

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM IN TOWN HALL
January 11, 2011
6:30 P.M.

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

Absent: None.

Others Present: Ellen C. Battaglini (Recording Secretary).

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

PUBLIC STATEMENTS:

None.

MINUTES: December 7, 2010 – Regular Session - *David Hale moved to approve the language as written, Hank Janowsky seconded and it was so voted, 5-0.*

Request for a Certificate of Compliance

Application by **Honey Black Kay**, represented by **William N. Rogers, II**, for a **Certificate of Compliance** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12. The work was permitted under DEP Number SE 58-275 at the property located at **595 Commercial Street** in Provincetown.

Presentation: William N. Rogers, II appeared to present the application. The project involved the replacement of a failed concrete gravity bulkhead with a timber bulkhead.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Rogers.

David Hale moved to issue a Certificate of Compliance under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law Chapter 12 for work permitted under DEP Number SE 58-275 at the property located at 595 Commercial Street in Provincetown, Dennis Minsky seconded and it was so voted, 5-0.

Request for a Certificate of Compliance

Application by **Teri Motley**, represented by **Coastal Engineering**, for a **Certificate of Compliance** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12. The work was permitted under DEP Number SE 58-480 at the property located at **659 Commercial Street** in Provincetown.

Coastal Engineering submitted a letter attesting to the completion of the project.

Presentation: Attorney Nancy Correia appeared before the Commission. She represents the applicant in the sale of the property.

The Commission tabled the matter until they have had a chance to speak with the owner of Cape Cod Docks concerning the seawall project later in the Hearing.

Notice of Intent (continued from December 7, 2010)

Application by **Gerard Irmer, Chair, Provincetown Harbor Committee**, represented by **Peter Markunas, of Woods Hole Group, Inc.**, for a **Notice of Intent** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12. The scope of work will include the annual springtime removal of fall and winter accumulated wrack and debris and the periodic seasonal beach-raking along approximately 7,380 linear feet of shoreline. The areas being considered for beach raking include the beach in front of the West End parking lot, the Town beaches between Court and Howland Street, and the beaches running from the Cape Inn to the Truro Town line. On the shoreline west of Howland Street, beach-raking activity will be limited to below the historic high water line.

Presentation: Gerry Irmer appeared to discuss the application. He submitted a letter from Natural Heritage which outlined the agency's requirements for the proposed project, including:

- after April 1st, no raking of seaweed shall occur at or below the highest drift wrack line of the past monthly tide cycle that has not been storm-influenced and before the raking is to occur, the Town's Conservation Agent, or other representative designated by the Conservation Commission, shall meet on site with the raking personnel to delineate the highest monthly drift line that has not been storm-influenced at or below which raking shall not occur;
- after April 1st, no raking shall occur on any sections of the beach where staff of Massachusetts Audubon's Coastal Water Bird Program has not been given permission to monitor for the presence of territorial or nesting piping plover or terns, or their chicks and to erect and maintain symbolic fencing, which is twine tied between posts, as necessary to protect the territorial courting or nesting areas of piping plovers and terns and their unfledged chicks. No raking shall occur inside or seaward of any symbolic fencing erected to protect territorial courting or nesting piping plovers, terns, or chicks;
- no raking shall occur within 100 yards of any unfledged piping plover or tern chicks. No raking shall occur between 100 and 200 yards of any unfledged piping plover chicks unless a monitor is present to determine the location of the chicks and to ensure that the raking equipment remains at least 100 yards away from it; and
- no later than March 1st of any year that raking is to occur, the applicant shall provide to Natural Heritage written evidence of a contract, or a memorandum of understanding, with Mass. Audubon Coastal Water Bird Program to monitor the piping plovers and terns and to maintain symbolic fencing in order to protect them during periods of raking.

Mr. Irmer reminded the Commission that permission from certain property owners was also needed before the project could proceed.

Public Comment: There was a letter from the Shellfish Committee strongly objecting to the project due to the potential detrimental effects on shellfish, as well as letters from Doug and Lisa Traub, the Beachcomber's Club and Pat deGroot in opposition to the project. There were letters from the Trustees of the Oceanside Condominium, Cass Benson, Colleen Sjogren and Claudette Silva, Pat Meaney and Delores DiFilippi in support of the project. There were letters of concern from Nancy Madden and Michael and Kathleen Boyle, all residents of Beach Point.

Commission Discussion: The Commission questioned Mr. Irmer. The Commissioners had concerns, including:

- the importance of the wrack line to the ecosystem;
- the difficulty in implementation of the proposed plan;
- the potential for heavy equipment on the beach on a regular basis;

- the environmental consequences of disposal of seaweed;
- the size of the project; and
- the consequences of the precedent that would be set by the Commission's approval of the proposed project.

Dennis suggested that Mr. Irmer might want to scale the project down and possibly test out small areas of the beach to rake in order to find out if any unforeseen issues arise. Mr. Irmer requested a continuance to the Public Hearing on February 1, 2011.

Lynne Martin moved to grant the request for a continuance of the Notice of Intent until the February 1, 2011 Public Hearing, David Hale seconded and it was so voted, 5-0.

