

A quorum was present. Those in attendance included Chairman Paul Chamberlin, Carol Scott, Jay Putnam, Eric Hilbert, Nat Mason, Corinne Johnson, Associate Members Billie Bates and Ira Seldin, Conservation Agent Kristin Andres and Secretary Mary Fougere. Associate Joseph Manteiga was absent.

**The following hearings were continued as follows:**

- £ **47 Oceanport Lane, Andrew S Holik Trust-2000-owner, Andrew Holik-applicant, CWP-08-044N:** Continued to August 6, 2008
- £ **211 Vineyard Avenue, Michael/Elizabeth Aghajanian, SE 10-2440:** Continued to June 18, 2008
- £ **Lot 106 Stage Island Road, DMD Properties, LLC, SE 10-2416:** Continued to June 18, 2008
- £ **24 Squanto Drive ( Unit 6), Stello Construction-Applicant, Kenneth Ritchie Realty Trust-owner, SE 10-2423:** Continued to July 16,2008
- £ **185 Balfour Lane, Edward H Wohl, SE 10-2353:** Continued to June 4, 2008
- £ **75 Holway Street, Robert Barsamian, SE 10-1693:** Continued to July 16,2008
- £ **19 Cowyard Lane, John/Lesley Nicholson:** At the applicant's request, the proposal was withdrawn

**336 Stage Island Road, David Wilber:** The hearing was opened for a Request for Determination of Applicability (RDA) for the proposed construction of an 8-ft by 10-garden shed at 336 Stage Island Road. David Wilbur was present. He stated that the new shed would be in the existing lawn area as shown on the plan, in close proximity to the house. **It was moved, seconded and voted for a Negative Determination. Mr. Wilber would return the abutter notification cards to the office on MAy 22, 2008.**

**66 Indian Trail, Joseph Barella:** The hearing was opened for an RDA for the proposed installation of platforms to support air conditioning and generator units at 66 Indian Trail. Mark Burgess of Coastal Engineering Company Inc represented the applicant and returned the abutter notification cards. He stated that the new generator would be powered by natural gas; the only disturbance to the ground would be the hand-digging of the sono tube supports. **It was moved, seconded and voted for a Negative Determination.**

**41 Marsh View Road, David/Susan Epstein: The hearing was re- opened for an RDA for the proposed "after the fact filing for "as built" addition and proposed construction of screened porch and deck, drive, walkway and planting at 41 Marsh View Road. Lynn Hamlyn of Hamlyn Consulting represented the applicant and returned the abutter notification cards. Due to an oversight by the engineer in not showing the flood plain contour on the application, the applicant has already constructed an addition in the AURA to the 100-yr flood plain. Mitigation has been provided for this project and the proposed screened porch and deck and is shown on the mitigation sketch dated MAy 12, 2008.**

Rather to enhance the existing buffer, the applicant would like to increase the buffer by removing lawn. Four hundred sq ft of new construction will be mitigated. The fence will be relocated to the house side of the disturbed area. The area to the east will not be mowed. The fence will serve as a visual indication where mowing will stop.

A letter of approval from abutter Nancy Swetland dated May 13, 2008 was read into the record.

The proposal is scheduled on the ZBA agenda for May 22, 2008 : **the Conservation hearing was continued to May 28,2008.**

**34 Nickerson Lane, James/Brenda Sears, SE 10-2240**: The hearing was opened for a Request to Amend an existing Order of Conditions under SE 10-2240 to include the installation of an in-ground irrigation system at 34 Nickerson Lane. William Riley, Esq represented the applicants and returned the abutter notification cards. He noted that the 50-ft No-Disturb Zone (NDZ) to the coastal bank goes through the corner of the dwelling, but is not shown on the plan. The existing Order required a landscape plan to be provided. The applicants would like to irrigate the expensive shrubbery they have purchased and Mr Riley has supplied a sketch plan colorized to show various areas of the property.

Soakers are shown in blue on the sketch, the blue dash line is the feed for the soakers; the applicants are aware of the concerns of the Commission regarding the use of irrigation on turf lawns, especially in the NDZ. Zone 1 and Zone 2 are lawn areas and will have regular sprinkler heads.

**It was moved, seconded and voted to close the hearing.**

**Mill Pond off Dusty Miller Lane and Mill Farm Lane, Chatham Water Department –applicant, Town of Chatham –owner, SE 10-:** The hearing was opened for the installation of observation well associated with proposed town water supply well at Mill Pond off Dusty Miller Lane and Mill Farm Lane. William Redfield from the Chatham water Department was present and returned the abutter notification cards. He stated that this is an "after the fact filing, the work had been completed by Earth Tech , who inadvertently forgot to file the application with the Commission. Mr DiNatali , hydrogeologist from Earth Tech, stated that even though the area is identified on existing maps as a shrub swamp, the area was frozen at the time and was not mushy so he did not think to file.

The pump test will be completed in June; the outfall pipe will lead into Harwich. They have already received permission from the Town of Harwich.

