.

I have also attached a copy of an affidavit signed by Lucetta Williamson in 2012 regarding the construction and use of the former stairway. Ms. Williamson is now deceased, but the affidavit clearly shows that the stairway was constructed and used by the Williamson family with some exceptions.

Also attached is a copy of the Land Court decision affirming rights in the neighborhood owners to use Liberty Lane for access to the beach. It appears that the license applicants want to create their own private beach association rather than assert their right to use the Liberty Lane access now being used by the Dunes Beach Association and share the costs of that access.

Finally, my clients do not agree with the applicant's assertion that they have easement rights over Eastham Avenue for the construction of a stairway.

Thank you. Please do not hesitate to contact me with any questions or concerns

Very truly yours,



Benjamin E. Zehnder

BEZ/
enclosures
cc via email only:
Richard McKeown
Client
Sheila Vanderhoef
Jacqui Wildes Beebe

**Property Address: 215 Thumpertown Road, Eastham
Certificate**

EASEMENT

We, **GAIL S MCKEOWN, MICHAEL W MCKEOWN, KEITH T MCKEOWN Trustees of the GMK Trust** under a Declaration of Trust dated June 13, 1994 being Document No. 617,058, of 132 Winter Street, Holliston, Middlesex County, Massachusetts 01746 ("Grantor"),

for consideration of ONE DOLLAR (\$1.00) paid,

grant to **The Town of Eastham**, by and through its Board of Selectmen, having a usual address of 2500 State Highway, Eastham, MA 02642 ("Grantee"),

a perpetual nonexclusive easement over the below-described portion of the land of the Grantor in Eastham, Barnstable County, Massachusetts known as 215 Thumpertown Road, shown on Land Court Plan 38549-A and noted on Certificate of Title 134096 as well as that portion of Crest Avenue adjacent to said land as shown on said plan.

Said easement area shall be the beach area of the Grantor's said land and Crest Avenue, meaning such land as shall from time to time exist seaward of the bottom of the coastal bank.

Said easement shall be for all purposes for which public beaches are used in the Town of Eastham as well as the right to traverse the easement area for access to other portions of the beach(es) along Cape Cod Bay, but shall not include the right to erect or maintain any permanent structures or to conduct any commercial activities thereon.

The land area in which the aforesaid right and easement is granted is conveyed subject to the right hereby expressly reserved by the Grantor to continue to enjoy the use of said land area for all purposes not adverse to the rights herein granted to the Grantee.

Said easement rights shall be void without recourse and shall revert to the Grantor or its assigns in the event of: 1) the issuance of a license or permit by the Grantee for the the construction of a pathway, stairway or other means of access to the beach and waters of Cape Cod Bay over Crest Avenue immediately westerly of the westerly terminus of Eastham Avenue; or 2) Actual construction of any pathway, stairway or other means of access to the beach and waters of Cape Cod Bay over Crest Avenue immediately westerly of the westerly terminus of Eastham Avenue;

Grantee, by its acceptance herein, agrees that it shall indemnify and hold the Grantor harmless from and against any and all liabilities, claims or suits arising out of the use of said easement by the Grantee or members of the public, excepting only those matters arising out of the intentional action or inaction of the Grantor.

Grantor trustees herein certify that the said GMK Trust has not been terminated, altered or amended; that they have the authority to grant the within easement; that all of the beneficiaries of

the said trust are of adult age and competent; and that they have been authorized and directed by all of said beneficiaries to execute and deliver the within instrument.

WITNESS the execution hereof under seal this _____ day of _____, 2016



GAIL S MCKEOWN, , Trustee



MICHAEL W MCKEOWN, Trustee




KEITH T MCKEOWN, Trustee

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared **GAIL S MCKEOWN**, Trustee, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she signed it voluntarily for its stated purpose,

Notary Public

My Commission Expires: 


AFFIDAVIT OF LUCETTA R. WILLIAMSON

1. My name is Lucetta R. Williamson and I make the within statements based upon my own personal knowledge and observations and under the penalties of perjury;
2. I reside at 350 Lodge Rd. in Middlebury VT.
3. I own two properties in Eastham MA. My husband and I purchased a cottage at 25 Eastham Ave. in 1959 where I spent summers with my family from 1960 until 1982. My husband and sons built our winterized home at 25 Martha Ave in 1982/1983. I have spent most or all of every summer at 25 Martha Ave since 1983.
4. The stairs that the Beach Association (BA) describe as "community" were always designed, built, paid for and installed by my husband and sons. They were our stairs placed deliberately on what we considered to be our property.
5. If there were minor repairs made to the stairs in our absence, I was not made aware of them and they were miniscule in comparison to the expense and labor involved in building and maintaining our stairs by my family.
6. We never collected or asked for money to pay for our stairs. If minor contributions were offered, my husband and I would decline them.
7. We never consulted with homeowners in the area regarding new stairs because it was not our obligation to do so. The Beach Association did not exist and was just formed this year.
8. My family has taken complete responsibility for the nourishment of the bank and buffer zone on which the pathway and stairs were located. We have replenished sand several times, planted beach grass and small bushes, and finally installed the very costly stone revetment.
9. When we built our first set of stairs in the 1960s, they were used by my family and a limited number of people that we recognized and knew. Over time usage increased greatly by people we did not know or recognize – and this was at all hours of the day and night. There was also an increasing disregard for the fragile top of the bank area that protects our home. People using the stairs left beach equipment and even a boat (sunfish size) dumped right on top of our precious beach grass and left for long periods of time. We have learned the hard way that where there are stairs, anyone will use them, whenever it suits them.
10. The storm in the winter of 2010 resulted in a sheer cliff from the top of our bank to the beach, inches from the edge of our deck. Before any chance to reinforce the bank was possible, we observed tire tracks ending just feet from the edge of

the bank. My son constructed a barrier for the purpose of preventing further damage by a car to the already fragile bank, as well as preventing the possibility of personal injury.

11. In my mind the most reasonable alternative to what the BA proposes is what they have been doing for the past three summers, namely using the stairs at Thumpertown Beach Landing. This alternative involves no more than 1-2 minutes additional walk time along well traveled roads. Roads that my children and grandchildren, and countless others, use daily to access Thumpertown Beach Road for jogging, bike riding and walking.

Dated: October 1 2012



Lucetta R. Williamson

49

D

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

Barnstable, ss.

Miscellaneous
Case No. 98220

JOHN S. AHERN and
ALICE M. AHERN,
Plaintiffs

vs.

DUNES BEACH ASSOCIATES, INC.,
DONALD J. HARRAHY, DORIS A.
HARRAHY, CLIFFORD R. BREWER,
EMMA C. BREWER, CHARLES W.
BEATTIE, ELIZABETH J. BEATTIE,
WILLIAM C. McGOVERN, JOY W.
McGOVERN, MICHAEL J. MERTEN,
FRED HEDLUND, JR., BARBARA A.
HEDLUND, EDWARD F. SAVAGE,
EVELYN V. SAVAGE, FRANK X.
MANGANARO, NANNETTE S.
MANGANARO, DONALD B. LAKE, MARY
M. LAKE, EDWARDE. ANDREWS,
ANN-MARIE K. ANDREWS, ROBERT W.
CHESNEY, TERRY TESTER, A. JOSEPH
LASKOWSKI, VIRGINIA M. LASKOWSKI,
DANIEL H. DeMALE, VIDA R. DeMALE,
and TOWN OF EASTHAM,
Defendants