Notice of Intent

Application by **Robert M. Levin** and **Jerome P. Conlin**, represented by **Felco, Inc.** for a **Notice of Intent** under the Provincetown Wetland By-Law, Chapter 12. The scope of work will include repair and reconstruction of an existing pool and deck within 100' of an isolated wetland at the property located at **65 Bayberry Avenue** in Provincetown.

Presentation: John McElwee, of Felco, Inc., and Andrew Garulay and Craig Panaccione, both of Crossroads Landscaping, appeared to present the application.

Public Comment: There were 4 letters in support of the application and 1 letter of concern about the catch basins being located within the 100' buffer zone and the potential for light pollution.

Commission Discussion: The Commission questioned Mr. McElwee, Mr. Garulay and Mr. Panaccione.

Dennis Minsky moved to grant the Notice of Intent under the Provincetown Wetlands By-Law, Chapter 12 for work to include the repair and reconstruction of an existing pool and deck within 100' of an isolated wetland at the property located at 65 Bayberry Avenue in Provincetown with the Standard Order of Conditions and with the Special Conditions that the applicant will move the spa equipment shed beyond 80' from the resource area, install a double line of biologs around the limit of work, maximize the mitigation by planting wherever possible, within the work limit and outside the work limit, with a planting survivability of at least three years or the plantings will be replaced, pay careful attention to light and noise factors wherever possible and that native species only be planted within the Conservation Commission's jurisdiction, Jack McMahon seconded and it was so voted, 5-0.

Request for Determination of Applicability

Application by **Paul Fanizzi**, represented by **Safe Harbor Environmental**, for a **Determination of Applicability** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12. The scope of work will be the replacement of pilings from an existing wave-break located at **539 Commercial Street** in Provincetown. This case has been continued until the January 25, 2011 Public Hearing.

DISCUSSION:

Seawall Projects in the East End with Cape Cod Docks:

The Commission questioned Lawrence Demers of Cape Cod Docks about his work in the replacement of bulkheads at the properties located at 659 and 661 Commercial Street. The Commissioners specifically wanted to know Mr. Demers proposed methodology for cleaning up the beach in front of those properties. Mr. Demers submitted his proposal, which included the use of a L85 hydraulic screening attachment fastened to an ASV, model RCV, rubber-tracked

skid steer. The clean-up will also require three complete low-tide cycles. The Commission questioned Mr. Demers about his proposed protocol.

Dennis Minsky moved to accept the methodology as presented by Lawrence Demers, of Cape Cod Docks, to require, in addition, that he, or his employees, hand-pick the beach to the west of 659 Commercial Street up to the first breakwater and that the Conservation Agent, or a member of the Conservation Commission, be present while the clean-up occurs, Lynne Martin seconded and it was so voted, 5-0.

663 and 665 Commercial Street Seawall Project:

Dennis informed the Commission that Brian had approved Brad Locke's clean-up protocol. *Dennis Minsky moved to approve the Conservation Agent's Administrative Review of Brad Locke's restoration plan for the clean-up of the beach in front of the properties located at 663 and 665 Commercial Street, Hank Janowsky seconded and it was so voted, 5-0.*

Request for a Certificate of Compliance

Application by **Teri Motley**, represented by **Coastal Engineering**, for a **Certificate of Compliance** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12. The work was permitted under DEP Number SE 58-480 at the property located at **659 Commercial Street** in Provincetown.

Coastal Engineering submitted a letter attesting to the completion of the project.

Presentation: Attorney Nancy Correia appeared to discuss the Request.

Public Comment: None.

Commission Discussion: The Commission briefly discussed the Request.

Dennis Minsky moved to grant a Certificate of Compliance under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12 for work permitted under DEP Number SE 58-480 at the property located at 659 Commercial Street in Provincetown with the contingency that the Enforcement Order now in place be lifted and that the Conservation Agent certify that the beach in front of 659 Commercial Street has been sufficiently cleaned, Lynne Martin seconded and it was so voted, 4-1 (David Hale opposed).

DISCUSSION:

Pilgrim Bark Park Shade Project:

Candace Nagle appeared to discuss the project. The Commission agreed that the project could be handled as an Administrative Review, but would like some scrutiny of the project. Dennis suggested that either the Conservation Agent or a member of the Conservation Commission be on site to monitor the progress of the limb-cutting, trimming and re-planting. Candace shall call Brian to inform him of the start of the project. Candace inquired if the fees could be waived as the Dog Park is a non-profit organization. Dennis will ask Brian if the fees could be waived. The Commission will discuss the topic at the next Public Hearing.

De-watering at 645 Commercial Street:

Dennis called David Guertin about the de-watering pipe that appeared on the beach one day. Mr. Guertin insisted that the Town would get the permission of the Commission before the de-watering was to begin. It appeared that it has already begun. Dennis also contacted Sharon Lynn

about the pipe. There will be a meeting set up with Mr. Guertin. The Commission briefly discussed the issue and will discuss the topic at the next Public Hearing.

Town Meeting Annual Report:

The Town Meeting Report is due on January 26, 2011.

By-Law Sub-Committee:

Dennis said that the By-Law Sub-Committee has to meet. David suggested that the Sub-Committee may want to look into lighting issues that were discussed in regard to the project at 65 Bayberry Avenue.

ADJOURNMENT: Jack McMahon moved to adjourn at 9:30 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