

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
JUNE 20, 2017
5:30 P.M.

Members Present: Dennis Minsky, Mark Irving, Alfred Famiglietti, Gregory Howe and Robert Brock.

Members Absent: Nathaniel Mayo (excused) and Kiah Coble (excused).

Others Present: Attorney Gregg Corbo (Town Counsel), Rex McKinsey (Harbormaster), Steve Mague (environmental consultant), Gloria McPherson (Town Planner), Tim Famulare (Conservation Agent) and Ellen C. Battaglini (Permit Coordinator).

Chair Dennis Minsky called the Open Session to order at 5:33 P.M.

1) **Executive Session:**

Executive session pursuant to G.L. c. 30A, §21(a)(3), to discuss litigation strategy in the following matters: Aqua King Fishery, 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; Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386; and the Request for Superseding Determination of Applicability filed with the Massachusetts Department of Environmental Protection by David Kelley regarding commercial fishing operations for surf clams utilizing Hydraulic fishing gear off Herring Cove.

He declared that an Open Session might have a detrimental effect on the Town's litigating position with regard to these matters. He called for a motion to go into Executive Session pursuant to M.G.L. c. 30A, s. 21A (3).

Alfred Famiglietti moved to go into Executive Session pursuant to M.G.L. c. 30A, s. 21A (3), Gregory Howe seconded and it was so voted by roll call vote: Mark Irving: Yes; Alfred Famiglietti: Yes; Gregory Howe: Yes; Robert Brock: Yes; and Dennis Minsky: Yes.

The Commission returned to Open Session at 6:03 P.M.

2) **Staff Update**

Public update regarding the status of (i) the litigation of the following cases: Aqua King Fishery, 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; Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386; and (ii) the Request for Superseding Determination of Applicability filed with the Massachusetts Department of Environmental Protection by David Kelley regarding commercial fishing operations for surf clams utilizing hydraulic fishing gear off Herring Cove.

Attorney Gregg Corbo, Town Counsel, reviewed the history and current status of the litigation related to hydraulic clamming. Rex McKinsey reviewed a proposed study, which will be undertaken by the Center for Coastal Studies, of the impact of hydraulic dredging on the Herring Cove area. Attorney Corbo said that the results of the study would inform discussions with

stakeholders in an effort to formulate sound, science-based conditions for managing and maintaining the resource responsibly and sustainably.

Public Comment: Dieter Groll asked whether the local regulation could be revised to add more criteria about fees and the subject of the proposed study. Attorney Corbo said that the Appeals Court ruled that the Commission does not have the authority to enact a regulation that effectively regulates the taking of sea clams. If the decision were to become a final judgment, current regulation would not be enforceable, notwithstanding the authority of the Commission to enact regulations that are more stringent than the Wetlands Protection Act. Any new regulations would have to be reviewed to make sure they were consistent with the Court's decision. He said that the Town has sought an assessment of a civil penalty in its filings, but that issue has not yet been decided. Mr. McKinsey stated that the Center for Coastal Studies has done sediment transport studies in that area, so there is a baseline with which to compare further research. He thought that the most important components of the study would be regarding velocity change as it is affected by the compaction of the bottom in that particular area off Herring Cove. The Commission briefly questioned Mr. McKinsey and Attorney Corbo.

3) **Public Comments** on any item not on the agenda below:
None.

4) **Public Hearings:**

a) CON-17-171 **Shank Painter Pond Wildlife Sanctuary, 185 Route 6**
Administrative Review application by **Cody Salisbury, Provincetown Water Superintendent**, pursuant to the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law, for the installation of an 8" x 2" tap on a water main to facilitate flushing of water main. Work to take place within NHESP Estimated and Priority Habitat and Buffer Zone to an Isolated Vegetated Wetland.

Presentation: Cody Salisbury appeared to present the application. He reviewed the project, which involves a water main that ties into Province Road and Ship's Way Road that has been inactive since the development at 90 Shank Painter Road was constructed. The Town is proposing to activate it in order to provide water service to several properties and move the service connections off Province Road, partly because of an upcoming paving project on the road. The water main will be flushed prior to activation and the same standard operating procedures, including de-chlorination, tarping to minimize velocity of the discharge and the installation of silt fencing, would be used as when mains are drained for maintenance purposes.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Salisbury. He briefly described the de-chlorination process. Mr. Minsky reviewed the conditions requested by the Commission, including the anchoring of plastic tarping under and downstream from the pipe discharge, the installation of at least two rows of hay bales on top of the tarp and below the pipe discharge and the installation of silt fencing fabric against the hay bales to reduce the velocity of the discharge flow. Mr. Famulare suggested that the applicant notice staff prior to any activity commencing in order to inspect the controls, and to possibly observe the activity happening, and determine the chlorine residual at the tank prior to draining.