ORDER DENYING PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

The plaintiffs are the owners of lots 19 and 20 on a plan entitled "Plan of House Lots for S.S. Higgins, Eastham, Mass.", dated June 20, 1899 and recorded with Barnstable Deeds, Plan Book 26, Page 127 (the "Higgins Plan"). Title to a portion of lots 19 and 20 was registered in Case No. 28083, but title to the remainder, closer to the site of the present dispute, remains unregistered. The plaintiffs in the present proceeding seek diverse avenues of relief against the Town of Eastham (the "Town") added as a necessary party defendant by order of Court entered on December 18, 1981, and against Dunes Beach Associates, Inc. and

twenty-six property owners in said town. Motions for summary judgment by the plaintiffs and the original defendants were argued on December 6, 1981. After the Town was made a party and answered, motions by and against it for summary judgment again were argued on June 1, 1982. Affidavits were filed in connection with the motions, and upon motion by counsel for the private defendants, the Court also has considered its records in Registration Case Nos. 27333 and 28083. For the sake of clarity, the Court has attached to this decision a copy of the Eastham Assessors' plan on which counsel for the private defendants has indicated the location of the plans which figure in this proceeding and the numbers of the relevant Land Court cases. The Court suggested to counsel at the hearing on June 1, 1982 that motions for summary judgment were an inappropriate method of deciding the complex issues presented in the complaint, but the argument was made that there were no facts in dispute.

After consideration of the pleadings, the affidavits and the records in the above-numbered Land Court cases and other cases in the same area (Registration Cases Nos. 38549, 38550 and 38551) the Court denies the plaintiffs' motions for summary judgment and grants the defendants' motions for summary judgment.

On such evidence, I find and rule as follows:

1. The Higgins Plan depicted sixty numbered lots and seven streets, i.e. Liberty Avenue, Pleasant Avenue, Eastham Avenue, Seaview Avenue, Hewett Lane, Martha Avenue and Crest Avenue.

2. In Land Court Case No. 20438 title to fifty-seven numbered lots were registered, the majority to the original petitioner, James E. Lynch, and the remainder to parties claiming under him. A portion of lots 37 and 56 on Land Court Plan No. 20438^A (the "Lynch Plan") also are shown on the Higgins Plan, i.e. lots 25, 26, 29, 30, 31, 32, and part of 33.

3. Martha Avenue, as well as Liberty and Eastham Avenues and Hewett Lane, also are shown on the Lynch Plan.

4. Notice was given in Case No. 20438 to the then owners of all lots on the Higgins plan. An appearance and answer was filed on behalf of at least one of such persons, Mildred E. Schofield. The petitioner entered into a stipulation with Mrs. Schofield which in paragraph 2 provided:

"2. That each of the parties and all other persons owning property in the S.S. Higgins subdivision as shown on that plan, legally entitled thereto, have the right to use said ways, on said plan, in common with the petitioner and other persons having a legal right over said ways."

The decree of registration of the lots still owned by Lynch at the time of its entry, June 11, 1952, referred to such stipulation in these words:

"The land hereby registered is subject to, and has the benefit of, the terms of a stipulation between the petitioner and Mildred Schofield, filed with the papers in this case on August 9, 1948, a copy of which will be filed at the Barnstable County Registry of Deeds with this decree."

The decrees in the names of substituted petitioners who had acquired title to lots from Lynch during the pendency of his registration proceedings did not mention the stipulation.

5. Thereafter, Harvey C. Newton and wife registered title to all the land on the Higgins Plan between Eastham Avenue on the north, Martha Avenue on the east, Liberty Avenue on the south and Crest Avenue on the west, other than lots 53 and 54 which subsequently were registered in the name of a third party in Case No. 38551. In the Newton registration proceedings a stipulation was entered into between the petitioners and the Town of Eastham to the effect that firstly, the petitioners waived and relinquished any claims of ownership they have or might have in Crest Avenue, and to the premises lying between said Crest Avenue and the waters of Cape Cod Bay, and that secondly, the petitioners, in common with the public, The Inhabitants of the Town of Eastham and all persons deriving said right by ownership of lots shown on the Higgins plan, had the right to the use of said

Crest Avenue and the premises between it and the waters of Cape Cod Bay for the purposes of travel on foot or by vehicle and for bathing, boating, fishing and kindred purposes, subject only to such rules and regulations as may now be in force and effect or may from time to time be set up or enacted by the Town.

6. Accordingly, the decree of registration provided as follows:

"There is appurtenant to the land hereby registered rights in and over said Crest Avenue and the area between said Crest Avenue and Cape Cod Bay, shown on said plan, subject only to such rules and regulations, all as set forth in a stipulation between the petitioners and the inhabitants of the Town of Eastham, filed with the papers in this case on October 21, 1958 . . ."

7. In the Case No. 27333 registration proceedings, the plaintiffs' predecessor in title, Harry Taylor, filed an answer.

8. There is a third subdivision plan of relevance which is entitled "Subdivision of Land in Eastham, Mass. belonging to Philip M. Smith", dated December 1952, by Scofield Brothers, duly recorded (the "Smith plan").

9. Dunes Beach Associates, Inc. ("Dunes") is a Massachusetts corporation organized under General Laws, c. 180, for the purpose of a neighborhood improvement association, has a membership of thirty-seven families and presently is accepting no new members.

10. Dunes is said to be the grantee in an instrument granting an easement five feet in width for the purpose of a footpath to be used by its members and extending westerly along Boreen Road on its southerly side adjacent to land now or formerly of Leroy K. Houghton to the westerly terminus of said road, then turning at a right angle and extending northerly across Boreen Road and over Lot 56 along its southwesterly boundary a sufficient distance to provide footpath access to Liberty Avenue.

11. Dunes, through its members, has constructed and is continuing to maintain a set of stairs on the banking at the edge of Cape Cod Bay leading down from Crest Avenue to the beach at a point at least seventy-five feet northerly of

Crest Avenue.

12. Since 1979 some of the individual defendants have walked westerly on the northerly side of Liberty Avenue to Crest Avenue, and thence northerly on Crest Avenue to the stairs and descended them to the beach with a reverse route being followed on their return to their properties. Prior to 1979 and the commencement of construction of a house on lot 7 on plan No. 27333^A the neighborhood route to the beach crossed said lot.

13. The defendants Laskowski are the owners of the land with the dwelling thereon on the southerly side of Boreen Road, shown as Lots 1 and 3A, Block B on the Smith plan. The dwellings are rented during the summer months with the maximum number of occupants limited to twenty-two persons.

14. The defendants DeMale are the owners of land on the northerly side of Sand Pit Road (now Weir Road) shown on the Smith plan, but said land is not part of the subdivision shown thereon.

The plaintiffs seek a permanent injunction restraining a) each of the individual defendants from using Liberty Avenue as shown on the Higgins plan for access to Cape Cod Bay and b) Dunes and its members from constructing, repairing, maintaining or providing an access route or stairway to Cape Cod Bay which requires the use of the ways on the Higgins plan, particularly Liberty Avenue. The plaintiffs further seek a determination that the defendants Manganaro and Harrahy as owners of Lots 37 and 56 on the Lynch plan and those claiming under them may not use Liberty Avenue to reach Cape Cod Bay, and a further determination that the stipulation in Case No. 20438 registered as Document No. 33426 gives none of the defendants whose certificates of title refer thereto any right to use Liberty Avenue. The plaintiffs also seek relief against the Town of Eastham by a determination that a) it has no prescriptive right to use Crest Avenue and the land between Crest Avenue and Cape Cod Bay for the

purpose of boating, bathing, fishing and other like purposes, b) that the Town took only such rights as Harvey C. Newton and wife might have in the area covered by the stipulation in Land Court case No. 27333 and that rights acquired by the Town under said stipulation are not in derogation of the rights of the plaintiffs and other owners of land on the Higgins Plan.