**The hearing was continued to May 28, 2008 for receipt of a file number from DEP.**

**159 Tide Mill Lane, Robert/Jennifer Stello, CWP08-107N**: The hearing was re-opened for a Notice of Intent (NOI) for the proposed vista pruning and maintenance, proposed pervious patio, access path and timber access stairs and proposed seasonal catwalk, pier, ramp and float at 159 Tide Mill Lane. The hearing was originally scheduled for May 7; at the applicant's request the hearing was continued to this meeting. The Chair commented that since this is a new hearing under the local bylaw, any questions and concerns regarding the project have to be raised during the hearing process even though some of it may be repetition from a previous filing. William Riley, Esq represented the applicant; he noted that the applicant has hired stenographer Lisa Gross to produce a transcript of the proceedings. Mr Riley also noted that he has several people in the audience prepared to comment on their observations of shellfishing activity in the area over an extended period of time. Most of them have worked at the Stello home or have frequented the Mitchell River.

The existing Order approved the stairway and catwalk; the Commission stipulated to those facts. No presentation was necessary regarding the stairway and catwalk. Mr Riley stated that the proposal is for a seasonal dock permitted by ZBA under the local Zoning Bylaw. Under Zoning, the dock must have 2- 1/2 ft of water depth at low tide and cannot exceed 80-ft in length. Shellfishing in the area is of concern and will be addressed. Mark Burgess of Coastal Engineering Company LLC would present and discuss the details of the dock design.

Mr Burgess stated that the pier is seasonal ( from June to end of October) in nature supported on 4" x 4" posts that are jettied in each time the pier will be installed. When removed, there will be no pilings that remain in the water. The structure goes to the end of the elevated walkway. DEP noted the presence of an algae bed in their superceding Order; DEP wanted the applicant to move the float back from the algae bed, instead of that ,the applicants have reduced the size of the float by 2 ft-. The float was 10-ft wide, it is now 8-ft ; the entire pier and float will extend to 78 ft. The float will have stops , as required by DEP in their Order. In summary, the ramp is the same distance as before, the structure will be 2-ft less into the water ways and the amount of square footage has been reduced. Pe r Mr Riley, the applicant maintains that at all stages of tide, there is sufficient height of the walkway for shellfishermen to scratch or bullrake.

An aerial photograph showing the location of the proposed pier in the Mill Pond was displayed. Mr Riley demonstrated that on the NE side and SE side of the Stello proposal, there are piers. The floats of both those piers are outside the float proposed by the Stellos. During the last hearing, it was noted that longrakers set a line and drift, there are several moorings with floats that cover as much area as the proposed one, that are outboard of the Stello location. The Harbormaster has approved the installation of a 10-ft by 20-ft float on the mooring between the Daniels dock and this one. During the brief period this pier is in the water there are numerous impediments to the longrakers who elect to drift in this area. Mr Riley felt that even though the bylaw restricts impediments to access shellfish,

the bylaw did not mean that temporary piers , floats and boats on floats would contradict the Conservation Bylaw which allows access to shellfishing all year long. The bylaw does not mean that the shell fishermen have to access the bottom every minute of every day; this was not the intent of the Conservation bylaw.

Mr Riley intends to prove that longrakers do not use this area anyway. Mr Riley noted that the Shellfish Constable letter dated MAY 21, 2008 is redundant and would like to offer testimony that people do not commercially shellfish in this area, even though there are shell fish present.

Noting procedural differences, the Chair would like to have the presentation , then the letters, then questions from the audience. Mr Riley felt he needed to lay a foundation for the testimony in support of the belief that no one shell fishes in this area, therefore referenced the new letter from Shellfish Constable Stuart Moore. The following people stepped to the podium:

- £ David C Johnson-employee of Mr Stello-worked on house on 159 Tide Mill Lane off and on for two years. In response to Mr Riley's questions, he stated that there has never been anyone scratching from a boat or longraking within 250 ft of the shoreline in front of the Stello house
- £ Justin Dibble-carpenter -also worked for 2 yrs on and off for Stello at house on Tide Mill Lane -Never seen anyone shellfish

The Chairman questioned whether Mr Riley intended to question every person, since many of them appear to have the same testimony and there are several other hearings that must be heard. Mr Riley noted that because people have worked on the Stello house, does not make them employees of the Stellos. The Commission agreed to stipulate that several people were present to testify that they had not seen longrakers on the Stello side of the river at various times of the year. Mr Riley agreed to provide the Commission with written statements signed by the individuals. Commissioner Scott asked Mr Riley to point out the Stello side of the river on the map. She stated that when several members of the Commission were at an on-site in the area for a different property , several Commissioners observed a person shellfishing in the area but she agreed that he may not have been within 80-ft from the Stello property

- £ Michelle Lapin, caretaker of McAlpin house in the area, testified that she has not seen shellfishermen in the area of the proposed dock.
- £ Mike Stello, brother of the applicant, spoke in favor of the longrakers; he was a longraker for many years before the area was seeded and felt that the Commissioners did not know how longraking was done. He detailed the longraking process. There area a lot of floats and docks in the area before one can get to the proposed pier area. In response to Mr Riley's questions, Mr Stello stated that it was better fishing in the channel and in deeper water. This dock area is not

in an area where commercial longrakers can make money. They may try to scratch but it is not lucrative.

