

# PROVINCETOWN CONSERVATION COMMISSION

January 6, 2011

5:00 P.M.

**Members Present:** Dennis Minsky, Jack McMahon, David Hale, Hank Janowsky and Barbara Prato.

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

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

Dennis Minsky called the Public Meeting to order at 5:03 P.M.

## **PUBLIC STATEMENTS:**

None.

## **DISCUSSION:**

### 2 Commercial Street – Sedimentation Controls and Protection of Abutting Wetlands:

Cliff Schorer and John Albright appeared to discuss this issue. Mr. Schorer gave a brief history of the Bentonite clay slurry spill from his initial knowledge of the event up to the present. When he first contacted an environmental scientist who worked for the well driller about the slurry spill from the drill rig, it was explained that the material was environmentally inert and composed of silica and sodium bentonite clay. The scientist also claimed that there were no known environmental hazards associated with the material. The drilling company suggested that Mr. Schorer just pick up the material and get rid of it. Mr. Schorer made arrangements to remove the material from the site, but he then received an Enforcement Order to stop the removal work. Mr. Schorer had also done some research into the material and found that it was “fit for human consumption” and was typically used for water well drilling, however that it would create a barrier on the surface of the ground if allowed to sit and dry. After the Order was received and work was halted, Mr. Schorer hired Paul Shea, of Independent Environmental Consultants, Inc., who had initially flagged the wetlands in that area, to generate an assessment report. Mr. Shea’s recommendation for removal was to let it dry as much as possible and then to remove it in buckets. He further suggested waiting until August to remove it as that would allow time for it to dry sufficiently. Mr. Schorer then received a bid proposal from the Horsley Witten Group for an independent assessment of the impact of the spill, which was undertaken at the request of the Commission.

Mr. Schorer related to the Commission his failed efforts to get the drilling company to accept responsibility for the spill. Mr. Schorer alleged to the company that he was unaware of the its use of the slurry and, in fact, was initially told by the company that the drilling in that area was easy and the use of slurry would not be necessary. The drilling company scientist said that vacuuming would do more harm than good because of the weight of the material and the corresponding “likeness” of all of the surrounding material. Mr. Schorer then assured the Commission that he is willing to remove the material whether the drilling company pays for it or not and that he would be looking to his insurance company for support.

**Public Comment:** Ted Malone, a direct abutter, asked how the material was going to be removed and if heavy equipment would be used and how the area would be accessed. Candace

Nagle, a resident of the neighborhood, asked if the State had weighed in on the toxicity of the air-borne particles after the clay mixture had dried.

**Commission Discussion:** The Commission questioned Mr. Shorer and Mr. Albright. The Department of Environmental Protection has contacted Brian about the issue, inquiring about what was being done to clean up the site. The Commission currently has issued an Enforcement Order with the requirement that an after the fact Notice of Intent be filed. The Commission discussed exercising its option to hire a consultant, to be paid for by Mr. Schorer, to make an independent assessment of the spill and recommend mitigation procedures. The Commissioners are concerned about the environmental damage that may result from waiting until August to remove the material and the ability to determine, at that time of the year, whether the clean-up has been completed or not.

***Hank Janowsky moved to hire Horsley Witten Group to implement Tasks 1, 2A, 3 and 4 as described in its letter of December 15, 2010 to the Commission, for a total of \$2730.00, to be paid by the owner of the property located at 2 Commercial Street, Dennis Minsky seconded and it was so voted, 5-0.***

Seawall Projects in the East End:

Brad Locke appeared to discuss the seawall projects at 663 and 665 Commercial Street. He has substantially completed these projects. He stated that the rubble on the beach was cleaned up on three different occasions. Large rubble was removed by hand and a power rake was used to clean smaller-sized material. He claims that there is still rubble migrating from the beach at 659 and 661 Commercial Street to the beach that he has already cleaned.

**Public Comment:** The Commission heard comments from Dana McCannell about her observations of both of the seawall projects. There were several letters in the file. One letter of concern about the impacts of heavy equipment and rubble on the beach, a letter from the owner of 665 Commercial Street about the location of the new seawall at 661 Commercial Street, claiming it was sited in front of where the old seawall was located, and a letter commending Mr. Locke's removal of rubble and the failure of Cape Cod Docks to remove rubble on the beach at 659 and 661 Commercial Street.

**Commission Discussion:** The Commission questioned Mr. Locke. Dennis had collected pieces of the coffer dam that he found on the beach in front of 659 and 661 Commercial Street and brought them to the Hearing and has observed material as far down the beach as 645 Commercial Street.