The abstract in said Registration Case No. 27333 commences with a deed from Martha C. Higgins to Solomon S. Higgins, dated November 19, 1897 and duly recorded in Book 235, Page 24, which bounds "by the bay" (s. 2) but the Higgins plan does not show any land lying westerly of the most westerly line of lots thereon other than so much thereof as is shown as Crest Avenue. In conveying out lots the pattern seems to have been to describe the property by lot number. By virtue of the dangling fee statute, G.L. c. 183, §58, such a conveyance today would be construed as including the entire fee of Crest Avenue subject to the rights of others entitled to use it. The beach area which exists in fact on the ground although not shown on said plan arguably might have been considered either an amenity appurtenant to land of the owners of all the subdivision lots or an area retained by the developer or one in which a third party has obtained rights by adverse possession or otherwise. The adoption by the Court in the decree of registration of the stipulation in Registration Case No. 27333 forecloses the plaintiffs from now raising any question as to the rights of the public and the Town in Crest Avenue and to the title to the land between it and Cape Cod Bay. It is the plain import of the decree that title to the fee of Crest Avenue and the beach is in the Town as provided in the stipulation. Notice of the proceedings had been given to the plaintiffs' predecessor in title (who appeared and answered). This question could have been litigated at that time and was not. It is now too late to object to the Court's acceptance of the position of the Town of Eastham incorporated in the

stipulation. By the stipulation the petitioners in Case No. 27333 relinquished any claim of ownership to the fee of Crest Avenue and to the land between it and the waters of Cape Cod Bay subject to their rights to use the same in common with the public, The Inhabitants of the Town of Eastham and all persons deriving said right by ownership of lots shown on the Higgins Plan, for the purposes enumerated in the stipulation. Therefore, the defendants in this case as residents of Eastham and members of the public, have a right to use Crest Avenue and the beach. The plaintiffs, as owners of lots on the Higgins Plan, may have standing to question the extent of the use by the defendants in their erection of stairs to reach the beach even if the town, the owner of the fee, does not. The primary right to contest the erection of the stairs, however, would appear to be in the Town. In any event, one who has the benefit of an easement has the right to employ all necessary means to enjoy it fully, and the erection of stairs is permissible under this principle. See Sullivan v. Donohoe, 287 Mass. 265, 267 (1934).

The decree in registration Case No. 27333 included the appurtenant right to use Crest Avenue and the area between the street and the waters of Cape Cod Bay. The Court, therefore, accepted the position of the parties that title to the fee in the street and the beach was in the Town of Eastham. If the status of the Town's title now were open to challenge, it appears that the Town would be able to show title based either upon tax takings or adverse possession. Daley v. Swampscott, Mass. App. Ct. ___ (1981)^{1/}. The Town, therefore, as the owner of the beach, would be the more appropriate party to raise any question as to the propriety of the defendants' use of the beach.

The motion for summary judgment by the Town accordingly is allowed.

^{1/}Mass. App. Ct. Adv. Sh. (1981) 959.

The plaintiffs also contest the right of the owners of the lots originally registered in the name of James E. Lynch to use the ways shown on the Higgins Plan. As hereinbefore mentioned the Lynch plan incorporated Martha Avenue as one of the streets shown thereon and notice was given to all the then owners of the remainder of the lots shown on the Lynch plan. Registration of the title to the lots on said plan showing the streets on the Higgins Plan (other than Crest Avenue) in effect was a holding that the Lynch lots had the benefit of the rights to use the streets on the Higgins Plan. This is so whether the decree originally registering title was, as to any particular lot, that incorporating the stipulation or not. This posture of the case makes it unnecessary to treat separately any question as to overburdening by Manganaro and Harrahy whose properties are made up of both Higgins and Lynch lots of the right to use Liberty Avenue. See, however, Deery v. Foster, Land Court Miscellaneous Case No. 104666 at page 13 where it is said:

"In the recent case of Myers v. Salin, 13 Mass. App. Ct. 127 (1982), there was a similar factual situation with a claim made and rejected as to overburdening the easement. There it was said:

"There is no evidence that the plaintiff Dow has placed any undue burden on the easements, despite the fact that he lives in a house on a parcel adjacent to the narrow parcel to which the easements created by the Whittington deeds are appurtenant. Compare Brassard v. Flynn, 352 Mass. 185, 189-190 (1967). It will be time enough to consider whether he in fact overburdens the easement when and if he makes a more significant or any unreasonable use of the beach rights or of the extension of Bradford Road."

The only remaining issue concerns the right of the remaining defendants, principally owners of lots on the Smith plan, to use Liberty Avenue to reach Crest Avenue, the stairs to the beach and the beach itself. Liberty Avenue, as shown on the plans, is thirty feet wide, and the foot path which the defendants follow is located approximately five feet southerly of the snow fence on lot 7 on Plan No. 27333^A. Liberty Avenue itself is only a paper street. It is clear that the plaintiffs, as owners of lots 19 and 20 on the Higgins Plan have the right to use Liberty

Avenue, in common with the owners of all the lots on the Higgins Plan and, as decided above, on the Lynch Plan. The plaintiffs have not used this right, but they ask the Court to restrain others from passing over the way on foot even though the owners of the fee of this portion of Liberty Avenue have no objection; it is well settled, of course, that the owner of the fee which is subject to an easement retains all rights therein not inconsistent with the grant of the easement. Healey v. Smith Carriage Co., 265 Mass. 203 (1928). Western Mass. Electric Co. v. Sambo's of Mass., Inc., 8 Mass. App. Ct. 815 (1979). A second and related principle is that the usual easement is not exclusive. Under all the circumstances here, i.e., the implementation of the Newton stipulation, the Lynch plan, the undeveloped nature of the surroundings and of Liberty Avenue and the type of passage over it, I find and rule that the defendants who own lots on the Smith Plan and DeMale may continue to pass to and from the beach on foot over the northerly half of Liberty Avenue. Greene v. Canny, 137 Mass. 64 (1884) is distinguishable.