George Hampson, Senior Biologist at Woods Hole, had submitted a written shellfish report to Mr Riley based on his site visit April 25, 2008. The report is dated May 1, 2008. In summary, he noted the presence of the algae mass and noted it was due to the nitrogen loading in the Mill Pond, stated that he had not observed eelgrass in the area and stated that there are definitely shellfish in the Mill Pond. He noted that seeding of the quahogs should be conducted in the fall, rather than the spring. The oxygen levels go too low in the bottom due to the algae growth in the seed area to support the young shellfish.

From the audience, boat owner Craig Vokey, testified to the lack of shellfishing in the proposed pier area. From the audience, Donald Eldredge, father of the applicant, testified to the lack of shell fishermen in the area of the proposed dock. He submitted his comments in a letter dated May 21, 2008.

MR Riley noted that copies of the ZBA decision letter approving the dock, the Superceding Order from DEP and the Vaccaro bottom study have been submitted to the record. The dock meets the performance standards under the State Act and meets the performance standards of the Local Bylaw. On balance of public vs private use, this proposal meets the criteria.

Commissioner Jay Putnam questioned the determination of MHW. He thinks that there are sections along the shoreline in the area of the proposed pier where the elevation lines vary, thus affecting the location of MHW. There are areas along the shoreline where MHW does not follow the contours. As he observed it, there is alterniflora that goes all the way around the patens, the patens is basically an island along this shore. If high water comes around island, then MHW location is affected.

Mr Burgess stated that the Commission already agreed to the delineation of MHW in the previous hearing; MHW was determined by the difference in location of vegetation, spartina patens and alterniflora. There is a variation by approximately by 3-inches. The alterniflora is at the edge and is a distinction all along area here. Army Corps profiles don't apply in this region. He questioned whether the Commission was changing its mind. Mr Putnam stated that since this was a new hearing, he questioned MHW location now as he did then. The location of MHW on the plan does not seem to correspond to the field conditions. Mr Hampson agreed with Mr Burgess's assessment of MHW however he noted that alterniflora has to go through a dry spell, it cannot be wet and survive.

Commissioner Scott questioned whether the float next to the proposed pier has always been there. Mr Stello stated that the neighbor contacted him to build a float on his mooring according to criteria set by the Harbormaster.

Commissioner Chamberlin questioned whether there was an eelgrass survey submitted, Mr Riley verified that it was in the Vaccaro study. . The Chair also questioned whether there were spot elevations taken at the float. Mr Burgess stated that he would supply them.

Shellfish Constable Stuart Moore spoke as an advocate for a slowly disappearing group of people and acknowledged that he had submitted his report dated May 21, 2008. The Mill Pond, as all of our waterways is severely impacted by a field of moored boats and seasonal piers that have the cumulative impact of shrinking the area available to longrakers by a substantial number of acres. Briefly the environment for shellfishing in the Mill Pond has shrunk drastically, apparently there is no moratorium on floats, therefore the situation will continue. In general piers and attached floats present an impediment to shellfishing, especially longraking from a boat for quahogs, a method used extensively by commercial interests in the pond. The fishermen have been forced to work "in the slots" since there are ever increasing impediments to their trade.

The Mill Pond in its entirety is a viable shellfish area and is not ideal for shellfishing but many shellfishermen still go there to enhance their livelihood. It is not only longrakers but other types of fishermen. This dock taken by itself, is not worse than what is there, but it will have a cumulative effect against a group of people who use the Mill Pond in the summer, if they can. They have to pick their spots and have to have spots to pick.

The portion of the bylaw that protects shellfish, shellfish habitat and access to shellfish was put in the document to protect a viable resource of the town. The area is seeded in the fall. The Harbor Management Plan is in place which emphasizes the abilities of all people to use the waterways. The dock will go in at the expense of a group of people who need the protection the town can give them. Commissioner Hilbert noted that the Shellfish Constable has served the town for almost twenty years.

Letters from the following opposed to the proposal were read into the record:

- £ **Town of Chatham Shellfish Advisory Council, letter dated MAY 16, 2008**
- £ **Shell fisherman John Kenneway, letter dated May 20,2008**
- £ **Shell fisherman John Linnell, letter dated May 20,2008**
- £ **Shell fisherman Michael Anderson, letter received May 21, 2008**
- £ **Shell fisherman John Bustard, letter dated May 21, 2008**
- £ **Town of Chatham South Coastal Harbor Management Committee, dated May 20,2008**
- £ **Commonwealth of Massachusetts, Division of Marine Fisheries, letter dated May 1, 2008**

In a letter dated May 1, 2008, Gil Upson wrote in favor of the proposal.

