

TOWN OF PROVINCETOWN

CONSERVATION COMMISSION

MEETING MINUTES OF OCTOBER 26, 2000

The following minutes are available on-line as a service and are not the official record due to changes in formatting for the Internet. The minutes may have attachments that are not included here in this format. The official, complete paper copy can be viewed during regular office hours, Monday - Friday: 8 a.m. to 5 p.m. in the Office of the Town Clerk, 260 Commercial St. Provincetown, MA 02657.

Meeting Held in Town Hall

Members Present: John Bennett (Chair), Robert Guerreiro, Thomas Hochard, Sheila Benzer (Alternate),

Members Absent: Susan Avellar, Sue Ogden (both excused)

Others Present: Roger Dias (Building Inspector), Sandra Turner (DPW staff), Mark White (Environmental Partners Group), Rachel Crosby (On-Call Secretary)

Call to Order: Chair John Bennett called the Meeting to order at 6:35 PM.

I. Public Hearings

Notice of Intent

244 Route 6, Town-owned 47.7 acres known as Assessors' Map Parcel # 08-1-005, Town of Provincetown

To conduct landfill capping activities at the Old Burn Dump – Mark White of the Environmental Partners Group appeared and made a presentation on behalf of the Town on the background of the Burn Dump, the regulatory status/environment, site investigation activities and included a discussion of remedial alternatives.

Commission Discussion

Commission members asked for more details on exactly where the high concentration of lead and PAH's were found. About 10 of the 100 test holes had lead or PAH concentrations which exceeded MCP standards. Mr. White compared the cost of removing the burn dump material with capping the site. The net cost to the Town for capping would be \$150,000. The slopes will be seeded with a grass mix.

The Commission members discussed whether it was necessary to cap the entire burn dump site, especially those areas that are already heavily vegetated, as opposed to simply capping those areas where the high concentrations were found. Mr. Bennett said the Town was opposed to spot-capping due to the human health liability risk from uncapped areas. Mr. White said that the DPW would have some leeway in allowing existing vegetation to remain. Mr. White answered several questions about his firm's experiences dealing with burn dumps and landfills in other towns. Mr. White confirmed that he and his firm were under contract with DPW, but could not represent the DPW in terms of the potential Orders of Conditions. Sandra Turner, Acting DPW Director, appeared and said she could represent DPW's interests.

In response to a question from Sheila Benzer, Mr. White said he did not know exactly how many trees would need to be removed to cap the Burn Dump. Ms Turner confirmed that DPW would be doing a lot of the work in-house.

Mr. Bennett referred to and discussed a draft Order of Conditions he had prepared. Mr. Bennett confirmed that he had modified article(s) in the Order of Conditions after receiving comments from

the applicant (DPW). The Commission discussed which and how much acreage could or would be dedicated for conservation purposes.

Sheila Benzer referred to and read from a DEP report, which stated that existing vegetation on the slopes should remain untouched. Ms Benzer also read from another letter from the Environmental Partners Group (addressee not stated) which said that the capped area would be only 1.3 acres. Ms Benzer discussed the potential removal of burn dump material from the top of the site where the Sewage Treatment Plant may be constructed. Ms Benzer said that it appeared that the material will be pushed off the top of the site onto the back of the site, where it would be capped. Ms Benzer objected to preparing the top of the site for a Sewage Treatment Plant which may not be eventually built there. Ms Benzer said the Order of Conditions should only address the capping of the site, not the preparation for a potential Sewage Treatment Plant.

In response to a question from John Bennett, Mr. White said that the cost of capping the top of the site versus removing and consolidating the burn dump material from that area would be a “wash,” i.e., about the same. Ms Benzer suggested that the application should be tabled and that Town should return after the Town Meeting vote on the Sewage Treatment Plant site, that otherwise they were “putting the cart before the horse.”

In response to a question from Robert Guerreiro, Mr. White explained the function and purpose of the French drains.