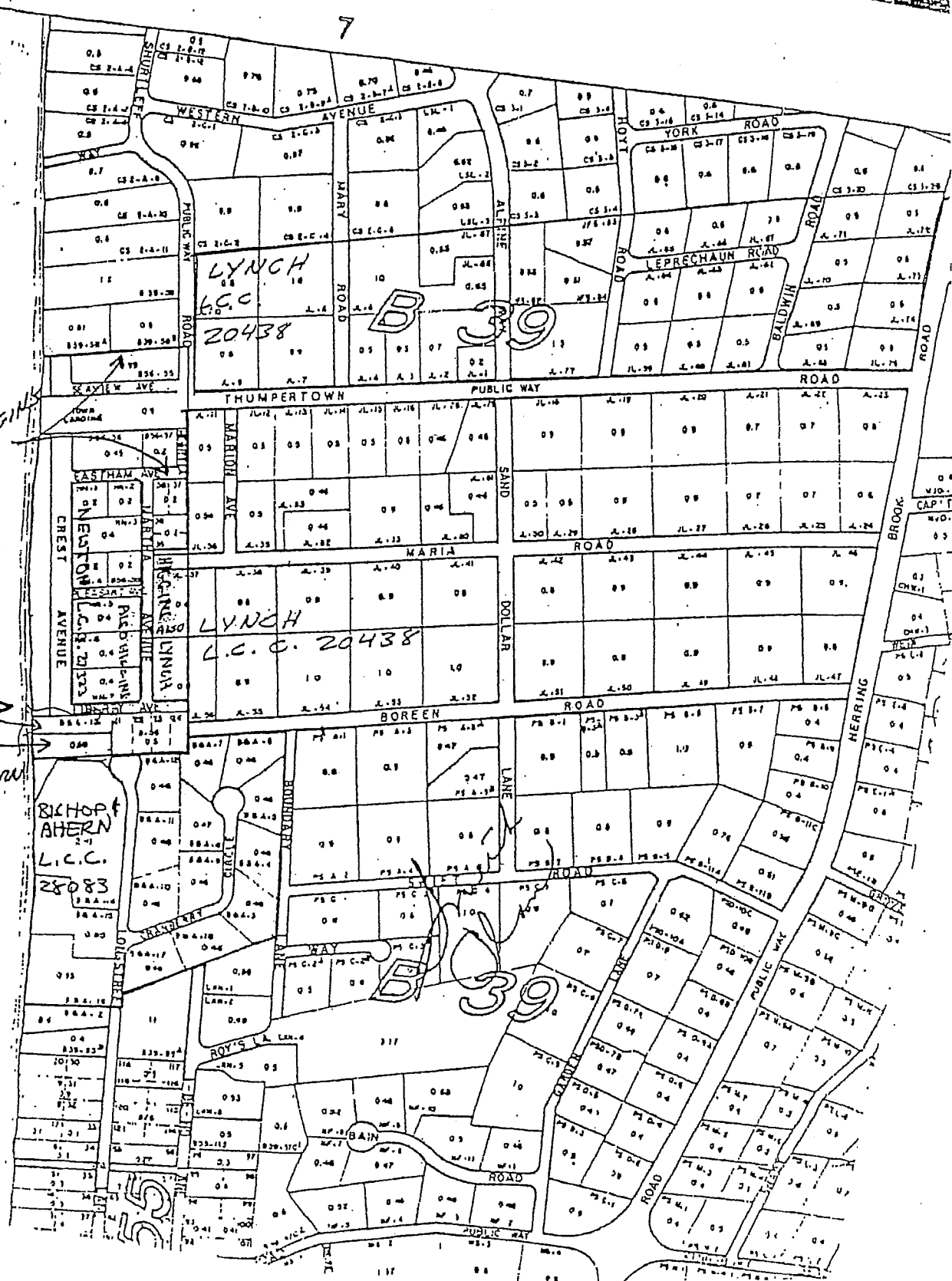
It follows that the private defendants' motions for summary judgment is allowed.


Justice

June 28, 1982

S.S. HIGGINS

John S. Higgins
1450
BANKS AVERN
18043



BICKHOF
AVERN
L.C.C.
28083

LYNCH
L.C.C. 20438

JUN 14 1983

COMMONWEALTH OF MASSACHUSETTS.

APPEALS COURT FOR THE COMMONWEALTH,

At Boston,

June 13, 1983.

IN THE CASE OF

JOHN S. AHERN & another

vs.

DUNES BEACH ASSOCIATES, INC. & others.

pending in the Land

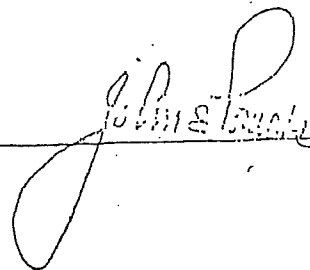
Court for the County of Suffolk

ORDERED, that the following entry be made in the docket; viz,—

Order denying motion for relief
from judgment affirmed.

Judgment affirmed.

By THE COURT,

 CLERK.

June 13, 1983.

OVER

NOTE.

The original of the within rescript
will issue in due course, pursuant
to M.R.A.P. 23.

APPEALS COURT

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

NO. 82-1008

JOHN S. AHERN & another

vs.

DUNES BEACH ASSOCIATES, INC., & others.

MEMORANDUM AND ORDER

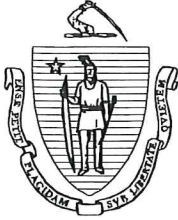
Following oral argument and consideration under Rule 1:28 of this court, the panel have concluded that each of the questions which have been argued on the appeals (see Mass.R.A.P. 16[a][4], as amended, 367 Mass. 921 (1975); Lolos v. Berlin, 338 Mass. 10, 13-14 [1958]) was properly decided by the judge below, essentially for the reasons given by her.

Accordingly, it is ordered that the order denying the motion for relief from judgment and the judgment be, and the same hereby are, affirmed.

By the Court (Grant, Armstrong
& Greaney, JJ.),

Ronald D. Cretney
Assistant Clerk

Entered: June 13, 1983.



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Chrystal Komegay, Undersecretary

April 27, 2016

Ms. Elizabeth Gawron
Eastham Board of Selectmen
2500 State Highway
Town Hall
Eastham, Massachusetts 02642

AKA - Roach Property

ADMINISTRATION

RECEIVED

Re: The Meadows, Local Initiative Project, Eastham, MA
Certified Cost and Income Statement

Dear Ms. Gawron:

The Department of Housing and Community Development (DHCD) has received the enclosed Certified Cost and Income Statement submitted by the Project sponsor for The Meadows housing development as required by Section 4 of the Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants (Regulatory Agreement) for the development. DHCD has reviewed the Certified Cost and Income Statement and determined that the Project Sponsor is in compliance with the G.L. c.40B limited dividend requirement as set forth in the Regulatory Agreement.

In the original Certified Cost and Income Statement, DHCD found that the market rate commissions exceeded the limit of 6% of the market sales proceeds. The independent auditor subsequently confirmed that the affordable unit commissions were 3% of affordable unit sales, market unit commissions were below 6% and furniture staging in a model home was listed separately. The adjusted figures are found on the Schedule of Total Chapter 40B Costs *with CPA Adjustment*.

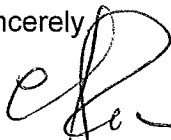
Section 4(c) of the Regulatory Agreement provides that prior to DHCD's acceptance of the Certified Cost and Income Statement, the Town of Eastham will have a period of 30 days to have the Certified Cost and Income Statement evaluated for accuracy by an independent auditor applying the same standards as DHCD. DHCD will review any inaccuracies identified by the Town before issuing an acceptance of the Certified Cost and Income Statement.

Please address any comments in writing by May 27, 2016 to:

Catherine Racer, Associate Director
Division of Housing Development
Department of Housing and Community Development
100 Cambridge Street, Suite 300
Boston, Massachusetts 02114

If you have any questions regarding these materials, please feel free to contact Rachel Carlson at 617-573-1303.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Racer', with a long horizontal flourish extending to the right.