The Chairman questioned why Mr Riley did not request a Special meeting of the Commission knowing the length of his presentation. The Commission had met for other

projects that require an extensive amount of time during the hearing process; there are many other applicants on the agenda for the evening and this hearing is the 6<sup>th</sup> of 20-plus hearings.

The Chair noted that although the Commission is aware there is no eelgrass in the proposed pier area, the historic eelgrass presence has to be considered as noted by the Division of Marine Fisheries. The Commission is also aware of the nitrogen problem referred to by the Senior Biologist from Woods Hole. Given the Town of Chatham's on-going wastewater management plan that would reduce the levels of nitrogen in the estuaries and waterways, there is every reason to suspect that the eelgrass may be restored once the town is sewerred.

The Commission has approved a pier for Chatham Bars Inn, and although it appears that the projects are similar, the decision was supported by the findings. The files that include the findings of the proposals for piers are available in the office for public scrutiny.

From the audience, Chairman of Selectmen Sean Summers, speaking as a private citizen who has shellfished in the past, addressed the Commission. The Chair stated that Mr Summers does have the right to address the issue, and he questioned if the members of the Commission should ignore the fact that he is the Chairman of the body that appoints the Commissioners.

He is in favor of the proposal since there are only 3-4 bull rakers left, and they could probably go to other areas of town. The town has 66 miles of shoreline and many areas are accessible. He felt that if people don't like docks and piers, then the banning of docks and piers should be addressed at Town Meeting. He felt that this dock would have no cumulative effect on shellfishing.

Mr Riley stated other than the spot elevations required of Mr Burgess, the applicant will not be submitting other evidence. They will be ready to close at the next meeting. The hearing was continued to May 28, 2008.

**558 Fox Hill Road, Fox Hill Road Realty Trust, Robert/Margaret Wolin, Trustees:**

The hearing was opened for a Notice of Intent (NOI) for the proposed construction of bank stabilization and beach access stairway replacement at 558 Fox Hill Road. Bob Perry of Cape Cod Engineering represented the applicants and returned the Abutter notification cards. He felt that the applicants have a serious circumstance on their property. The property has a coastal bank at the north end of Crow's Pond. It is an altered bank, loose amount of fill at the base, possibly from when Eastward Ho was renovated. To the east there is a steel sheet pile bulkhead and a number of recreational piers. The salt marsh, although healthy is broken in spots, with gaps. The increased tide range in the pond is undercutting the bank in front of the house.

Ms Andres and Coastal Resources Director, Ted Keon, have met on site with Mr Perry and Chris Norgeot of Anchor Marine. The plan represents a combination of gabions and

coconut fiber rolls at the edges. The gabions go from elevation 4 to elevation 8 on either side of the stairs. On the wings are fiber rolls. In both areas, the zones above will be seeded and planted with *Panicum dentatum* which has deep roots. He felt that it is important in this location to do a meaningful repair, a serious buttress with some mass but low profile. The materials will be hand carried through the gaps in the salt marsh. It is labor intensive but possible to do the project by hand.

The replacement stairs are in kind, but narrower. The work would be completed by hand. Commissioner Jay Putnam questioned the purpose of the platforms near the water since it appeared that the erosion was more pronounced in this area due to loss of vegetation. Mr Perry stated they are open-air storage platforms but accepted the suggestion to move the platforms.

The Chair stated that he felt the reflection off the vertical structure may increase erosion and wondered if softer, fiber rolls could be used the whole length to soften the wave action. Mr Perry felt that the fetch is strong there and the gabions are quite pervious to allow wave deflection. He felt that the salt marsh may improve if the erosion on the bank could be curbed. The existing slope is 1:1 with a few pines which appear to be ready to fall. The loose soil on the bank is not stable against the increased tide.

The Notice of Intent contained a narrative on wave-cut banks that have been created in Crow's Pond. The current break has increased the tide range. The Chair questioned how long it took for the bank to get to this point; Mr Perry stated that this is an acute problem that has just recently occurred. Ms Andres stated that perhaps there is a change, but nothing has been tried for shorefront protection on this site prior to this proposal. The steel bulkhead is already in place and she questioned whether there was need torevet the whole property now. She also noted that the eelgrass that is present on the bank was put there by the Wolins, and is not the result of high tides. The vegetation has not been allowed to grow due to the presence of the eelgrass.

From the audience, Mr Wolin stated that the normal tide range is about 18-inches higher, and possibly rising, since the new break. From the audience Ted Keon stated that his general concern is the minimal erosion and should the gabions etc be constructed, there will be a lack of sediment to the system.

Commissioner Hilbert felt that this was a jump from what has been allowed on other properties since there has been no soft solutions that have been presented. He would like to see a photographic record if available.

**The hearing was continued to June 4, 2008.**

**85 Wapoos Trail, Frank Andrew/Frances deGanahl:** The hearing was opened for an NOI for the proposed selective removal of invasives plant species; proposed restoration of native plant species; proposed tree maintenance and proposed re-establishment of view corridors at 85 Wapoos Trail. Commissioner Jay Putnam was recused from the hearing.