Mark Irving moved to approve the Administrative Review application, CON-17-17, by Cody Salisbury, Provincetown Water Superintendent, pursuant to the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law, for the installation of an 8" x 2" tap on a water main to facilitate flushing of water main at Shank Painter Pond Wildlife Sanctuary, 185 Route 6 with the afore-mentioned conditions, Alfred Famiglietti seconded and it was so voted, 5-0.

b) CON-17-129 **76R Bayberry Avenue** (continued from the meeting of June 6, 2017)

Notice of Intent by **Christopher Wise** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to dig trenches in roadways and campsites to bring electric, Water and sewer connections to 183 campsites. Work to take place within NHESP Estimated and Priority Habitat, Bordering Land Subject to Flooding and the 100-ft. Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Attorney Lester J. Murphy and Chris Wise appeared to discuss the application. Attorney Murphy reviewed new material submitted related to the proposed upgrading of the utility services at the campground. He reviewed the water/sink configuration, a model of which was shown to the Commission, and electrical facilities for installation at each campsite.

Public Comment: None.

Commission Discussion: The Commission and Mr. Famulare questioned Attorney Murphy and Mr. Wise. Mr. Famulare reviewed his memo regarding the project and recommended conditions. The Commission discussed the conditions with Attorney Murphy and Mr. Wise. Mr. Famulare will work on conditions for the next meeting. Attorney Murphy requested a continuance to the July 18, 2017 Public Hearing.

Mark Irving moved to grant the request to continue CON-17-129, 76R Bayberry Avenue, Notice of Intent by Christopher Wise, to the July 18, 2017 Public Hearing at 6:30 P.M., Gregory Howe seconded and it was so voted, 5-0.

c) CON-17-166 **24 Pilgrim Heights Road**

Request for a Determination of Applicability by **Frank Mockler** and **Stephen Griffin** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the construction of a one-story addition to the existing residence within an existing brick patio. Work to take place within NHESP Estimated and Priority Habitat and the 100-ft. Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Frank Mockler and Stephen Griffin appeared to present the application. Mr. Mockler reviewed the application that involves putting a 7' by 8' addition on the structure. It will be located within the current brick patio area, which has been disturbed since 1986 and is within the 100' buffer zone.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Mockler and Mr. Griffin. Mr. Mockler said that access to the area for a backhoe will be via a pathway on the south side of the structure and materials will be stored in the driveway.

Mark Irving moved to grant a Negative #1 and a Positive #5 Determination for CON-17-166, Frank Mockler and Stephen Griffin, 24 Pilgrim Heights Road, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the construction of a one-story addition to the existing

residence within an existing brick patio with the Standard Order of Pre-Construction Conditions numbers 1-4, Construction Conditions numbers 1-5 and 10-12 and Post-Construction Condition number 3, Gregory Howe seconded and it was so voted, 5-0.

d) **CON-17-167 57 Pleasant Street**

Request for a Determination of Applicability filed by **Michael Metivier and Kevin Luczkow**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the replacement and expansion of an existing wooden deck. Work to take place within NHESP Estimated and Priority Habitat, Bordering Land Subject to Flooding and the 100-ft. Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Kevin Luczkow appeared to present the application. He reviewed the project that involves the replacement of a deck.

Public Comment: None.

Commission Discussion: The Commission briefly questioned Mr. Luczkow. He said that all work will be performed within the fenced-in area on the site.

Dennis Minsky moved to grant a Negative #3 Determination for CON-17-167, 57 Pleasant Street, Michael Metivier and Kevin Luczkow, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the replacement and expansion of an existing wooden deck with the Standard Order of Construction Conditions numbers 1, 2, 4, 5 and 10-12, Mark Irving seconded and it was so voted, 5-0.

5) **Approval of Minutes of June 6, 2017**

Dennis Minsky moved to approve the minutes of June 6, 2017 as amended, Mark Irving seconded and it was so voted, 5-0.

6) **Information**

Administrative Review applications approved by Agent:

a) CON-17-170 **379R Commercial Street** – replacement of wooden posts supporting second floor deck and installation of sonotubes.

7) **Any other business that shall properly come before the commission:** Mr. Famulare reported that there was excavating occurring in the parking lot of Seamen’s Bank for a sewer upgrade by the owners of the Canteen at 225 Commercial Street. He recommended that an Enforcement Order be issued and the owners be asked to appear before the Commission at the next meeting.

ADJOURNMENT: *Dennis Minsky moved to adjourn the Public Hearing at 8:15 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017

Dennis Minsky, Chair