Catherine Racer
Associate Director

Enclosures-New Cape Enterprises, LLC-Independent Accountant's Report-May 5, 2015

Received

MAY 27 2015

Division of Housing Development

NEW CAPE ENTERPRISES, LLC

COST CERTIFICATION

APRIL 30, 2007

Received

MAY 27 2015

Division of Housing Development

NEW CAPE ENTERPRISES, LLC

COST CERTIFICATION

APRIL 30, 2007

NEW CAPE ENTERPRISES, LLC
COST CERTIFICATION
APRIL 30, 2007

Contents

<u>Section</u>	<u>Page</u>
1 Examination of Cost Certification	
Independent Accountants' Report	2
Schedule of Chapter 40B Maximum Allowable Profit from Sales	3
Schedule of Total Chapter 40B Costs	4
Notes to Schedules	5
2 Developer's Certificate	
3 Identification of RS Means Construction Data	
4 Release authorizing Developer's CPA to share workpapers	
5 General Contractor's Certificate	

PAULA J. ERICSSON, CPA

291 Nashua Road
Billerica, MA 01821
978-667-0244 fax 978-215-4010
paula@pjecpa.com

INDEPENDENT ACCOUNTANT'S REPORT

To the Members of New Cape Enterprises, LLC

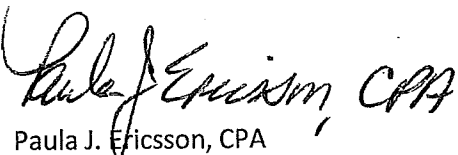
We have examined the accompanying Schedules of Chapter 40B Maximum Allowable Profit from Sales and Total Chapter 40B Project Costs of New Cape Enterprises, LLC as of April 30, 2007. These schedules are the responsibility of management of New Cape Enterprises, LLC. Our responsibility is to express an opinion on these schedules based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and, accordingly, include examining on a test basis, evidence supporting New Cape Enterprises, LLC's, schedules of Chapter 40B Maximum Allowable Profit from Sales and Total Chapter 40B Project Costs and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

As described in Note 1, the schedules were prepared in conformity with the accounting practices prescribed by the requirements of the Massachusetts Housing Finance Agency ("MassHousing"), MGL Chapter 40B, and the Regulations, 760 CMR 31.00, et seq., *Guidelines for Housing Programs in which Funding is Provided through a Non-Governmental Entity*, issued by the Department of Housing and Community Development, and applicable sections of the Massachusetts Housing Partnership's *Local 40B Review and Decision Guidelines Appendix: Standards for Determining Whether Permit Conditions Make a 40B Development Uneconomic* (November 2005).

In our opinion, the schedules referred to above present fairly, in all material respects, the Chapter 40B Maximum Allowable Profit from Sales and Total Chapter 40B Project Costs of New Cape Enterprises, LLC as of April 30, 2007, in conformity with guidelines prescribed by the Department of Housing and Community Development and MassHousing.

This report is intended solely for the information and use of the Members of New Cape Enterprises, LLC, MassHousing, the Commonwealth of Massachusetts, the Department of Housing and Community Development, and the Town of Eastham, MA and is not intended to be and should not be used by anyone other than these specified parties.



Paula J. Ericsson, CPA
May 5, 2015
Billerica, MA

NEW CAPE ENTERPRISES, LLC
BAY MEADOWS
SCHEDULE OF CHAPTER 40B MAXIMUM ALLOWABLE PROFIT FROM SALES
AS OF 4/30/2007

This Schedule covers the period from Oct 1, 2004 to April 30, 2007

Affordable Unit Fraction 56%

SALES REVENUE

	<u>Total Number of Units</u>	<u>Total Dollars</u>	
Market Unit Sales	8	\$ 3,808,500	
Affordable Unit Sales	10	<u>1,464,000</u>	
Total Sales Revenue	18	5,272,500	(A)
Total Project Costs (taken from Schedule of Total Chapter 40B)		<u>4,420,085</u>	(B)
Computed Profit from Sales		<u>\$ 852,415</u>	C=(A)-(B)
**Maximum Allowable Profit- 20% of Total Project Costs		<u>\$ 884,017</u>	D=(B) X 20%
Excess Profit		<u>0</u>	C-D
Percent Profit		<u>19%</u>	%(C)/(B)

**Maximum Allowable Profit from Sales is limited to the lesser of 20% of Total Project Costs or the amount as directed in the Regulatory Agreement.

**NEW CAPE ENTERPRISES, LLC
BAY MEADOWS
SCHEDULE OF TOTAL CHAPTER 40B COSTS
AS OF 4/30/07**

WITH CPA ADJUSTMENT

<u>DEVELOPMENT ITEM</u>	<u>TOTAL COST</u>	<u>PER UNIT COST</u>
SITE ACQUISITION	\$ 396,813	\$ 22,045
HARD COST		
Site Development Costs		
Roads (including utilities in roads)	175,495	9,750
On-site Septic System	55,969	3,108
On-site Water System	35,452	1,970
Landscaping	76,050	4,225
Utility Connections	63,738	3,541
Residential Construction*	2,817,659	156,537
TOTAL HARD COSTS	\$ 3,224,363	\$ 179,131
SOFT COSTS		
Permits/Surveys	2,200	122
Architectural	126,751	7,042
Engineering	95,187	5,288
Legal	36,966	2,054
Insurance	26,018	1,445
Property Taxes	4,018	223
Construction Loan Interest	124,948	6,942
Appraisal	768	42
Accounting	10,000	556
Commissions/Advertising		
Affordable Units	43,290	4,329
Market Units	204,676	25,585
Furniture Staging	35,977	1,999
Consulting	16,110	895
Developer's Overhead	72,000	4,000
TOTAL SOFT COST	\$ 798,909	\$ 44,384
TOTAL DEVELOPMENT COSTS	\$ 4,420,085	\$ 245,560
Per Square Foot Hard Cost		
Market Type 1	191	
Market Type 2	116	
Affordable Unit Type 1	191	
Affordable Unit Type 2	116	

* To be supported by RS Means data.

**NEW CAPE ENTERPRISES, LLC
BAY MEADOWS NOTES TO SCHEDULES
APRIL 30, 2007**

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Organization

New Cape Enterprises, LLC, a Massachusetts limited liability company, was formed on June 16, 2004 to acquire, develop and sell 18 units of residential housing, including 10 units for qualifying low income families in Eastham, Massachusetts. Substantial completion of the project occurred on January 31, 2007 when the last of the certificates of occupancy were obtained.

Basis of Presentation

The accompanying Schedules have been prepared utilizing the format prescribed by the Massachusetts Housing Finance Agency, as Project Administrator for the Department of Housing and Community Development. The purpose of these Schedules is to facilitate the review and determination of the project's allowable profit from sales.

Basis of Accounting

The accompanying Schedules have been prepared in conformity with the accounting practices prescribed by the requirements of the Massachusetts Housing Finance Agency ("MassHousing"), MGL Chapter 40B, and the Regulations, 760 CMR 31.00, et seq., *Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity*, issued by the Department of Housing and Community Development, and applicable sections of the Massachusetts Housing Partnership's *Local 40B Review and Decision Guidelines Appendix: Standards for Determining Whether Permit Conditions Make a 40B Development Uneconomic* (November 2005) using the accrual basis of accounting.

Estimates

The presentation of the Schedules in conformity with the basis of accounting described above requires management to make estimates and assumptions that affect the reported amounts of sales and costs during the reporting period. Actual results could differ from those estimates.

NOTE 2 – CAPITAL CONTRIBUTIONS

The Members have made capital contributions of \$337,500.

NOTE 3 - FINANCING

Construction financing, in the amount of \$3,700,000, has been provided by a mortgage loan by Boston Private Bank & Trust Company. Interest is payable monthly at a variable rate equal to Boston Private Bank & Trust Company base rate during construction.

NOTE 4 – SUBSEQUENT EVENTS

The organization closed, has filed final documents and was in good standing with the Commonwealth of Massachusetts at the time of substantial completion of the project.

DEVELOPER'S CERTIFICATE

This Certificate is provided in connection with the cost certification of New Cape Enterprises, LLC (the "Developer") for a Chapter 40B development known as Bay Meadows (the "Development"), located in Eastham, MA (the "Municipality"), for purposes of assisting the Massachusetts Housing Finance Agency, as Subsidizing Agency as defined under the provisions of 760 CMR 56.02 (the "Subsidizing Agency") for the Development, in determining the Developer's compliance with the limitations on profit from the Development pursuant to the provisions of the Commonwealth of Massachusetts comprehensive permit process (M.G.L. Chapter 40B, 760 CMR 56, and the Massachusetts Department of Housing and Community Development's Comprehensive Permit Guidelines (collectively, the "Comprehensive Permit Rules")).

