

**PROVINCETOWN
CONSERVATION COMMISSION
JUDGE WELSH ROOM
May 7, 2013
6:30 P.M.**

Members Present: Dennis Minsky, Lynne Martin, and Mark Irving.

Members Absent: David Hale (unexcused) and Barbara Prato (excused).

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

Chair Dennis Minsky called the Public Hearing to order at 6:36 P.M.

PUBLIC STATEMENTS:

Jim King appeared to comment on a fence project on Winston Avenue that the Commission acted on at a previous Public Hearing. He stated that, in his opinion, the Commission had acted inappropriately. Mr. King filed an appeal of the Commission's decision with the Department of Environmental Protection.

Dennis asked Mr. King not to discuss the issues related to that specific project, as the fence project had not been advertised as a topic of discussion on the Commission's agenda. If Mr. King wanted to talk about the principles of access to the beach, he was free to do so, however he could not speak about any particular project that may have involved those issues.

Brian reminded the Commission and Mr. King that the Commission did not typically respond to public statements.

Dennis stated that Mr. King could also request that the topic be placed on a future agenda.

Mr. King reiterated that he thought that the Commission acted inappropriately in the Winston Avenue case. While his appeal was being processed and reviewed by DEP, the Commission allowed another project to go forward which allowed a pathway to the beach on Winston Avenue Extension. In doing so, a large percentage of his appeal was mitigated, so when his appeal process came to an end, the new pathway to the beach had already been constructed. A member of the Commission, in conjunction with the landowner who proposed the fence and other Winston and Dewey Avenue neighbors, hired Safe Harbor to create a new pathway to the beach before his appeal could be heard, rendering his appeal worthless. He stated that no work should have been allowed or done while his appeal was pending. The Commissioners had been informed of his appeal when it was submitted. He has not yet heard from DEP regarding his appeal and is of the opinion that the Commission was remiss in allowing another pathway to be built and unethical that a member of the Commission was involved in the project. He would also like to know why when the new pathway project was presented to the Commission that it was only wide enough to accommodate pedestrians and not vehicles, as was recommended by the Board of Selectmen.

Dennis stated that it was not legal to discuss specific topics that have not been advertised to the public. He suggested that Mr. King request that the issue be placed on a future agenda.

Mr. King requested that the issue be placed as a discussion topic on the Public Hearing agenda for May 21, 2013.

MINUTES: Postponed.

Request for a Determination of Applicability:

Application by **Bronwyn Malicoat** under the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and the Provincetown Wetlands By-Law, Chapter 12. The applicant seeks approval for site work to include demolishing and rebuilding a garage structure with a larger footprint and to add a second story to the new structure at the property located at **310 Bradford Street** in Provincetown.

Presentation: Bronwyn Malicoat presented the application. She seeks to demolish a 20' by 20' garage and rebuild it to measure 24' by 24' and add a second story to include two artists' studios. A similar project was approved by the Commission in 2004, but the work was never started. In addition to this project, she seeks to demolish a shed to the left of the house and coop and place a 10' by 12' shed towards the back of the property near a garden and a 12' by 20' shed to the right of the driveway as you enter the property.

Public Comment: None.

Commission Discussion: The Commission discussed where the proposed projects were in relation to resource areas. The Commission decided that the increased size of the garage and the addition of one shed were of no concern as the area in which they were located was already disturbed. The shed that currently is the closest to the wetland area will be demolished and a smaller shed will be built where an existing garden is located. The second shed is also located in a developed area. The Commission requested that some mitigation in the form of native plantings be placed at the site where the shed will be removed. Ms. Malicoat will present a planting plan incorporating native plantings to the Conservation Agent for his approval.

Mark Irving moved to grant a Negative #3 Determination under the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and the Provincetown Wetlands By-Law, Chapter 12 for site work to include demolishing and rebuilding a garage structure with a larger footprint and the addition of a second story and the demolition and rebuilding of one shed and the placement of another shed outside the resource area at the property located at 310 Bradford Street with the Standard Order of Conditions and with the conditions that there be mitigation in the form of the planting of native vegetation in the area where the demolished shed was located and the submission of a planting plan to the Conservation Agent for his approval, Dennis Minsky seconded and it was so voted, 3-0.

