

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
February 5, 2013
6:30 P.M.

Members Present: Dennis Minsky, David Hale, Lynne Martin (left at 9:07 P.M.), Barbara Prato and Mark Irving.

Members Absent: None.

Others Present: Brian Carlson (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

Chair Dennis Minsky called the Public Hearing to order at 6:32 P.M.

PUBLIC STATEMENTS:

None.

MINUTES: Postponed.

Notice of Intent

Application by **Seaman's Bank, c/o Christopher Snow, Esq.**, represented by **Paul Shea**, of **Independent Environmental Consultants, Inc.**, for a **Notice of Intent** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12. The scope of work will include the proposed construction of a 6' wide wooden deck and stairs to provide access for the public to the coastal wetland resource area at the property located at **221 Commercial Street** in Provincetown.

Presentation: Paul Shea, Ron Friese, Esq. and William N. Rogers, II appeared to present the application. This is a Chapter 91 license project. Behind Seaman's Bank, there is an asphalt parking lot and an existing concrete wall and on the other side of the wall is a narrow, low coastal dune. Seaman's Bank was required, as part of their Chapter 91 license, to provide the public with access to the beach. The project has been approved by the state and would include a 6' wide by 100' long wooden deck with a stairway coming down to it. The deck will abut the concrete wall. According to Mr. Shea, the coastal dune is not functioning as a dune because it cannot move or migrate farther landward due to the seawall and the parking lot. The deck will have adequate spacing (1/2") between the floor boards of the deck to allow for sunlight to pass through to the coastal dune vegetation and for sand movement. The deck will be supported by wooden deck posts. There will be a minor alteration of the coastal dune for the installation of the posts and the concrete piers with concrete footings. All proposed construction activities will be done by hand in order to limit impacts on the resource area. There is a MESA letter, dated 2/5/13, stating that the project does not occur within estimated habitat of rare wildlife or priority habitat. There is a DEP file number assigned to the project.

Documents Submitted: AWPA Form 3, a site plan by William N. Rogers, dated 8/ 2012, a Certified Abutters' List, a notice to abutters, copies of filing fee checks, a letter from Independent Environmental Consultants, Inc., dated 2/4/13, a construction protocol, a project description and a letter from the Division of Marine Fisheries, dated 2/5/13.

Public Comment: None. There was a letter from Jerry Irmer, Chair of the Harbor Committee, requesting that the deck be constructed at all one level and as low as possible. In addition, the Harbor Committee requested that LED lighting be located on an ADA-compliant ramp from the parking lot to the east side gate and that open space metal decking be used for the walkway.

Commission Discussion: The Commission asked for more specific information regarding the deck, including its height above the beach, the spacing of the deck boards, the intent of the deck and the stairs. Mr. Rogers explained that the grade did not allow the deck to be constructed at one level and that the deck would be constructed as low as possible. Mr. Shea explained that wood instead of metal is being used because environmental factors such as moisture, sand and salt water. The Commission discussed vegetation in the area, including what needed to be removed and requiring that vegetation be re-planted in any disturbed areas.

Mark Irving moved to approve the application by Seaman's Bank, c/o Christopher Snow, Esq., represented by Paul Shea, of Independent Environmental Consultants, Inc., for a Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12 for the proposed construction of a 6' wide wooden deck and stairs to provide access for the public to the coastal wetland resource area at the property located at 221 Commercial Street in Provincetown with the Standard Order of Conditions and with the Special Conditions that there be no access from the beach for construction purposes and that impacted vegetation be replaced, Barbara Prato seconded and it was so voted, 4-1 (David Hale opposed).

Notice of Intent

Application by **Steven Lampert**, represented by **William N. Rogers, II**, for a **Notice of Intent** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12. The scope of work will include the proposed installation of a split rail fence along the easterly property line and private way located at **6 Winston Avenue** in Provincetown. Mark Irving recused himself as he is an abutter to the property.