The undersigned hereby certifies to the Subsidizing Agency, DHCD and the Municipality, under pains and penalties of perjury, as follows:

1. At the time the project reached substantial completion, the Developer had a legal existence and was in good standing with the Commonwealth of Massachusetts.
2. Construction of the Development has been completed in good and workmanlike manner, in accordance with the plans and specifications approved pursuant to the Comprehensive Permit, and all materials and fixtures required by the plans and specifications have been furnished and installed and are of the best quality called for.
3. The information contained in the Schedules of Chapter 40B Maximum Allowable Profit from Sales and Total Chapter 40B Costs (collectively, the "Schedules") is accurate and complete. The Schedules are fairly presented in conformity with the Comprehensive Permit Rules and instructions provided by the Subsidizing Agency.
4. The Schedule of Chapter 40B Maximum Allowable Profit from Sales reflects revenue from the sales of all of the units in the Development.
5. All project costs shown in detail on the Schedule of Total Chapter 40B Costs and in total on the Schedule of Chapter 40B Maximum Allowable Profit from Sales have been paid as of the date of these schedules other than items listed as accruals or estimates.
6. I/We have identified all accounting estimates that could be material to the information in the Schedules and I/we believe the estimates are reasonable.
7. I/We have made available all necessary financial records and related data to the CPA who is conducting an examination of the Schedules.
8. There are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the information in the Schedules.
9. Except as noted on Exhibit A attached hereto, none of the amounts listed on the Schedule of Total Chapter 40B Costs were paid to a Related Party. A "Related Party" is (i) any person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Developer; (ii) any person that is an officer of, member in, or trustee of, or serves in a similar capacity with respect to the Developer or of which the Developer is an officer, member, or trustee, or with respect to which the Developer serves in a similar capacity; (iii) any person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the Developer, or of which the Developer is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the Developer has a substantial beneficial interest (10% or more); (iv) any spouse or "significant other" cohabiting with the Developer; (v) any parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of the Developer; (vi) any employee of the Developer and (vii) any spouse, parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of an employee of the Developer or any "significant other" of an employee of the Developer.
10. Except as set forth on Exhibit A attached hereto, there are no:
 - a. Payments for purchase of land from a Related Party, as defined in section #9 above.
 - b. Sales of units to a Related Party.
 - c. Contracts or subcontracts with a Related Party.

- d. Purchases of materials and/or supplies from a Related Party.
 - e. Purchases of services from a Related Party.
 - f. Financing provided by a Related Party, or
 - g. Any other transactions with a Related Party in connection with the Development.
11. I/We have reviewed the information presented in Exhibit B attached hereto, the RS Means Schedule, and I/we believe that the schedule is an appropriate representation of the Development.
 12. There are no developer overhead costs included in other line items on the Schedules.
 13. There are no costs in the Schedules that are included more than once.
 14. There are no costs listed in the Schedules that do not relate directly to the Development (except for permitted overhead expenses not duplicated in any other line item).
 15. The costs shown on the Schedules are net of all kickbacks, rebates, adjustments, discounts, promotional or advertising recoupment or similar reimbursement made or to be made to the Developer or any Related Party.
 16. There have been no communications from regulatory agencies concerning noncompliance with zoning or environmental laws or noncompliance with, or deficiencies in, financial reporting practices related to the Development.
 17. I/We have no knowledge of any fraud or suspected fraud affecting the Developer or the Development involving—
 - a. Management,
 - b. Subcontractors,
 - c. Employees who have significant roles in internal control, or
 - d. Others where the fraud could have a material effect on the Schedules.
 18. I/We have no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others.
 19. I/We have complied with all aspects of the final amended version of the executed Regulatory Agreement for this project and all provisions outlined in Mass Housing's Guidance to Developers and Municipalities for the Preparation of Cost Certification Upon Completion of 40B Project for which Mass Housing Serves as Subsidizing Agency.
 20. I/We will retain all records underlying the information provided in the Schedules for a period of at least four years from the date the Subsidizing Agency has accepted the final report, and will allow the Subsidizing Agency and the Municipality the right to inspect such records at reasonable times during the retention period.

EXECUTED under seal, under the pains and penalties of perjury, this 18th day of May, 2015.

Developer: New Cape Enterprises, LLC

Signature: Dennis R. Kanin

Name: DENNIS R. KANIN

Title: PRINCIPAL

EXHIBIT B - Identification of Appropriate RS Means Construction Data

[schedules to be provided for Affordable and Market Rate Units]

2 Bedroom Units: Appx 940sq

3 Bedroom Units: Appx 1800

Market Rate Units # of Market Rate Units: 8

Avg square footage of Market Rate Units: 3 Bedroom Units: Appx 1800

Type of Siding:

- ☐ Wood
- ☐ Brick
- ☐ Stucco
- Hardiplank on 3 bedroom units
- Shingles on 2 bedroom units

Type of Housing:

- ☒ Single Family detached
- ☐ Duplex
- ☐ Triplex
- ☐ Garden-style condominium
- ☐ Townhouse condominium
- ☐ Other: _____

Location of Unit:

- ☐ End-Unit
of units: _____
- ☐ Interior Unit
of units: _____
- ☒ N/A

Garage:

- ☒ No garage
- ☐ Yes
- ☐ 1-car garage
of units: _____
- ☐ 2-car garage
of units: _____
- ☐ Other: _____
- Is garage attached or detached? _____

Basement:

- ☒ Yes
- ☐ No
- Is basement unfinished or finished? _____

Bathrooms

- ☒ Full baths 2 full in (7) 3 bedroom units
- # of units: 1 full in (1) 2 bedroom unit
- ☐ Half baths
- # of units: _____

Windows and Skylights:

- ☐ Fixed Picture Windows
Size: _____
of units: _____
 - ☐ Bay/Bow Windows
Size: _____
of units: _____
 - ☐ Palladian Windows
Size: _____
of units: _____
 - ☐ Skylights
Size: _____
of units: _____
- Regular windows in all units:
24"x24" double hung

Fireplace

- ☒ No In (1) 2 bedroom unit
- ☒ Yes: Type
- ☐ Economy (prefab metal)
of units: _____
- ☒ Average (masonry)
of units: (7) in 3 bedroom units
- ☐ Custom (masonry)
of units: _____

Porch/Deck

- ☐ No
- ☒ Yes: Type
- ☐ Economy
of units: _____
- ☒ Average
of units: 8
- ☐ Custom
of units: _____
- ☐ Luxury
of units: _____

Finished Attic

- ☒ No
- ☐ Yes: Type
- ☐ Economy
of units: _____
- ☐ Average
of units: _____
- ☐ Custom
of units: _____
- ☐ Luxury
of units: _____

Central Air Conditioning

- ☐ in all units
- ☒ in 0 # of units

Cabinets

- ☐ Economy # of units: _____
- ☐ Average # of units: _____
- ☒ Custom # of units: 8
- ☐ Luxury # of units: _____

Countertops

- ☐ Economy # of units: _____
- ☐ Average # of units: _____
- ☒ Custom # of units: 8
- ☐ Luxury # of units: _____

Flooring

- ☒ Hardwood
of units: 8 742sf in (7) 3 bedroom units
amt sq foot per unit: 428sf in (1) 2 bedroom unit
- ☒ Tile
of units: 8 128sf in (7) 3 bedroom units
amt sq foot per unit: 312sf in (1) 2 bedroom unit
- ☒ Carpet
of units: 8 892sf in (7) 3 bedroom units
amt sq foot per unit: 144sf in (1) 2 bedroom unit
- ☐ Linoleum
of units: _____
amt sq foot per unit: _____