DISCUSSION:

Administrative Review for emergency dredging at the fairway at MacMillan Pier and sand accretion at the West End parking lot:

Rex McKinsey, Rich Waldo, Deputy Director of the Department of Public Works and Evan Evans, of the Provincetown Inn, appeared to discuss the issue. Mr. McKinsey requested an emergency administrative approval from the Commission for dredging in the area of float space 1W and the Waterfront Park, which includes the courtesy float. In 2007 and 2011, a similar project was undertaken, however this year the conditions are worse than in previous years. The proposal is to remove the accumulation of sand and weeds via a crane. Upon the request of the Commission, Mr. McKinsey stated that the sand and wrack material will be tested for benzene before it is de-watered and disposed of at the Transfer Station.

The Harbor Committee has voted to spend \$20,000 from the Harbor Access Gift Fund for the project. The removal will begin after Memorial Day. The de-watering will take place in the

municipal parking lot. Mr. McKinsey stated that the sand could be put at the Pearl Street or Kendall Lane Town Landings where sand has been lost if it is clean and can be segregated from the plant material.

Mike Winkler is proposing to use an excavator on a float to perform the work. The sand to be dredged has migrated from the east. The volume will be approximately 100 cubic yards, which is the limit under an emergency request. Mr. McKinsey explained that the Town at some point in the future intends to file a Notice of Intent to maintain the beaches in light of the movement of sand westward.

The West End Parking Lot has accumulated a great deal of sand from winter storms this year. The Provincetown Inn is a man-made structure that serves as a barrier to stop the flow of sand in the west end. Consequently, a 4' sand dune has now formed in this area and is encroaching on a pool and an exterior function area. At this time, Mr. Evans will have to bear the cost of moving the sand off the macadam and returning it to the beach. Before public funds can be used for any removal of sand in the future, a Notice of Intent would need to be filed with the Commission and a beach maintenance plan created. The proposed strategy is for the Harbor Committee to bring an annual appropriation article to Town Meeting for beach maintenance. If passed, any sand accumulation would then be moved by the Town.

The Commission discussed the issues raised by Mr. McKinsey.

Mark Irving moved to grant permission for the emergency dredging at MacMillan Pier in the area of the courtesy float and float space 1W of not more than 100 cubic yards of sand and vegetation, to de-water and test those materials, and if the sand is determined to be 'clean', to re-nourish either Kendall Lane or Pearl Street Town Landing and to dispose of the vegetation at the Transfer Station, Dennis Minsky seconded.

The Commission discussed the motion.

The motion was so voted, 3-0.

The Commission discussed the west end project. Mr. Evans stated that the accumulation of sand is affecting his business. The work will take one day.

Lynne Martin moved to grant emergency permission to Evan Evans, of the Provincetown Inn, for the one-day activity of moving not more than 100 cubic yards of sand that has accumulated on the macadam at the property located at 1 Commercial Street back to the upper beach, Dennis Minsky seconded and it was so voted, 3-0.

CONSERVATION BOARD STATEMENTS:

Dennis read a letter from the Shellfish Advisory Committee addressed to Doug Johnstone, Town Clerk, stating that the Town may have cause for concern regarding beach access on Dewey and Winston Avenues as well as on adjacent aquaculture development areas. The Advisory Committee voted to put it on their next month's agenda.

Dennis reiterated two concerns of the Commission. He would like the best information concerning wood preservatives in water structures and an answer to the question of whether the Commission is able to approve a bulkhead where one does not exist.

Lynne is still concerned about the fill at 160 Bradford Street Extension. Brian has no information about that issue. He and Dennis will do a site visit.

Wellfleet has a new requirement in regard to beached boats. Dennis called the Conservation Agent and she will send him a copy of the regulation.

Morgan Clark and Rich Waldo met with Dennis in regard to the Commission's concerns about the use of herbicides in Town. They agreed to work more closely together, but nothing will happen until the fall. DPW has already signed a contract with a lawn maintenance company.

Jessie Cartwright and April Baxter are potential new Commission members. Mark will be voted in as a regular member. One of the two applicants will be appointed as an alternate by the Commission and the other will be recommended to the Town Manager for appointment as an alternate.

Dennis Minsky moved to appoint Mark Irving as a regular member of the Conservation Commission, Lynne Martin seconded and it was so voted, 3-0.

The two applicants will be invited to the next Public Hearing.

MINUTES: April 16, 2013 – Approval of the minutes will be postponed until the next Public Hearing.

Brian stated that Town Counsel needs the Commission to sign a municipal certification regarding the Dune's Edge Campground Conservation Restriction.

Dennis Minsky moved to sign the municipal certification regarding the Dune's Edge Campground Conservation Restriction, Mark Irving seconded and it was so voted, 2-0-1 (Lynne Martin abstaining).

ADJOURNMENT: Lynne Martin moved to adjourn at 7:52 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