



TOWN OF TRURO CONSERVATION COMMISSION

P.O. Box 2030
Truro MA 02666-0630

Conservation Commission Meeting Minutes: June 3, 2019

The meeting and public hearings were called to order at 5:30 P.M. at the Truro Town Hall. Commissioners Present: Deborah McCutcheon, Diane Messinger; Larry Lown and Robert White; Others Present: Emily Beebe, Conservation Agent

Minutes of 4/1/2019 were discussed, and proposed changes submitted,

Motion: Commissioner Lown moved to accept the minutes as presented; seconded by Commissioner White; the vote was unanimously in favor, 4-0-0.

Requests for Certificates of Compliance:

17 Sandpiper Rd, SE# 75-1021: The Commission visited the site earlier in the day and was satisfied that the certificate could be issued.

Motion: Commissioner Lown moved to issue; second by Commissioner Messinger; the vote was unanimously in favor, 4-0-0.

460 Shore Rd, SE# 75-1050:

Motion: Commissioner Lown moved to issue; second by Commissioner Messinger; the vote was unanimously in favor, 4-0-0.

Emergency Certifications:

0 Fisherman's Road- beach cleanup of broken drift fence, this was issued directly following the Commissions meeting April 1, 2019;

Motion: Commissioner Lown moved to issue; second by Commissioner Messinger; the vote was unanimously in favor, 4-0-0.

Town of Truro-installation of emergency call boxes at Oceanside public beaches brief discussion about the process and the footings; engineered plans were submitted.

DPW Notification: annual snow fencing at Ballston Beach;

Administrative Review Permits:

542 Shore Rd: beach nourishment; 6 Bearberry Lane: support 6 beams with helical anchors; 488 Shore Rd: sand nourishment behind seawall; 492 Shore Rd: sand nourishment behind seawall; 41 Bay View Rd: repair lower section of stair and replace with removable section; 378 Shore Rd: sand nourishment behind seawall, patio replacement 1:1; 55 Pond Rd: well installation

All bayside & oceanside beaches: pole mounted first aid kits (requested by DPW) (locations will be reviewed the following week by the Agent and the DPW director) Questions about the contents of the kit were raised. There was brief discussion and input provided from Maureen Burgess, the Select Board liason to the Conservation Commission.

Motion: Commissioner Lown moved to issue all permits as a group; second by Commissioner White; the vote was unanimously in favor, 4-0-0.

Field Change: East Harbor, change order/additional repairs; discussion presented by Gordon Peabody and Farren Dalby from Safe Harbor Environmental. They will be planting the beach-grass at this location to restore the site. The delays in the start of the project have moved the finish date to mid-late June, which is not a good time to plant the beach grass; Mr. Peabody informed the Commission that they will be planting the area in November and utilizing transplanted grass taken from the site prior to disturbance. The Conservation Agent also presented the Commission with a description of a change that included adding 2 extra culvert sections to address leakage. **There was a motion to approve the field change;**

Motion by Commissioner Lown; second Commissioner Messinger; the vote was unanimously in favor, 4-0-0

6:00 PM PUBLIC HEARINGS: The Truro Conservation Commission holds the following public hearings in accordance with the provisions of MGL Ch. 131, s. 40, the Wetlands Protection Act and the Truro Conservation Bylaw, Chapter 8:

Notice of Intent: 271 Shore Rd, Days Market, SE# 75-1070: improvements to septic system; Barrier Beach, Coastal Dune and Land Subject to Coastal Storm Flowage. (Map 13, Parcel 12). Mylan Janoplis presented his project for the Market, which now includes a deli. Replacing existing tank with a 2-compartment tank and a new Grease trap. The plans were prepared by Billy Rogers, PE. Abutters have been notified by certified mail, and receipts were presented. The driveway is paved and will be repaved.