***David Hale moved to issue an Enforcement Order to the owner of 659 Commercial Street for violation of an existing Order of Conditions for failure to police the beach for rubble on a daily basis and continuing to work outside the work area as delineated in the Order of Conditions, therefore the property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource area, resource area alterations resulting from said activity shall be corrected and the resource area returned to its original condition and a restoration plan shall be filed with the Conservation Commission on or before January 11, 2011, Dennis Minsky seconded and it was so voted, 5-0.***

***David Hale moved to issue an Enforcement Order to the owner of 661 Commercial Street for violation of an existing Order of Conditions for failure to police the beach for rubble on a daily basis and continuing to work outside the work area as delineated in the Order of Conditions, therefore the property owner, his agents, permittees, and all others shall***

*immediately cease and desist from any activity affecting the Buffer Zone and/or resource area, resource area alterations resulting from said activity shall be corrected and the resource area returned to its original condition and a restoration plan shall be filed with the Conservation Commission on or before January 11, 2011, Dennis Minsky seconded and it was so voted, 4-0-1 (Jack McMahan abstaining).*

*David Hale moved to issue an Enforcement Order to the owner of 663 Commercial Street for violation of an existing Order of Conditions for failure to police the beach for rubble on a daily basis and continuing to work outside the work area as delineated in the Order of Conditions, therefore the property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource area, resource area alterations resulting from said activity shall be corrected and the resource areas returned to its original condition and a restoration plan shall be filed with the Conservation Commission on or before January 11, 2011, Barbara Prato seconded and it was so voted, 5-0.*

*David Hale moved to issue an Enforcement Order to the owner of 665 Commercial Street for violation of an existing Order of Conditions for failure to police the beach for rubble on a daily basis and continuing to work outside the work area as delineated in the Order of Conditions, therefore the property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource area, resource area alterations resulting from said activity shall be corrected and the resource areas returned to its original condition and a restoration plan shall be filed with the Conservation Commission on or before January 11, 2011, Dennis Minsky seconded and it was so voted, 5-0.*

The Commission discussed the issue of the restoration plans.

*David Hale moved that the restoration plans for 663 and 665 Commercial Street can be approved by the Administrative Review of the Conservation Agent prior to January 11, 2011, Dennis Minsky seconded and it was so voted, 5-0.*

*David Hale moved to issue a Type 4 violation of the Provincetown Wetlands By-Law Chapter 12 to the owner of 659 Commercial Street for unauthorized activity beyond the scope of the Order of Conditions, that being the presence of unauthorized construction rubble, debris and material in a protected coastal beach resource area, and to levy a fine of \$300.00 per day for four separate, documented violations occurring on December 13<sup>th</sup> and December 18<sup>th</sup>, 2010, and January 5<sup>th</sup> and January 6<sup>th</sup>, 2011, for a total of \$1200.00, Dennis Minsky seconded and it was so voted, 5-0.*

*David Hale moved to issue a Type 4 violation of the Provincetown Wetlands By-Law Chapter 12 to the owner of 661 Commercial Street for the unauthorized activity beyond the scope of the Order of Conditions, that being the presence of unauthorized construction rubble, debris and material in a protected coastal beach resource area and to levy a fine of \$300.00 per day for four separate, documented violations occurring on December 13<sup>th</sup> and December 18<sup>th</sup>, 2010, and January 5<sup>th</sup> and January 6<sup>th</sup>, 2011, for a total of \$1200.00, Dennis Minsky seconded and it was so voted, 4-0-1 (Jack McMahan).*

**DISCUSSION:**

**Greenway Project:**

Our Americorps volunteer is nearly finished with a draft map of the Greenway. The Commission briefly discussed the issue. According to Dennis, the next step might be for the Open Space Committee to make an amendment to the Open Space Plan to include a reference to the Greenway, citing its importance and value.

**Pilgrim Bark Park Shade Project:**

Candace Nagle appeared to discuss this project with the Commission. The lack of shade at the dog park is a public safety and health issue. She is proposing to plant some trees for a distance of 25' along the south side of the Dog Park. The proposed project would also involve relocating some saplings and other trees. The area in question is 91' from the nearest wetland, thus within the jurisdiction of the Commission. The Commission questioned Ms. Nagle. The Commission has to decide whether the project could be handled as an Administrative Review or would require the filing of a Request for a Determination of Applicability. Natural Heritage will also have to make a determination. The Commissioners will make a site visit and discuss the project at the next Public Hearing on January 11, 2011.

***ADJOURNMENT: Jack McMahon moved to adjourn at 7:10 P.M. and it was so voted unanimously.***

These minutes were approved by a vote of the Conservation Commission at their meeting on \_\_\_\_\_, 2011

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2011  
Dennis Minsky, Chair