Presentation: Attorney Lester J. Murphy, William N. Rogers and Steven Lampert appeared to present the application. Attorney Murphy stated that the project, which is limited in scope, consists of installing a 100' long section of wooden, split rail fence running along the property line adjacent to the layout of Winston Avenue and is delineated on the site plan submitted. The fence will include 10 sections with 11 fence posts. The total land area physically disturbed would be approximately 2-3 sq. ft. There will be no detrimental effect on sand migration and the presence of the fence will allow beach grass to re-grow within the existing walkway. The purpose of the fence is to delineate the property line and to guide traffic from the Lampert property to Winston Avenue where it belongs. Mr. Lampert is concerned about the effect of the traffic on his property and the potential liability issue if someone were to get hurt while on his property. He is not required to provide public access to the beach over his property. However he is willing to re-vegetate the pathway on his property. All work will be done by hand. The DEP File No. is SE 058-0516 and a letter from DMF stating that the project will not adversely affect the actual resource area habitat of state-protected rare wildlife species.

Documents Submitted: A WPA Form 3, a site plan by William N. Rogers, II dated 1/13, a letter from DMF, dated 2/5/13 and pictures of the site.

Public Comment: Bob Silva, Gordon Vinther and Mark Irving spoke in opposition to the application. There were 11 letters in opposition and 1 letter in support of the application.

Commission Discussion: Dennis Minsky clarified that the Commission's focus is solely on the fence's effect on the resource area. Some of the Commission's concerns included the fact that even though the direct effect of the fence is minimal, its installation would result in traffic potentially traversing an area of existing vegetation, and the precedent that may be set as a result of approving the fence. Other property owners on the beach could theoretically be able to erect split rail fences on the beach and the cumulative effect could be of concern. Also of concern is that there is a Wetland Restriction Order on the property and the Commission has no information as to what that is. Mr. Rogers explained that the Order was that no building was to take place beyond a certain line on the property. He has delineated that line on the site plan. He surmised that the fact that DEP did not object to the fence may indicate that the fence is not in violation of the Order. The Commission discussed the length of the fence. Attorney Murphy replied that it had to be long enough to discourage people from walking around it and Mr. Lampert indicated that the fence ends at the driveway of the house, will be located only about 20' or 30' beyond the existing pathway and that the length makes it look aesthetically correct.

David Hale moved to approve the application by Steven Lampert, represented by William N. Rogers, II, for a Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12 for work to include the proposed installation of a split rail fence along the easterly property line and private way located at 6 Winston Avenue in Provincetown with the Standard Order of Conditions and with the Special Conditions that the existing pathway be re-vegetated with beach grass and with the stipulation that in three years if the usable right of way has been established on Winston Avenue, the split rail fence will be removed, Dennis Minsky seconded and it was so voted, 3-1 (Lynne Martin opposed).

Notice of Intent

Application by **Dominic Cioffolietti & Christopher Scinto**, represented by **David LaJoie**, of **Felco, Inc.**, for a **Notice of Intent** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12. The scope of work will include the proposed renovation and expansions of existing deck and timber retaining walls at the property located at **7 Commercial Street** in Provincetown.

Presentation: David LaJoie and Derik Burgess appeared to present the application. The project consists of renovations and expansions of existing deck areas and timber retaining walls within the buffer zone of a coastal dune, beach and within land subject to coastal storm flowage. The walkway that runs along the side of the building will be renovated. All disturbed areas will be re-vegetated and stabilized with beach grass. All excavated material will be stored within the work limit. An excavator will be brought in from the beach, accessed via the West End Parking Lot, and will remain on the deck until the project is completed.

Documents Submitted: A WPA Form 3, site plan by Cape Associates, dated 02/1/13, pictures of the property and a floor plan showing decks.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. LaJoie about re-vegetating the dune in front of the property and how the use of the excavator might impact the dune. The Commission would like to preserve the integrity of the dune as much as possible. Mr. Burgess stated that the excavator would hug the side of the house and use the deck as part of the vehicular access in order to stay off the dune. Using the abutting property would cause more of an impact

on the dune. The Commission requested that the Japanese knotweed in the area be removed and that native species be planted.

David Hale moved to approve the application by Dominic Cioffolietti & Christopher Scinto, represented by David LaJoie, of Felco, Inc., for a Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12 for work to include the proposed renovation and expansions of existing deck and timber retaining walls at the property located at 7 Commercial Street in Provincetown with the Standard Order of Conditions and with the Special Conditions that the excavator will make only one trip into the site and one trip out of the site, entering from the beach along the dune as depicted in the site plan, the dune will be reconstructed to its pre-existing condition if damaged by the excavator, the dune will be re-vegetated with original species, the Japanese knotweed will be removed from the site and replaced with native species, the equipment will be staged on the deck and the vinyl sheets will be stored on the west side walkway, Barbara Prato seconded and it was so voted, 5-0.