There was a motion to approve the project with conditions;

Motion: by Commissioner White; second Commissioner Messinger; the vote was unanimously in favor, 4-0-0

Notice of Intent: 449 Shore Road, Cousins Family Revocable Trust; SE #75-1026: new dwelling, septic system and driveway; Coastal Dune, Barrier Beach; LSCSF; buffer zone to BVW. (Map 8, Parcel 15) *(Continued from 4/1/2019)* The project was represented by Mr. Lajoie, who designed the plans. He read a letter from the property owner into the record. Factual errors in the letter were noted by Commissioner Lown; including a question about whether the lot was taxed as buildable. Mr. Lajoie did not know how the lot was assessed. Commissioner Lown asked because his understanding was that the property owners were not going to build the house, but sell the lot with the plans, as buildable. Mr. Lajoie said that they may want to build it themselves. Commissioner Lown said that the letter stated that they just wanted to sell the lot, as they needed the money from the sale. Mr. Lajoie countered that they may build it and stay in it for a little while, and then sell it. The chair asked if he was told this. He said he did not suggest to his client that they say anything. The letter was accepted into the record as an exhibit. Matt Creighton from BSC group was present as consultant for the Commission, and reviewed his process which included a site visit, and a review of the plans, application and information submitted by the applicant. He described the site as disturbed, with a railroad track that went along the back with a bank, where he found wetland plants hydric soils and water. Because it is disturbed he looked at both soils and vegetation. He described how he placed flags at the edge of the wetland as he delineated it on the house side of the lot.

He also used a telephone pole as a feature to measure to, as it was located on the plan. He discussed the water table elevation shown on the plan assumed at 3.4'. Mr. Creighton stated that the soil material on the site is all sand, which confirms it is a coastal dune, and is presumed to be a primary frontal dune, unless proven otherwise. The project must meet the performance standards for a Coastal Dune. He stated that the bulkheads across the street on Cape Cod Bay stabilize the area, but the applicant must prove it is not a primary frontal dune to the Barrier Beach system.

Mr. Creighton stated he had consulted with Jim Mahala at MA DEP about the delineation of the Coastal Dune and his take was that - as long as the site is in LSCSF there is a direct connection to the ocean and therefore it is considered a Coastal Dune

Mr. Creighton stated he reviewed Lynne Hamlin's letter which discussed the characterization of the freshwater wetland and she logged upland soil and upland plants at the north (Route 6) side of the property. He stated that he did not explore this area but focused on the portion of the property being proposed for development, which was the south side. He found redox soils and streaking within the top 7 to 10 inches, which defines the soil as a Coastal/ Prairie redox soil and classifies it as a wetland or hydric soil. He relied upon the MGL definition of a coastal wetland found in Chapter 131, section 40, to define BVW.

Mr. Creighton stated that the Coastal Dune is defined as a primary frontal dune because it is on a Barrier Beach and LSCSF; therefore, the house and septic system must be built to the V- zone standards and needs variance for the septic to be installed on a Barrier Beach and a Coastal Dune. The wetland protection act regulations performance standards require the applicant to show they will not destabilize the dune by disturbing any of the vegetation - this is a standard that is very difficult to meet when you are putting a house over it. He stated that the applicant has not documented how they could move forward without impacting the resource areas.

The Chair asked Mr. Creighton to clarify about impacts to the resource areas and asked him if he was aware of the performance standards of these areas.

Mr. Creighton replied that the performance standards for Coastal Dune and primary frontal dune are:

- no disturbance of vegetation on primary frontal Dune or Coastal Dune and no filling in a primary frontal dune which is considered a V zone even though it's mapped as an A-zone.
- He stated that the proposed sand fill for the house or the septic system would not be allowed.
- The proposed dwelling would have to be elevated further to meet the V-zone requirements.

Chair McCutcheon asked if any other performance standards are implicated?

Mr. Creighton replied that there are no performance standards for LSCSF under the state regulations but that the site is within a LIMWA (a mapped area showing "limited wave action") which also suggest the house should be built under V-zone standards.

Mr. Creighton mentioned that modifying the dune increases the potential for storm damage; he noted there was no bird nesting habitat under NHESP but other creatures use it as habitat such as migratory birds.

Mr. Creighton filed his report December 20, 2018 following his site inspection.

Chair McCutcheon asked if he made the report available to Mr. Lajoie and his client or both. Mr. Creighton responded that he had; this was affirmed by Mr. Lajoie.

Mr. LaJoie responded that after he received the report they went back out to the site to locate the BSC flags and put them on the plan. He then sent a letter to the Commission to address the points made by the BSC group.