Seth Wilkinson of Wilkinson Ecological Design represented the applicant. There were two applications, one for invasive plant management and one for vista view pruning. Historic photographs of the site were circulated to show the areas of view enhancement. The applicants wish to design view corridors for view enhancement, the view corridors will be somewhat different than the panoramic historically on this site; it will be necessary to remove a 9-inch and a 12-inch pine which have been compromised in the past. The oaks will be managed, the sassafras have a lot of sucker growth but will be managed to allow a strong center stem to grow and provide canopy. The shed will be moved. Commissioner Hilbert felt that the 9-inch pine was healthy and should not be removed.

The invasive plant management will involve the removal of Japanese knotweed, honeysuckle and bittersweet. The area will be replanted this fall. The heavily vegetated areas will be cleaned of invasive vines on either side of the property. The work will occur within 50- ft of the coastal bank.

The Commission questioned whether the deck had been permitted. Mr Wilkinson stated that it was a cantilevered deck that was approved under another application a year or so ago. The painters have a temporary shed in the parking area which will be removed as soon as they are done. Additionally, there were old landscape timbers thrown over the bank that will be removed.

The Commissioners felt that an on-site visit would be necessary to verify the view corridors and determine the extent of the invasive removal on either side of the dwelling leading seaward. **The hearing was continued to June 4, 2008.**

**80 Bridge Street, Stage Harbor Marine, SE 10-2401**: The hearing was re-opened for an NOI after re-advertisement for proposed marina improvements at 80 Bridge Street. Roy Okurowski of Coastal engineering Construction Company represented the applicant and returned the abutter notification cards. He stated that the revised plans dated April 30, 2008 show a project that has been scaled back by removing 5 original finger slips on the west side of the marina. Originally the rehabilitation of the entire marina had been proposed but it was found that they could not increase the number of slips without increasing parking and obtaining approval from the Board of Health. Therefore, the slips are "as is", the rest of the project has not changed, the proposed dredging has not changed.

The aquaculture project located next door to the marina, does not operate the pumps during the time the proposed dredging will occur. Should there be a timing overlap, Mr Okurowski has included the installation/construction of a siltation curtain over the intake pipe. A construction narrative and protocol were submitted in the original file. The applicant has applied for a water quality certification already, this process can take up to two years.

A comment letter from NHESP was read into the record.

The proposal will require a Special Permit from the ZBA; **the Conservation hearing was continued to July 16, 2008.**

**Holway Street, Town of Chatham:** The hearing was opened for an NOI for the proposed maintenance of existing, licensed revetment at Holway Street. Coastal Resources Director Ted Keon and Roy Okurowski of Coastal Engineering represented the applicant. Mr Keon returned the abutter notification cards. He stated that the Patriots Day storm cause damage all along the along the revetted area in Chatham Harbor. There are both private and public revetments along the stretch, the Town revetment fared better than some in that there was some movement of stones but not as extensive a movement as some of the other areas to the north. Since there was a Federal disaster declaration, the Town was granted FEMA funds for the proposed work.

Coastal Engineering has determined that the structure would benefit from some maintenance work. The proposed work involves the replacement and adding of new, larger toe stones and the re-setting of other stones that have moved around at the top.

An Army Corps permit is still necessary but is in the works; ideally, Mr keon would like the work to be done ASAP. The work will be completed from above the revetment by a crane at the top of the revetment. Mr Okurowski would submit a construction protocol.

**The hearing was continued to May 28, 2008 for receipt of a file number from DEP.**

**160 Wapoos Trail, The R C Cantu Trust No 1-owner, Robert Cantu, Trustee-applicant, SE 10-2453:** The hearing was opened for an NOI for the proposed additions, including balconies and associated view pruning at 160 Wapoos Trail. John Lavelle of Coastal Engineering Company Inc represented the applicant. The proposal to renovate the existing dwelling and balcony involves the expansion of the first floor footprint by 62 sq ft. The second and third floors have balconies that involve expansion over existing lawn areas. The rear of the property slopes to the street; there are no drainage impacts from the expansions due to the slope.

Mitigation planting is proposed with a 4:1 ratio. Commissioner Johnson felt that the proposed mitigation area should be all along the top of the bank. A siltation barrier is proposed on the sloped area towards the driveway side, not along the coastal bank. All roof areas will be tied into existing drywells.

The Commission felt that the view areas are well defined already; the application for view pruning is for the maintenance of the existing view.

The proposal will require a Special Permit from ZBA; **the Conservation hearing was continued to July 16, 2008.**

**1064 & 1086 Main Street, South Cape Enterprises, Inc:** The hearing was opened for an NOI for the proposed demolition of commercial fish processing facility and demolition of single family dwelling and proposed construction of 10 multifamily dwelling units in two buildings at 1064& 1086 Main Street. David Clark of Clark Engineering LLC represented the applicant. The proposal has already been approved for a 40B Comprehensive Permit by the Zoning Board of Appeals.

