

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**April 19, 2016**  
**6:30 P.M.**

**Members Present:** Dennis Minsky, Mark Irving and Barbara Prato.

**Members Absent:** Lynne Martin (excused).

**Others Present:** Anna Meade (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

Chair Dennis Minsky called the Public Meeting to order at 6:30 P.M.

**PUBLIC STATEMENTS:**

None.

**OLD BUSINESS:**

**3 Oppen Lane:** Enforcement Order issued February 4, 2016, for the cutting of trees without a permit (local MESA & buffer to ILSF).

Attorney Lester J. Murphy and Ken MacPhee, of Bartlett's Tree Experts, representing Mark & Stacy Garvey, the owners of 3 Oppen Lane, appeared to discuss the Enforcement Order. Attorney Murphy stated that the Garveys apologized for the unpermitted work, explaining that they didn't understand the scope of the work that was being done in their absence or that the area was located within the jurisdiction of the Commission. He said that as a result of the Enforcement Order, the Garveys have hired Mr. MacPhee to review the situation and to generate a proposal as to how to address it.

Mr. MacPhee reviewed his proposal, which includes implementing a two-year program using organic fertilizer, to be distributed twice a year (spring and fall), on the cut trees from the top of the bank downward. He submitted a label of the product. He added that the need for restoration pruning would be decided in the fall, after the growing season, and generating a restoration plan at this point, because of the extent of the pruning, would be difficult. He submitted and reviewed photographs he had taken of the pruned trees. He is confident that the trees cut will, even though reduced more than in the past, will develop scrub growth and a restoration plan could be executed. It will take about two years to determine how many trees will recover.

**Public Comment:** Alfred Famiglietti asked a question about the diameter of the trees and questioned the number of years that the proposed restoration would take.

**Commission Discussion:** The Commission questioned Attorney Murphy and Mr. MacPhee about the two-year plan, the proposal for restoration pruning and possible mitigation on the property. The Commission directed Mr. MacPhee to submit a professional restoration plan by May 16<sup>th</sup>, for discussion at the Commission's June 7<sup>th</sup> Public Meeting. The plan should be detailed and specific and include a thorough assessment and evaluation of the damage done, a plan for repairing that damage and for slope stabilization, using ground cover or other stabilization plantings. In addition, the Commission will require the introduction of habitat-

enhancing plantings as mitigation and requested that the Conservation Agent be part of the process. The Commission discussed the issue.

***Dennis Minsky moved to ratify the Enforcement Order for 3 Oppen Lane with the conditions that the applicant submit a detailed restoration plan by May 16<sup>th</sup>, to be discussed at the June 7<sup>th</sup> Public Meeting, that the application of the proposed organic fertilizer shall be allowed prior to that Meeting and that the Conservation Agent be involved in the restoration plan, which shall include slope stabilization and habitat enhancement plantings, Barbara Prato seconded and it was so voted, 3-0.***

***Dennis Minsky moved to impose a fine of \$2250 on the owners of the property located at 3 Oppen Lane for work done without a permit, Mark Irving seconded.***

The Commission discussed the motion.

***Dennis Minsky moved to impose a fine of \$1500 on the owners of the property located at 3 Oppen Lane for work done without a permit, Mark Irving seconded and it was so voted, 3-0.***

***Dennis Minsky so declared that the Conservation Commission move into Executive Session at 7:00 P.M. pursuant to M.G.L. c. 30A, Section 21(3) in order to discuss strategy with respect to litigation related to Aqua King Fisheries, LLC v. Conservation Commission, Barnstable Superior Court, C.A. No. 2015-00064; Conservation Commission v. Stellwagen Bank Fisheries Corp., Barnstable Superior Court, C.A. No. 2015-00387 and Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386, as discussion in an open meeting may have a detrimental effect on the litigating position of the Conservation Commission and that the Open Session will reconvene at the conclusion of the Executive Session. The motion was so voted by roll call: Dennis Minsky: Yes, Barbara Prato: Yes and Mark Irving: Yes.***

Chair Dennis Minsky reconvened the Public Meeting at 7:40 P.M.

**105 Bradford Street Extension:** Enforcement Order issued March 30, 2016, for the cutting of trees without a permit (local MESA).

Nadine Licostie appeared to discuss the matter. She said that her business is very committed to beautifying the property and creating a respite for customers and the Town. She said that she was completely unaware of the local by-law and the Commission's regulations and as soon as she did become aware, she filed for an Administrative Review. She claimed that an abutter planted non-indigenous willows on their property. They were growing at a fast pace and those were the trees that were taken down.

The Commission discussed the issue that provoked the Enforcement Order with Ms. Licostie. Mr. Minsky clarified that a restoration plan should rehabilitate the area in question to the satisfaction of the Commission and include a detailed description, and number, of specific species of trees and any ground cover or other mitigation that could be planted in order to repair the trauma done to the area.