Public Comment

- Peter Souza said that the real intention of the Town’s application was to prepare the site for a Sewage Treatment Plant and that the documentation on lead levels, etc. was inadequate. Mr. Souza said that the Town had until 2002 to cap the site and that he would appeal a Conservation Commission approval. Mr. Souza urged the Commission to table the application.

Commission Discussion

Sheila Benzer spoke about the endangered animal species in the area of the Burn Dump as well as other fauna and flora in the area.

Mr. Bennett asked Ms Turner if it were acceptable to add an additional Article to the Order of Conditions which would state that construction would be delayed until the DPW staff, an engineer, and Conservation Commission members could meet at the site to determine exactly the areas to be disturbed and capped. Ms Turner said that she would find the additional article acceptable so long as worker safety was also considered.

Mr. Bennett said he was encouraged by the Town’s response to the earlier Enforcement Order. Mr. Bennett said he felt the Conservation Commission should cooperate with the Town and consider that the Burn Dump site could be eventually used as a Sewage Treatment Plant location.

Sheila Benzer said she had several comments and additions that she wanted to make on the Order of Conditions, but that she had not yet had time to discuss them with John Bennett. Sheila Benzer also commented on the fact that the gates promised by DPW Director David Guertin were not erected until just recently and that promised signs had not been put up. Sheila Benzer submitted several photos of the area which she said showed damage done subsequent to the last Conservation Commission meeting.

John Bennett moved to approve the Order of Conditions as amended and drafted. The motion failed for lack of a second.

Robert Guerreiro moved to deny the plan and Order of Conditions, Sheila Benzer seconded and it was so voted, 3-1 (John Bennett).

Notice of Intent

139 Commercial Street, Jay Anderson c/o Robert O’Malley (continued from September 28)

Construction of two dwelling units, renovation, Title 5 – Attorney Jamie Veara, Mario Digregorio (a wetlands specialist), Mr. Cabral (an engineer from Coastal Engineering), realtor

Robert O'Malley, and co-counsel Lester Murphy appeared to present the application. Mr. Veara said that the Title 5 septic system design was pending approval before the Board of Health. Mr. Veara referred to and discussed "delineations" on site plans, dated August 17, 2000. Mr. Digregorio said that the coastal dune zone boundary was conservative and had been established long before he was hired for the project. Mr. Bennett concurred that it was difficult to determine zone delineations at this site, but that it appeared that the coastal dune zone boundary as shown on the plan was generally acceptable to all concerned parties. Mr. Digregorio distributed a map showing flood zone boundaries and referred to calculations required by Rebecca Haney, a marine biologist with the Massachusetts Coastal Zone Management, that appeared impossible to complete due to a lack of data.

Building Inspector Roger Dias stated that Ms Haney's delay in making a determination was due to the fact that the calculations had not been completed by Mr. Digregorio. Mr. Dias recommended waiting until Ms Haney issued her report.

Mr. Digregorio said that once the velocity zone was conclusively calculated it would affect virtually every property on Commercial Street.

Mr. Veara read from and discussed the Massachusetts Code of Regulations which he interpreted as being permissive of the structures the applicant wants to build. Mr. Veara confirmed that the applicant had already applied for a building permit, but that it was pending approval from the Conservation Commission and the Board of Health.

Mr. Digregorio discussed how the project met "performance standards."

Mr. Dias spoke in opposition to the assertions made by Mr. Veara and Mr. Digregorio, stating that siting a 38,000 cubic foot house on a dune would obviously have negative effects.

Mr. Veara read from sections of a letter from an abutter's attorney listing the abutter's objections, stating that none of the objections were of concern to the Conservation Commission.

Public Comment

- Robin Reid, the attorney for the abutter, spoke, saying the matter was not properly before the Conservation Commission as the septic system had not been approved. Ms Reid recommended waiting for the report from Ms Haney. Ms Reid said that, contrary to Mr. Veara's assertion, the velocity zone did have an impact on the septic system.

Commission Discussion

The Commission discussed whether it could legally hear an application before the septic system design had been approved. Sheila Benzer said that she felt it was important to hear from Ms Haney first.