- In reference to the coastal dune he said many projects on the Bayside of shore Road and East side have been approved in the same flood zones.
- He also said that a building on piles only disturbs the land for the pilings. They have applied to the Board of Health and will go to the ZBA if needed.

Commissioner Lown asked if there was a set procedure for which board needed to review a project first.

Mr. LaJoie said there is not a rule and that he has applied to Board of Health but has continued this until the Conservation Commission decision is made.

Commissioner Lown stated he had read the Hamlin report and the BSC report and had questions about the wetland flag locations. Mr. Lajoie said he would meet the Commissioners on site to show that the wetland flags match.

Commissioner Lown asked about the location of the primary dune and if its location being on the landward side of a bulkhead and Route 6A was significant.

Mr. Creighton said no as soon as a hurricane wipes out that wall in the house is in the ocean the land is performing as a primary front of Dune. He further pointed out that signs along Route 6 say be "careful of blowing sand" a true indication that the sand is moving. The question was asked if the house plans showed it moved 16 feet back would it be buildable. Mr. Creighton replied that the project would still be in the Coastal Dune and LSCSF, and that a proposal to build a new home on a Coastal Dune on a vacant lot does not meet performance standards.

Mr. Creighton referenced a legal case from Plum Island where a proposal to build new cottages on the barrier island were denied and then appealed; the appeal was upheld because you cannot build a house on a Coastal Dune and not remove the vegetation. The applicant must document how they will not destabilize the area and how they meet all the performance standards; he opined that with what had been submitted thus far he did not believe they have met the performance standards.

He stated that this lot was on the railroad right of way and there was a need for release of the easement from the railroad; further, this area is historic chapter 91 jurisdiction (landlocked tidelands MGL chapter 91) and that 5000 ft.² of disturbance within a Coastal Dune should go through MEPA or at least an administrative determination about the EIR or ENR process.

Mr. LaJoie stated that he wanted to disagree with all of what Mr. Creighton had asserted. And asked to elaborate on his disagreement.

Chair McCutcheon stated that the commission was going to give both parties the opportunity to make an additional written submission.

Mr. LaJoie stated that they didn't consider this a Coastal Dune because the property is in an area previously given approvals for new construction on both sides of the road and there was never a concern about this being buildable before. He volunteered to submit the deed of railroad easement.

The chair stated it would be useful to have the deed from the railroad, and whatever else he wanted to attach to a letter to the Commission that explains what he is submitting. She stated: there has been a lot of consternation about building in that area of Beach point. Mr. LaJoie asked if he should submit the material or continue to talk to the Commission about the plan and what the applicant proposed, continue this hearing and come back.

Chair McCutcheon stated that she wanted a submission in writing covering the issues discussed.

Mr. LaJoie said he'd like to get back to his consultants and talk with them; the Chair asked how much time he needed to write his points out to the best of his ability and have his experts do the same.

Mr. LaJoie asked for the Commissioner's questions and stated if you would like less disturbance we will get back to you about how we could reduce disturbance; and also that they could put in retaining walls to reduce the amount of fill, or move the septic system.

Chair McCutcheon reiterated her request that the applicant write a response to address the concerns of the Commission. She further stated they would ask Mr. Creighton for a summary response to this upcoming letter from Mr. LaJoie.

The Agent suggested that the consultant would need to estimate the cost for this next phase of work and payment for the Commission's consultant would need to be received in advance from the applicant.

Mr. LaJoie stated that he wanted to ask the commission what it was that they wanted to request from the homeowner to help them decide that they were protecting the resource areas and that hasn't been done yet.

Chair McCutcheon responded that she disagreed about whether it's been done because what was heard tonight was that none of the performance standards for this type of area have been met. She further stated that Mr. LaJoie could refute that, but they were looking to bring the matter to a conclusion. She stated that they wanted to have the applicants representative return to talk about the proposal details and respond to the comments delivered at this meeting by Mr. Creighton, and that would close the record and then they would issue a decision. She stated that they (LaJoie and Creighton) would be sent specific instructions about what the commission needed.

Commissioner Lown asked - doesn't it come down to one report or the other?

Chair McCutcheon responded that it was possible that the Commission could come up with a circumstance under which a house was built. Commissioner Messinger suggested that it seemed that they were dragging this out, and if it is a Coastal Dune then you can't build on it at all.