Mr Clark has now submitted a complete set of detailed plans for the proposal. Included in those plans is a Comprehensive Stormwater report. The applicants are in compliance with the Stormwater Regulations from DEP. During the hearing /approval process, the Commission had asked for stormwater treatment of waters coming from Rt 28 and Chatham Hts Rd to the site. They are proposing to capture all the first flush and treating it before it reaches Perch Pond. There are two oil separators on the plan to treat runoff before it goes to the drywells. All run-off from the buildings will be untreated and will be directed to drywells. The site is located in a DEP Zone 2 which means there is a higher level of Stormwater treatment. Unfortunately for the applicant, the entire site has such poor soils that the higher level of treatment applies to the whole site.

Mr Clark stated that maintenance of the storm facilities should be included in the Commission's permit. Since this is a 10-unit multifamily project, there will be an Association that will be responsible for the maintenance of the site.

**The proposal was continued to June 18, 2008; Mr Clark will have time to respond to any comments from DEP and for receipt of a file number.**

**720 Orleans Road, Edwards Angell Palmer & Dodge, LLP, Mary Ellen Rogan, Esquire-applicant, June Lauzon Realty Trust-owner:** The hearing was opened for an NOI for the proposed installation of Title 5 septic tank and pump chamber at 720 Orleans Road. David Clark of Clark Engineering LLC represented the applicant and returned the abutter notification cards. The proposal is a simple upgrade from a cesspool system to a Title 5 septic system. There are no variances required by the Board of Health.

There will be re-contouring around the tank, there is a long distance from the street to the area and the work limit has been set to allow the trucks and machinery room to work. The entire system will be installed in existing lawn area.

The edge of lawn is right at the 50-top of bank delineation, there will not be trees lost for the leaching part of the system but there may be some insignificant trees lost for the installation of the tank and the pump chamber. There is a large tree near the garage which may be saved. The applicant is amenable to the replacement of trees on the lot if necessary.

The proposal has not received a file number from DEP; **the hearing was continued to May 28, 2008.**

**42 Harbor View Lane, Keith/ Janet Sherin:** The hearing was opened for an NOI for the proposed demolition of a single family dwelling and proposed construction of a new dwelling at 42 Harbor View Lane. David Clark of Clark Engineering LLC, David Hawk of Hawk Design and William Riley, Esq represented the applicant. Mr Clark returned the abutter notification cards. Mr Hawk presented Landscape plans at the table.

Mr Riley reviewed colorized drawings showing the changes in lot coverage from the existing dwelling and the proposed dwelling. The lot is restricted to the east by coastal bank, an isolated wetland on the west side of the lot and the flood plain to the south. The existing dwelling is sited only 20-ft from the property lines to the north and south. The 50-and 100-ft lines setbacks to each resource area are delineated on the plan. The new dwelling will be moved back from the top of the bank. The Flood plain elevation is 11.0 ft ; a portion of the proposed driveway is within the flood plain, the rest of the dwelling is outside the flood plain. The Sherins are involved in the applications previously reviewed by the Commission, for shorefront protection.

The proposal involves the re-building of the coastal bank, the existing carport was dug out from the bank years ago. There will be considerable re-grading on the south side and an increase in building coverage in the NDZ by 291 Square feet. A lot of lawn on the south side will be removed and mitigated. There is substantial mitigation proposed along the top of the bank, on the western side of the dwelling surrounding the isolated wetland and along the southern property line. The row of Leyland Cypress on the norther property line will remain.

In a letter dated May 20, abutter Hollis Kahn addressed concerns about new contours along the western and south western portions of the lot. Mr Clark stated that a drainage swale will be created to direct stormwater to the Sherin property. In a letter dated May 11, 2008, abutters John & Doon Foster expressed their approval of the project.

It was noted that there is a drainage culvert that drains the old bog to the north that runs through the isolated wetland on the applicant's property. The ditch/drain is maintained by Cape Cod Mosquito control.

The proposal is *scheduled* on ZBA agenda for June 26, 2008; the Conservation hearing was continued to June 4, 2008.

**1107 Main Street, Minot Acres, LLC Gregory Edson-applicant, SE 10-2435:** The hearing was re-opened for an NOI for the proposed construction of roadway, utility improvements and drainage in conjunction with an 8-lot subdivision at 1107 Main St.  
**Lime Hill Road, Lucy Buckley-owner, Gregory Edson, Minot Acres LLC-applicant, SE 10-2424:** The hearing was re-opened for an NOI for the proposed road improvements to existing road for approximately 400 linear feet on Lime Hill Road.

J Thaddeus Eldredge of Eldredge Surveying and Engineering represented the applicant and directed the Commissioners to the “Post Construction Conditions -Watershed Area Plan” revised April 22, 2008 for discussion. The Chair reminded the applicant that they were seeking a maintenance plan for Betty’s Path in the subdivision. Mr. Eldredge indicated he had supplied a Stormwater checklist from DEP, an Elicit Discharge Statement after construction of the storm water system and a complete drainage report operation and maintenance agreement.