Affordable Units # of Affordable Units: 10

Type of Siding:

- ☐ Wood
☐ Brick Hardiplank on 3 bedroom units
☐ Stucco Shingles on 2 bedroom units

Type of Housing:

- ☒ Single Family detached
☐ Duplex
☐ Triplex
☐ Garden-style condominium
☐ Townhouse condominium
☐ Other: _____

Location of Unit:

- ☐ End-Unit
of units: _____
☐ Interior Unit
of units: _____
☒ N/A

Garage:

- ☒ No garage
☐ Yes
☐ 1-car garage
of units: _____
☐ 2-car garage
of units: _____
☐ Other: _____
Is garage attached or detached? _____

Basement:

- ☒ Yes
☐ No
Is basement unfinished or finished? _____

- Bathrooms** 2 full in (5) 3 bedrooms
☒ Full baths
of units: 10 1 full in (5) 2 bedrooms
☐ Half baths
of units: _____

Windows and Skylights:

- ☐ Fixed Picture Windows
Size: _____ Regular windows in all units:
of units: _____ 24"x24" double hung
☐ Bay/Bow Windows
Size: _____
of units: _____
☐ Palladian Windows
Size: _____
of units: _____
☐ Skylights
Size: _____
of units: _____

Fireplace

- ☒ No in (5) 2 bedroom units
☒ Yes: Type
☐ Economy (prefab metal)
of units: _____
☒ Average (masonry)
of units: in (5) 3 bedroom units
☐ Custom (masonry)
of units: _____
☐ Luxury (masonry)
of units: _____

Avg square footage of Affordable Units: 2 Bedroom Units: Appx 940sf
3 Bedroom Units: Appx 1800sf

Porch/Deck

- ☐ No
☒ Yes: Type
☐ Economy
of units: _____
☒ Average
of units: 10
☐ Custom
of units: _____
☐ Luxury
of units: _____

Finished Attic

- ☒ No
☐ Yes: Type
☐ Economy
of units: _____
☐ Average
of units: _____
☐ Custom
of units: _____
☐ Luxury
of units: _____

Central Air Conditioning

- ☐ in all units
☐ in 0 # of units

Cabinets

- ☐ Economy # of units: _____
☒ Average # of units: 10
☐ Custom # of units: _____
☐ Luxury # of units: _____

Countertops

- ☐ Economy # of units: _____
☒ Average # of units: 10
☐ Custom # of units: _____
☐ Luxury # of units: _____

Flooring

- ☐ Hardwood
of units: _____
amt sq foot per unit: _____
☐ Tile
of units: _____
amt sq foot per unit: _____
☒ Carpet
of units: 10 1504sf in (5) 3 bedroom units
amt sq foot per unit: 572sf in (5) 2 bedroom units
☒ Linoleum
of units: 10 258sf in (5) 3 bedroom units
amt sq foot per unit: 312sf in (5) 2 bedroom units

SPECIFICATIONS

Private well
Title V Septic System
Excavation and full foundation
Fiberglass roof shingles
Anderson High Performance Windows, 6 x 6 vinyl grill inserts and full screens
Anderson sliders and screens
Insulated steel front door
Clapboard or shingles front
Cedar trim (natural red cedar)
2" x 4" walls
Gas heat FHW
Aluminum gutters and downspouts
Brick front steps
Bulkhead
Fireplace, new used brick, flush hearth
Deck, 12' x 12'
Carpet and Vinyl flooring
Formica countertops with 4" backsplash
Fiberglass tub and shower units
Lighted medicine cabinets
Smoke detectors
Washer/dryer hookup
Colonial trim and miniwax finish
Flush insulation to Mass. building code
Tyvec wrap to all homes
Sheetrock primed interior walls
Rough grade landscaping
Appliances GE
Light fixtures
2 telephone jacks
1 cable outlet
1 outside spotlight
2 exterior faucets
1 electric outlet on deck

Form of Release

March 25, 2015

**Paula J Ericsson, CPA
291 Nashua Road
Billerica, MA 01821**

Dear Ms. Ericsson:

We have completed Bay Meadows, Eastham, MA, a Chapter 40B project, and have submitted to the Massachusetts Housing Finance Agency ("MassHousing"), the Subsidizing Agency for Chapter 40B projects, the cost certification report for the project, which included a Schedule of Chapter 40B Maximum Allowable Profit from Sales and a Schedule of Total Chapter 40B Costs. You have examined these schedules according to the Instructions to Developers and Independent Certified Public Accountants provided by MassHousing and have issued an Independent Accountant's Report on these schedules, with a date of May 5, 2015. We recognize that these schedules and the notes thereto contain information that is highly summarized.

We understand that MassHousing, in the fulfillment of its responsibilities as Subsidizing Agency for 40B projects, including gaining a fuller understanding of the detailed information behind the summarized data on the schedules, may wish to ask you for clarification of items reported on those schedules or notes thereto either through verbal discussions or through a review of the workpapers you gathered and generated during your examination.

We hereby authorize you to respond fully and without limitation to MassHousing's requests.

Very truly yours,

A handwritten signature in cursive script, reading "Dennis R. Kavin".

New Cape Enterprises, LLC

GENERAL CONTRACTOR'S CERTIFICATE

This Certificate is provided in connection with the cost certification of New Cape Enterprises, LLC (the "Developer") for a Chapter 40B development known as Bay Meadows (the "Development"), located in Eastham, MA (the "Municipality"), for purposes of assisting the Massachusetts Housing Finance Agency, as Subsidizing Agency as defined under the provisions of 760 CMR 56.02 (the "Subsidizing Agency"), in determining the Developer's compliance with the limitations on profit from the Development pursuant to the provisions of the Commonwealth of Massachusetts comprehensive permit process (M.G.L. Chapter 40B, 760 CMR 56, and the Massachusetts Department of Housing and Community Development's Comprehensive Permit Guidelines).

The undersigned hereby certifies to the Subsidizing Agency and the Municipality, under the pains and penalties of perjury, as follows:

1. The undersigned served as General Contractor for the Development pursuant to a contract dated April 27, 2005 (the "Construction Contract").
2. The original amount due under the Construction Contract was \$2,329,800. Change orders were approved in the amount of \$233,252, for a total contract sum of \$2,563,052.
3. All amounts shown on the Schedule of Total Chapter 40B Costs dated December 31, 2009, provided to you by the Developer, listed under the following line items, have been paid to the General Contractor, its subcontractors or suppliers: [list line items]
4. Except as noted in the chart below this paragraph, none of the foregoing amounts were paid to a Related Party to the Developer. A "Related Party" is (i) any person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Developer; (ii) any person that is an officer of, member in, or trustee of, or serves in a similar capacity with respect to the Developer or of which the Developer is an officer, member, or trustee, or with respect to which the Developer serves in a similar capacity; (iii) any person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the Developer, or of which the Developer is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the Developer has a substantial beneficial interest (10% or more); (iv) any spouse or "significant other" cohabiting with the Developer; (v) any parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of the Developer; (vi) any employee of the Developer and (vii) any spouse, parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of an employee of the Developer or any "significant other" of an employee of the Developer.

List of Contractors and Subcontractors that are Related Parties:

Name of Contractor/Sub-Contractor	Work Performed and Nature of Relationship to Developer	Amount Paid

5. If the General Contractor is a Related Party to the Developer, as defined herein, the undersigned hereby certifies that the General Contractor performed all of the following tasks that are typically required of general contractors:

- Construction of buildings
- Supervision and coordination of work
- Job site safety
- Project scheduling
- Submission of shop drawings
- Preparation of payment requests
- Warranty of work

EXECUTED under seal, under the pains and penalties of perjury, this 10 day of APRIL,
15.