Chair McCutcheon responded that since Mr. LaJoie wanted to submit more material she would rather that the Commissioner not make her mind up right now, as they wanted to

give him an opportunity to persuade them all, and that he had a right to that opportunity. Mr. LaJoie specified he needed two-month continuance to prepare his response. The chair suggested that they hold a special meeting after the regular August meeting. The date was for the continued hearing would be August 7. There was a joint motion between the parties to continue this matter to August 7 at noon.

Notice of Intent: 405 Shore Rd, Kenneth Shapiro, SE# 75-1062; removal of garage, construction of dwelling, septic system and appurtenances; Barrier beach, LSCSF, Coastal Dune. (Map 10, Parcel 5) *(continued from 5/6/2019) As new plans had been received late, the matter was continued to July 1, 2019 at the applicants request.*

There was a motion to continue the matter to July 1.

Motion: by Commissioner Messinger; second Commissioner Lown; the vote was unanimously in favor, 4-0-0.

Notice of Intent: 588 Shore Rd, Emily & Ellen Lanigan, SE# 75-1071: addition, second floor deck & reconstruct second floor; Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 5, Parcel 20). Jason Ellis was present with the Applicant, Emily Lanigan. He described the proposal to build a 2-story addition to the front of the existing home in the area currently used as the front porch of the house, this "porch" area is a 3-4 tall concrete patio and encompasses the entire footprint of the addition. They also wanted to complete some maintenance pruning of the hedge on their driveway at shore road, to make it safe, and improve sightlines.

A new deck is proposed off the second floor, and will be cantilevered, or posted to the deck below.

The new work is entirely within the existing disturbed footprint, and it appears that no vegetation would be disturbed.

The Agent inquired about the existing foundation and how the new work would relate to it. They propose to leave the existing foundation and attach to the proposed new foundation. The new foundation would be made of break-away panels because this is in LSCSF. The project is limited to a very small part of the foundation. The attachment If there is a change about the amount of foundation on the existing house that needs to be addressed/changed, outside the current proposed

When do you learn about this? Jason stated they have been in front of the Zoning Board of Appeals, and they are due to return to that board.

It was noted that this project as proposed would create a variance condition by decreasing the setback to the septic tank. This would need to be addressed to the Board of Health.

Special Conditions discussed include removing the old concrete and addressing concrete overpour. The privet hedge could be maintained. Any change requires they return to the Commission. **There was a motion to accept the proposal and issue an Order of Conditions with special conditions as discussed.**

Motion: by Commissioner Messinger; second Commissioner Lown; the vote was unanimously in favor, 4-0-0

Public Hearing on Proposed Amendments to the Truro Conservation Commission Policies, Procedures, and Regulations: Section II- Chapters 1, 2, & 7.

The Agent confirmed with the Commission that they had a posted meeting the following day to meet with the Board of Selectmen at a work session to discuss the Conservation

Commission regulations. They reviewed the comments made by Town Counsel that are shown in blue, and comments included in the gray margin on the left in the draft. The Commissioners asked that the Town Counsel's comments remain in the draft and not be incorporated until after the work-session. Commissioner Lown had comments about the readability of the document and was concerned about certain sections that reference other sections that do not track. These were noted by the agent. He responded to Counsel's comment about repetition, and felt that repetition would be a positive thing, as the regulations are very technical. He also noted various punctuation errors. Town Counsel suggested adding statements of significance as a preamble to the regulations. These were in the original drafts and had been removed at a workshop of the Commission as they seemed wordy. The Commissioners agreed to re-incorporate these sections. There was also a description of flood zones. It was suggested that we include flood zone descriptions under the definition of LSCSF, this would include velocity zones and A-zones.

Motion: Commissioner McCutcheon moved to adjourn the meeting; seconded by Commissioner Lown; the vote was unanimously in favor. The meeting adjourned at 8:27pm.

Site visits: The Commissioners (Messinger, Lown, White and McCutcheon) met on Monday June 3, 2019, at 1:00 PM at the Cobb library, and proceeded to view the project areas at 17 Sandpiper Road, 271 Shore Road, 405 Shore Road, 449 Shore Road, and 588 Shore Rd.

Minutes prepared by Michelle Fogarty/EB