Proposed mitigation for work in close proximity to wetland resource areas was shown on smaller, colorized plans sheets 1-4 (sheet 3 has been revised); each sheet addressed specific areas. Re-planting of the slope as mitigation for disturbance within the jurisdictional areas of the Commission is shown. The Commission felt that the mitigation was weak, the size of plants was inadequate.

From the audience, Bill Ohrenberger, Esq. of Ohrenberger Associates, representing the Edson family, directed the Commissioners to a letter dated May 13, 2008 from Wildlife Biologist John C Jahoda, PH D. The contents were reviewed and entered into the record. The applicant had hired the biologist to ascertain the presence of vernal pool habitat. The purpose of the letter was to certify that there is no vernal pool habitat.

The Commission had asked for confirmation as to who would be responsible for maintenance of the drainage structures. The document entitled “Betty’s Path Homeowners Association Trust” dated May 13, 2008 affirms that the responsibility runs with the deed to every property. The Chair addressed pg 2, #12 —under Obligation, noting that this portion affirms the responsibility and pg 6 #21 addresses the perpetuity of the maintenance. The last page of the document includes the inspection of sediment in the drywells. The Chair was concerned that there is nothing to address the cleaning of the grates. Mr. Eldredge stated he would add that stipulation into the draft document.

From the audience, Lucy Buckley, owner of Lime Hill Road, requested a copy of the document. Mr. Eldredge and the attorney agreed to provide her and any neighbor who requests it, with a copy.

**It was moved, seconded and voted to close both hearings.**

**Pcls M3 & M2 Harding’s Beach Road, Kenneth Mulvaney-applicant, Heirs of Charlotte Mulvaney-owner, SE 10-2400:** The hearing was re-opened for an NOI for the proposed construction of a single family dwelling at Pcls M3 & M2 Harding’s Beach Road. Michael Ford, Esq. and J Thaddeus Eldredge represented the applicant. Mr. Ford stated that the plans have been revised to reduce the scale of the dwelling. Originally 1916 square feet of dwelling, garage and decks was proposed.

Currently the garage has been removed, the decks are gone, the house is now at 997 sq ft. Other changes to the site include the elimination of a large driveway, only a turn-around will be necessary. There will be no need for the ZBA to review the proposal.

Under the local bylaw, this site includes several resource areas under the local bylaw. Under the State Act, the wetland resource areas are not as restrictive.

Mr. Ford stated that the applicant further intends to provide a private Conservation Restriction on the adjacent lot so that no structure can be built in the future. William Litchfield, Esq., representing the abutters, has a copy of the newly revised plan.

The Commission agreed that they would like to review a planting/landscape plan prior to closing the hearing. Mitigation will be reviewed at that time. **The hearing was continued to June 4, 2008.**

**Parcel J6 John Gilpin Lane, Charwich Realty Ventures LLC, SE 10-2434:** The hearing was re-opened for an NOI for the proposed construction of a single family dwelling at Parcel J6 John Gilpin Lane. Commissioner Eric Hilbert was recused from the hearing. Wetland Scientist Mario DiGregorio and Ronald Rudnick, owner, were present. Mr. DiGregorio submitted revised plans dated May 15, 2008. The Chair re-iterated that the Commission had asked for two things:

- ◆ Profiles showing the location of the top of the inland bank, or lack thereof. Under the town regulations, the Commission questioned whether there was an inland bank on this property. The Chair noted that the State Act protects land below the water but the local bylaw protects the area above the water. It is important to show the first observable break on the plan that would delineate the location of the top of the inland bank. The Commission had asked for profiles to determine whether there is a break. The top of the inland bank is located in the area where the contours stop narrowing, as shown, but the top of the bank is not spelled out on the plan. In looking at the revised plan, the top of the inland bank is approximately where the house is now proposed, therefore the 50-ft "no Disturb Zone (NDZ) and the 50- ft outer AURA should be delineated.
- ◆ The Commission asked that the structure be reduced in size to reflect the location of the dwelling in the resource areas.

Mr. Rudnick read from an email from Terry Eldredge, after an on-site visit with Mr. Eldredge and Kevin McDonald, Director of Community Development. The email addressed the location of the top of the bank under the Wetlands Protection Act only. The Chair read from the local Wetlands Protection Bylaw, Pg 50 that defines the location of the top of an inland bank. He re-iterated that on an undeveloped lot, the first 50- ft (NDZ) is critical and that the Commission will be looking for a much smaller structure on this topography, similar to the actions taken by the applicant in the previous hearing.