Administrative Review

Discussion and review of work being proposed under the Provincetown Wetlands Protection By-Laws Chapter 12 at the property located at **294 Bradford Street** in Provincetown.

Presentation: Gordon Peabody and Lara Henry, of Safe Harbor, appeared to discuss the project. The applicant seeks to mitigate potential impacts on this upland site. Even though the site is not protected under the Wetlands Protection Act, Safe Harbor has submitted a booklet of that includes, among other information related to environmental issues regarding the project, 79 protective mitigation measures and performance standards for the site. It is, according to Mr. Peabody, similar to an Order of Conditions for the project.

Documents Submitted: A MESA Project Review Form, MESA-support documents, maps, site photographs and mitigations, steep slope stabilization techniques, controlling concrete techniques, managing storm water techniques, controlling invasive vegetation without herbicides techniques, a letter to abutters and a NHESP letter, dated 01/31/13.

Public Comment: Jonathan Sinaiko, an abutter, spoke against the application.

Commission Discussion: The Commission was concerned that there was a lack of detail about the project itself. Chapter 12 is related to the Commission's task to preserve resource areas in Town, specifically the potential loss of wildlife habitat. The Commission questioned Mr. Peabody about his proposed mitigations for the project. Mr. Peabody confirmed that Safe Harbor is involved in the project. The Commission was satisfied with the thoroughness of the Safe Harbor research and booklet. The Commission requested that Leyland cypress mentioned in the 'construction notes' on the site plan be changed to a native species.

Dennis Minsky moved to approve the mitigation plan submitted by Safe Harbor for the property located at 294 Bradford Street with the addition of the replacement of the Leyland cypress as screening on the driveway with a native species and with the stipulation that if Safe Harbor is not the consultant of record on the project that any new entity would have to return to the Conservation Commission under an Administrative Review, David Hale seconded and it was so voted, 5-0.

DISCUSSION:

Harry Kemp Way:

Demetrios Daphnis is requesting an extension until December 31, 2013 for the rehabilitation of the wetland abutting the property. According to an e-mail from Town Counsel, dated January 18, 2013, the applicant is going to do a second round of invasive species removal in the next couple of weeks and a third round before December 31, 2013. Town Counsel advises that the Conservation Restriction provide for the period for the removal of invasive species to run to on or before December 31, 2013. The Commission discussed the request and directed Brian to get the Commission an update on the progress of the removal. Before an extension can be granted, an update is required, specifically names, dates, actions and what was removed. The issue will be placed on the agenda for the March 5, 2013 Public Hearing.

2 Commercial Street:

Dennis has arranged for a meeting with Cliff Schorer on Thursday afternoon. He will e-mail the result of that meeting to the Commissioners.

401R Commercial Street:

Dennis heard from David Gluck, the property owner, about the persistent litter and abandoned kayaks on the beach grass. Mr. Gluck stated that he needed to amend the Chapter 91 license in order to move forward with the renovations that have already been approved by the Commission.

MINUTES: January 15, 2012 – *Barbara Prato moved to approve the language as written, Dennis Minsky seconded and it was so voted, 5-0.*

DISCUSSION:

Town Report:

The Commission briefly discussed the annual Town Report. *Dennis Minsky moved to approve the annual Town Report for 2012, Mark Irving seconded and it was so voted, 5-0.*

Approval of Dune's Edge Campground:

The Commission discussed the draft Conservation Restriction for the Dune's Edge Campground and Town Counsel's e-mails dated 1/24/13 and 02/04/13. The first e-mail contained comments and recommended changes to the CR. The second e-mail noted that the CR had not been finalized and indicated that the Commissioners should determine if and what changes they wanted to make to the document. The closing is on March 20th and the CR needs to be finalized, signed and sent to the state for approval prior to the Commission's March 5, 2013 meeting. The Commission wants to authorize Dennis to finalize the CR with Town Counsel. *David Hale moved to approve of and accept the Conservation Restriction to be granted to the Town by the Massachusetts Land Conservation Trust, Inc. substantially in the form presented to the Commission as of February 5, 2013 with such changes as may be approved by Chair Dennis Minsky and Town Counsel, Barbara Prato seconded and it was so voted, 4-0.*

ADJOURNMENT: *Barbara Prato moved to adjourn at 9:20 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Conservation Commission at their meeting on _____, 2013

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2013
Dennis Minsky, Chair