Public Comment

- Stan Humphreys, a geologist hired by the objecting abutter, said that the item of greatest concern was the structure proposed to be constructed on the vegetated area of the dune and that the impact would be considerably more than "negligible". Mr. Humphreys also said that a piling plan had not been provided. Mr. Digregorio countered Mr. Humphreys' statements about the minimum allowed adverse effect in the performance standards, stating that the "no adverse effect" limit could be activated only if an endangered species were present.

Commission Discussion

John Bennett questioned the lack of a piling plan and Mr. Veara referred to architectural plans already submitted to the Town along with the original NOI application. Robert Guerreiro said his concern was still with the velocity zone and its impact on the proposed slab foundation building. The Commission discussed where in Town Hall the FEMA studies might be as the applicant is claiming that the required calculations cannot be completed without the data from the studies.

Mr. Dias said that Ms Haney had said that she could issue a report within two weeks of receipt of

the calculations from the applicant.

John Bennett moved to inform the Board of Health that the coastal zone delineation as shown on the applicant's plan is acceptable to the Conservation Commission, Robert Guerreiro seconded and it was so voted, 3-1 (Sheila Benzer).

The applicant requested a continuance until the next Conservation Commission meeting and Chair John Bennett granted the continuance.

Notice of Intent

345A Commercial Street, Fish & Yee Condo Assoc/Coastal Engineering, Inc.

Reconstruct foundation of each building – Mr. Bologna and Mr. Ryan of Coastal Engineering appeared to present the application and discussed site plans previously submitted. Mr. Bologna said that the buildings would not increase in height. A small area in the front of Unit C would be expanded to become a small basement for heating equipment. Trees adjacent to the property would have to be removed, but the neighbor does not have any objections. There will be no heavy equipment on the beach side. Neighbor to the west would benefit by having the edge of a parking lot restored. Excavated soil would be removed from the site. Contractor has not yet been chosen.

Sheila Benzer moved to approve with a normal Order of Conditions and to accept the plans as submitted, Tom Hochard seconded and it was so voted, 4-0.

Silk fencing and straw bales required, debris and erosion control, all excavated material to be removed from site, trash removed daily or covered overnight, dumpster to be on-site, Mr. Diaz will inspect for compliance.

Notice of Intent

36 Shank Painter Road, Shank Painter Common Condos/Wm N. Rogers, II, P.E.

Title Five upgrade – William Rogers appeared to present the application. The design has been approved by the Board of Health and has been submitted to the State for approval. Septic system will be above the ground water level. Due to failed cesspools on the property, the owners are under an order from the Board of Health to upgrade. Leaching bed will only be 6" in height. Only one or two trees will be removed. Septic tanks will be outside buffer zone. Trenches will be dug to each cottage. Excavated material will be trucked off-site daily. Straw bales and silk fence to be placed along the top of the bank. Mr. Diaz will inspect for compliance. No pesticide, fertilizer or fungicide to be used on lawn in the future. Standard trash disposal protocols to be observed.

Robert Guerreiro moved to accept plan as submitted with Order of Conditions as noted, Tom Hochard seconded and it was so voted, 4-0.

Request for Determination of Applicability

523 Commercial Street, W. Ritzi and R. Siclari/Virginia Bender

Hammock stand on beach – applicant did not appear.

II. Public Statements

- None

III. Any Other Business Which Shall Properly Come Before the Commission

1. None

IV. Approval of Minutes

September 28, 2000 – Robert Guerreiro moved to accept, Sheila Benzer seconded and it was so voted, 3-1 (Tom Hochard).

Commission Member Comments –

- Sheila Benzer asked about the Taves' Order of Conditions and William Rogers said he had filed the Order of Conditions and had provided Mr. Taves with a copy.

Adjournment

Robert Guerreiro moved to adjourn at 9:59 P.M. and it was so voted unanimously.

.....
These minutes were approved by a vote of the Provincetown Conservation Commission members present at their meeting on _____, 200__

Respectfully Submitted:

_____ Title
Conservation Commission Signature

Submitted by Rachel T. Crosby, On-call secretary.