**Public Comment:** Jerome Crepeau, an abutter, commented about issues related to the boundary line between his and Ms. Licostie's property. Ken MacPhee asked if the Commission had

guidelines related to the local by-law and commented on the fact that most people do not know about it. Alfred Famiglietti asked a question related to the boundary issue.

***Dennis Minsky moved to ratify the Enforcement Order and direct the owners of the property located at 105 Bradford Street Extension to submit a professional restoration plan, with a timeline, that includes a detailed planting plan for the damaged trees in addition to mitigative ground cover by May 16<sup>th</sup>, for discussion at the June 7<sup>th</sup> Public Meeting, Mark Irving seconded.***

The Commission discussed the motion with Ms. Licostie.

***The motion was so voted, 3-0.***

## **NEW BUSINESS:**

### **Enforcement Order:**

**377 Commercial Street:** Enforcement Order issued March 31, 2016: Replacement and construction of a deck without a permit.

Jamie Kryszkiewicz appeared to discuss the matter. She said that the Condominium Association was seeking to replace a derelict deck at the property and apologized for not seeking the approval of the Commission, explaining that she was unaware that the project required its approval. Mr. Minsky said that there were two mitigating circumstances to consider in this matter; the fact that Ms. Kryszkiewicz had to wait for an extended amount of time this evening before being heard and the fact that the Enforcement Order was issued on March 29, 2016, and the Association sought to rectify that situation soon after by filing an Administrative Review on the 31<sup>st</sup>.

***Dennis Minsky moved to ratify the Enforcement Order for 377 Commercial Street for work done in a resource area without a permit, Barbara Prato seconded and it was so voted, 4-0.***

***Dennis Minsky moved to levy a fine of \$150 on the owners of 377 Commercial Street for work done in a resource area without a permit, Mark Irving seconded.***

The Commission discussed the motion.

***Dennis Minsky moved to levy a fine of \$100 on the owners of 377 Commercial Street for work done in a resource area without a permit, Mark Irving seconded, and it was so voted, 3-0.***

**105 Bradford Street Extension:** Enforcement Order issued March 30, 2016, for the cutting of trees without a permit (local MESA).

***Dennis Minsky moved to levy a fine of \$250 for a Type I violation for the cutting of trees without a permit, Barbara Prato seconded.***

Ms. Licostie suggested that the \$250 be used for public education about the Commission's regulations. She volunteered to make a public statement about the issue.

***The motion was so voted, 3-0.***

**Administrative Review**

Request for Administrative Review consideration by Nadine Licostie, **105 Bradford Street Extension**, to remove non-indigenous trees within the jurisdiction of the General By-Law Chapter 12 as defined by the Natural Heritage and Endangered Species Program (NHESP).

Nadine Licostie appeared to present the request. She requested a continuance to the June 21, 2016 Public Meeting at 6:30 P.M. in order to clarify the proposed restoration plan. Ms. Meade said that the plan should be submitted to the Commission by May 31<sup>st</sup>.

***Barbara Prato moved to grant the request to continue the Administrative Review consideration by Nadine Licostie to remove non-indigenous trees at the property located at 105 Bradford Street Extension to the June 21, 2016 Public Meeting at 6:30 P.M., Mark Irving seconded and it was so voted, 3-0.***

**Enforcement Order**

**240½ Bradford Street** Enforcement Order issued April 8, 2016, cutting of trees without a permit (Flood Zone A). The owner of the property was not present. The Commission had colored photographs of the property before and after the seven mature trees were cut. A neighbor had made the complaint. The Commission discussed the issue.

***Dennis Minsky moved to ratify the Enforcement Order for 240 ½ Bradford Street for the cutting of trees without a permit and direct the owner of the property to submit a restoration plan by May 31<sup>st</sup>, to be discussed at the June 21<sup>st</sup> Public Meeting, Barbara Prato seconded and it was so voted, 3-0.***

The Commission discussed fines.

**Application** of Alfred Famiglietti to become an alternate on the Conservation Commission. Mr. Famiglietti briefly informed the Commission about his qualifications for the position.

***Dennis Minsky moved to approve appoint Mr. Famiglietti as an alternate on the Conservation Commission, Mark Irving seconded and it was so voted, 3-0.***

**Application** of Scott Donahue to become an alternate on the Conservation Commission. Mr. Donahue briefly informed the Commission about his qualifications for the position.

***Dennis Minsky moved to approve appoint Mr. Donahue as an alternate on the Conservation Commission, Barbara Prato seconded and it was so voted, 3-0.***

**CONSERVATION AGENT REPORT:**

Anna Meade informed the Commission that she would be leaving the position of Conservation Agent.

**MINUTES: March 29, 2016 – *Dennis Minsky moved to approve the language as amended, Barbara Prato seconded and it was so voted, 3-0.***

**ANY OTHER BUSINESS:**

Mr. Minsky said that Sherry Dranch gave him information regarding butterfly habitats and he wants the Commission to keep in mind her idea to create one at the B Street Garden. The management plan for the area needs to be reviewed.

**ADJOURNMENT:** *Barbara Prato moved to adjourn the Public Meeting at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016

Dennis Minsky, Chair