General Contractor:

Signature: David P. Fleming
Name: DAVID P. FLEMING
Title: PRESIDENT

Key: 10943 Town of Eastham - Fiscal Year 2017 Preliminary

5/18/2016 9:23 am SEQ # 1

CURRENT OWNER			PARCEL ID		LOCATION		CLASS	CLASS%	DESCRIPTION		BN ID	BN	CARD
EASTHAM TOWN OF			2-32-A		300 SANDY MEADOW WAY		9300	100	VAC.SELECT/CITY CNCL				1 of 2
ROACH PROPERTY			TRANSFER HISTORY		DOS T SALE PRICE BK-PG (Crt)		PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY
G 2500 STATE HWY			EASTHAM TOWN OF		07/25/1996 E								
A EASTHAM, MA 02642			EASTHAM TOWN OF		07/25/1996 E				30	SUBDIVISION			
					1,171,651 (141491)								0 100

* - Partial Listing. See Next Page.

TOTAL		43.345 Acres	ZONING		A	FRNT	0	ASSESSED		CURRENT	PREVIOUS
Nbrhd		NORTH EASTHAM		N LOTS MFR-1 TO MFR-77, MFR-1 TO MFR-77 "87"				LAND		1,453,700	1,235,600
INFL1		100		O ROACH FY98, FY07 SPLIT - WAS 2/32, FY12 2/23U & V				BUILDING		0	0
INFL2		100		T SPLIT FROM 2/32A, FY08 INCL 2/32B, ACCESS				DETACHED		0	0
				E EASEMENT 600/86.				OTHER		0	0
TOTAL								TOTAL		1,453,700	1,235,600

								PHOTO	
								BLDG COMMENTS	



Memo:

To: Board of Selectman

From: Jessica Burt

Date: June 6, 2016

Re: Upcoming Committee Vacancies

The following committee members have terms that will expire July 1.

Mr. Gulrich and Dr. Haspel have served three consecutive terms:

Steven Gulrich	1651 Forest Advisory Committee
Dr. Martin Haspel	Animal Advisory

The following members do not wish to seek reappointment:

Martin Haspel	Board of Health
Carol DiBona	Council on Aging
Dolores Higgins	Council on Aging
Margaret Phillips	Human Services Advisory Committee
Joyce Ikonnikow	Recycling Committee
Janet Sisterson	Water Management Committee

Thank you,

Jessica Burt
Receptionist



P R O J E C T P L A N N I N G P R O F E S S I O N A L S

Charles Shurtleff, Mass DEP
Mass DEP
20 Riverside Drive
Lakeville, MA 02347

Michael DelVecchio, P3
150 Longwater Drive, Suite 102
Norwell, MA 02061

Dear Mr. Shurtleff,

Please accept this letter as a formal request to reactivate PWS # 4086094 for the new Eastham Public Library located at 190 Samoset Road, Eastham MA for a temporary duration of approximately 8 months.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael A. DelVecchio'.

Michael A. DelVecchio, P3

Cc: Dan Pallotta, P3
Sheila Vanderhoef, Town of Eastham



May 27, 2016

Board of Selectmen
Town of Eastham
2500 State Highway
Eastham, MA 02642

ADMINISTRATION

MAY 31 2016

RECEIVED

Re: Channel Change Information

Dear Chairman and Members of the Board:

We are writing to share with you the following channel changes occurring on July 28, 2016 within your community.

WHDH-ThisTV will move from ch 297 to ch 936;
WLVI-BuzzR will move from ch 291 to ch 939;
WCVB-MeTV will move from ch 292 to ch 942;
WFXT-Movie will move from ch 296 to ch 948;
WBIN-AntennaTV will move from ch 288 to ch 951;
WBIN-Grit will move from ch 289 to ch 952;
WGHB-World will move from ch 209 to ch 956;
WGBX-Kid will move from ch 217 to ch 958;
WGBX-Create will move from ch 237 to ch 959;
WSBE-Learn will move from ch 294 to ch 965;
WSBE-Vme will move from ch 293 to ch 966;
WFXZ-CD will move from ch 300 to ch 981;
WNEU-Exito will move from ch 290 to ch 983;
WUNI-LATV will move from ch 299 to ch 986;
WYDN-SD will move from ch 295 to 23.

Please be advised customers are receiving notification of this information, in advance, via bill message. Should you have any questions, please do not hesitate to contact me at 508.732.1536.

Sincerely,

Michael Galla

Michael Galla, Sr. Manager
Government & Regulatory Affairs



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508-240-5900 • Fax 508-240-1291
www.eastham-ma.gov

EASTHAM ZONING BOARD OF APPEALS AND EASTHAM PLANNING BOARD JOINT PUBLIC HEARING

MEETING AGENDA

Earle Mountain Room

June 15, 2016, 5:00 pm

1. Opening Statements

2. Open Joint Public Hearing

Case No. ZBA2016-6 – 10 Bayberry Lane, Map 13, Parcel 172. Philip Samuel Dickinson Revocable Trust (Owner) seeks a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law Section VI.C to demolish and rebuild a pre-existing, non-conforming single family residence in violation of lot size and setback requirements.

Case No. PB2016-13 – 10 Bayberry Lane, Map 13, Parcel 172. Philip Samuel Dickinson Revocable Trust (Owner) seeks Site Plan Approval – Residential pursuant to Eastham Zoning By-Law Section IX D.1 (Residential Lot Intensity) and Section XIV (Site Plan Approval – Residential) to demolish the existing dwelling and construct a new dwelling on a lot containing less than 20,000 sf resulting in a site coverage ratio greater than 15% and percentage of expansion greater than 2.5%.

Case No. ZBA2016-7 – 10 Ballwic Road, Map 12, Parcel 211B. Town of Eastham (Owner), Children's Place, Inc. (Applicant) seek a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law Section VI.D (non-conforming uses) for an addition to a pre-existing, non-conforming structure for educational use in District A – Residential.

Case No. PB2016-17 – 10 Ballwic Road, Map 12, Parcel 211B. Town of Eastham (Owner), Children's Place, Inc. (Applicant) seek Site Plan Approval – Special Permit pursuant to Eastham Zoning By-Law Section XIII (Site Plan Approval – Special Permit) for an addition and exterior alteration to an existing commercial structure.

Close Joint Public Hearing

3. ZBA Comprehensive Permit Rules and Regulations – Discussion/vote to adopt as amended

4. Review and approve minutes: February 4, 2016

5. Open Planning Board Public Hearing

Case No. PB2016-15 – 20 Keene Way, Map 19, Parcel 43I. James and Rebecca Birks (Owners) seek Site Plan Approval – Residential pursuant to Eastham Zoning By-Law Section IX D.2 (Residential Lot Intensity) and Section XIV (Site Plan Approval – Residential) to construct a new dwelling on a lot containing 20,000 sf or more where site coverage exceeds 3,000 sf.

Case No. PB2016-16 – 25 Blue Bill Lane, Map 17, Parcel 519. Dean and Mireille Bajorin (Owners) seek Site Plan Approval – Residential pursuant to Eastham Zoning By-Law Section IX D.2 (Residential Lot Intensity) and Section XIV (Site Plan Approval – Residential) for proposed addition and alterations to an existing dwelling on a lot containing 20,000 sf or more where site coverage exceeds 3,000 sf.

Close Planning Board Public Hearing

6. Review and approve minutes: May 18, 2016

7. Any other business that may come before the Boards

8. Adjournment