**The hearing was continued to July 2, 2008.**

**23 & 25 Linnell Lane & 116 Old Wharf Rd, Henry/Nancy Poydar, Paul/Gayle McAdams & Margaret McCarthy, SE 10-2428:** The hearing was re-opened for an NOI for the proposed roadway repair and maintenance on existing gravel Road at 23 & 25 Linnell Lane and 116 Old Wharf Road. Commissioner Eric Hilbert was recused from the proposal. David Lyttle of Ryder & Wilcox represented the applicant; he stated that Town Meeting had approved the bylaw revision that would allow the roadway to be elevated on May 12, 2008. Although the Attorney General has not approved the bylaw revision, the applicants will proceed at their own risk with the proposal. **It was moved, seconded and voted to close the hearing.**

**10,14 & 16 Love Lane, Forest Beach Realty Trust c/o Bruce Bogardus, SE 10-2389:** The hearing was re-opened for the proposed removal of three existing buildings and proposed construction of 1-three family dwelling; proposed installation of new septic system at 10, 14 & 16 Love Lane. No one represented the applicant; the proposal will require a Special Permit from ZBA and there is no hearing date scheduled on ZBA agenda to date. Revised plans are expected from Ryder & Wilcox; **the hearing was continued to July 2, 2008.**

**77 Oyster Pond Furlong, Geoffrey/Betty Piece, SE 10-2430:** Re-opening of hearing for proposed construction of porch addition and installation of Title 5 sewage disposal system and driveway at 77 Oyster Pond Furlong, Assessors Map 13E parcel R26. David Clark of Clark Engineering LLC represented the applicant and returned the abutter notification cards. He reviewed the revised plans dated April 23, 2008. The circular driveway has been removed, the newly proposed driveway seems to make more sense on the lot. The only activity within 100-ft of the BVW will be the mitigation planting. **The hearing was continued to July 2, 2008.**

**82 Uncle Albert's Drive Extension, Sage Group LLC, SE 10-2200:** The hearing was re-opened after re-advertisement for proposed construction of 4-foot wide chipped path for access to Oyster Pond and proposed construction of access stairs at 82 Uncle Albert's Drive Extension. David Clark of Clark Engineering LLC represented the applicant. The proposal has been withdrawn from ZBA because the ZBA had questioned why the pathway ended at the edge of phragmites, rather than at the water. It was felt that since there was no proposal for a catwalk or other structure at the water, then the intent of the applicant was not addressed. Mr. Clark noted that the applicant has no plans to build a catwalk since the Zoning Bylaw would not allow one on this site.

Mr. Clark explained that the pathway, as shown on the plan, ended at the edge of where clearing and some vegetation removal would occur. From that point, the existing pathway is evident so there will be no need to cut beyond the point shown on the plan. There will be no trees coming down along the whole length of the pathway.

The applicant is finalizing plans for a property swap with the Roussels so that the pathway can be pulled further from the bank of the ditch that is between the Bovenzi property and the applicant's. This area along the bank is more heavily vegetated, so there will be a 4ft -6ft buffer to the ditch.

The "Supplemental Comments of Abutter" from abutters Peter and Leslie Bovenzi dated May 19, 2008 were summarized and read into the record. From the audience, Peter Angelini, Esq., representing the Bovenzis, noted there was a concern that the pathway would cause additional erosion in the area near the ditch and promote flooding on the Bovenzi property

The Chair noted that 4-ft wide pathways are allowed under the local regulations and that this path is proposed to be serpentine in nature to avoid the "sluiceway effect" that would cause erosion. A large portion of the upper pathway is in field area that is mowed annually and no mulch is proposed so that existing vegetation will be allowed to grow.

Mr. Clark agreed to provide revised plans for the file showing the pathway ending at the water and also showing the pathway beginning at the edge of the applicant's driveway instead of at the edge of Uncle Albert's Drive Extension roadway. **At the applicant's request, it was moved, seconded and voted to close the hearing.**

**1005 Main St, Agway/Streibert, SE 10-** The Zoning Board of Appeals (ZBA) had requested comment on the proposal at 1005 Main Street. Sam Streibert of Streibert Associates was present to address the proposal for Agway of Cape Cod. The Commission has issued an Order of Conditions for the increase in parking and removal of vegetation at 1005 Main Street. Mr. Streibert has submitted a Storm Water Management report and a Snow Removal plan as required by the Order. The Planning Board will review the Preliminary plan and HBDC has approved the plan on May 21, 2008. The Commission will revise the letter already sent to ZBA and submit it as requested by Mr. Streibert.

**41 Marsh View Rd, Epstein:** The Commission has reviewed the Moran Engineering plan dated August 30, 2007, revised April 24, 2008 for "as built" and proposed additions to an existing dwelling at the above address.

All proposed work is within 100-ft of a Coastal Flood Plain, elevation 10.0 ft. A 140 sq ft addition in the No-Disturb Zone (NDZ) has already been constructed prior to this filing. Currently proposed are a covered porch and a deck to be constructed on sonotubes in the outer AURA on the south side of the dwelling.

As mitigation for the increased disturbance in the NDZ, the applicant has proposed to plant native shrub species in the disturbed area of the lot below the 1-ft contour line.

The Commission finds that the proposed mitigation is adequate to offset any adverse impact of the already-constructed addition in the NDZ and has conditioned a Negative Determination to include implementation of the submitted planting plan.

**Adjournment:** It was moved, seconded and voted to adjourn the meeting at 11:45 PM

**Respectfully submitted,**  
**Mary Fougere, Secretary**