

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**April 19, 2011**  
**6:30 P.M.**

**Members Present:** Dennis Minsky (left at 7:30 P.M.), Lynne Martin Jack McMahon, David Hale, and Barbara Prato.

**Members Absent:** Hank Janowsky (excused).

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

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

**PUBLIC STATEMENTS:**

Paul Bisaccia, a resident of Oceanside Condominium, commented on the Commission's beach grass removal and reconfiguration decision at the premises. The stakes that were put down to guide people walking to the beach are gone and there is just a straight pathway, devoid of beach grass, running from the beach to the buildings of the Condominium. When nor'easters blow, the wind and seawater comes straight into the buildings. Some buildings are more protected than others, having higher dunes shielding them from the wind and water. He is concerned about a major storm or rising sea levels causing considerable damage. He is asking that the Commission commit to making sure the zigzag path of beach grass, per its directive, does happen at the property. He claims that the Trustees of the Condominium Association prefer the straight path and less beach grass because it increases the rentals.

**De-Watering project in the East End:** Dennis summarized two letters he received regarding the de-watering project in the East End. One letter, from Robin Evans and Lincoln Sharpless, raised issues about the biological, chemical and physical impacts, the quantity and composition, including the temperature, salinity and PH, of the water being pumped into the Bay and the effects of any silt and sediment on its ecosystem. The other letter, from Carol Plessner, is concerned about how the de-watering process is being achieved. She speculates that the process is being run in a manner inconsistent with the Wetland Protection statutes of the Commonwealth or local Conservation Regulations in regard to the protection of resource areas, groundwater and wildlife. She thinks the water should be tested. Dennis stated that the de-watering operations are currently shut down, but partial de-watering will take place in the next two weeks. Because the issue is of concern to so many Town people, a larger forum is merited. He suggested that the issue should be put on the agenda for the May 3, 2011 Public Hearing.

***David Hale moved to request that the Department of Public Works and AECOM meet with the Conservation Commission at their May 3, 2011 Public Hearing for a full discussion of the de-watering process, including a discussion of the issues raised in letters from the public received by the Commission, Dennis Minsky seconded and it was so voted, 5-0.***

**MINUTES: March 15, 2011 – David Hale moved to approve the language as written, Jack McMahon seconded and it was so voted, 5-0.**

### **Request for Determination of Applicability**

Application by **Peter Azar**, represented by **Safe Harbor Environmental Services**, 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 applicant proposes the following work: replanting native vegetation; installing an outdoor shower and small storage shed, roadwork and stormwater recharge at the property located at **25 Race Road** in Provincetown.

**Presentation:** Gordon Peabody and Sarah Parkington, of Safe Harbor Environmental Services, and Peter Azar appeared to present the application. The work will include re-grading the clay roadway, the removal of gravel from the wetland area, the planting of shade-tolerant and indigenous plantings and the replacement of plantings that have failed to survive. The proposal includes getting rid of the gravel on the road, re-grading it and removing potholes. A small vegetated swale is proposed to control stormwater coming off the road in front of the house. A small storage shed has been placed on the side of the house, a dry well is proposed beneath the shower area and a permeable gravel mix will remain in the parking area.

**Public Comment:** Jacob Murray, an abutter, had a question about the drainage system being proposed and a concern about keeping the road flat when re-grading occurs.

**Commission Discussion:** The Commission questioned Mr. Peabody, Ms. Parkington and Mr. Azar.

**Jack McMahon moved to grant a Negative #3 Determination with the Standard Order of Conditions and the requirement that an effective re-grading plan be implemented, David Hale seconded and it was so voted, 5-0.**

### **After the Fact Notice of Intent**

Application by **Cliff Schorer and the Provincetown Conservation Trust** for an **After the Fact 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 a mitigation of a bentonite clay spill into a protected wetland resource area at the property located at **2 Commercial Street** in Provincetown.

**Presentation:** Cliff Schorer appeared to present the application. He submitted a copy of the Notice plus letters to MESA, but neither has been signed yet by the Conservation Trust. Mr. Schorer stated that the clay spill will be mitigated within 30 days of the Commission's approval or upon written confirmation of Natural Heritage approval, whichever occurs first, and 4 days after a rain event. A vacuum truck will be used to remove the clay. If any plantings are damaged during the removal project, they will be replaced. Mr. Schorer has relied upon the recommendations of Horsley Witten Group and Paul Shea, of Environmental Partners for the mitigation process.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Schorer. The Commission is concerned about the timing of the work as there is much biological activity occurring at this time of the year. There is no DEP File Number, the Conservation Trust needs to sign onto the project, and permission to access the property needs to be obtained. The Commission decided to take no official action.

Mr. Schorer requested a continuance until the May 3, 2011 Public Hearing.

*Lynne Martin moved to grant a continuance to the May 3, 2011 Public Hearing, Barbara Prato seconded and it was so voted, 5-0.*

**Notice of Intent**

Application by **Rex McKinsey, Harbormaster**, 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 mechanical dredging for one day at the northeast corner of the dredged fairway on the west side of MacMillan Pier to remove less than 100 cubic yards of accumulated organic material in Provincetown.

**Presentation:** Rex McKinsey and Sandy Turner appeared to present the application. The dredged area between the Town Pier and the Courtesy Float has filled in with organic material from the littoral zone to the east of the Pier. There is a tenant on the Pier who owns a float space nearest the northeast corner on the west side of the Pier next to the Municipal Parking Lot. This float space owner has increasingly limited access to this space during low tide because of the accumulation of organic material in the Harbor. The proposed work will be staged from the MPL and Mr. McKinsey is requesting that the material be de-watered there as well. He will ask the Fire Department to use a pumper truck to spray the material with fresh water to reduce the salinity and to help ready it to be mixed with the compost pile at the Transfer Station. Siltation fences will be erected and straw bales and filter fabric will be used around the de-watering area. Mr. McKinsey will be the onsite superintendent. Since the quantity of the organic material to be removed is limited to less than 100 cubic yards, no DEP permit or 401 Water Quality Certification will be required.

**Public Comment:** There was a letter from Jon Salvador, the owner of the float space in question, in support of the project. Dana McCanell spoke in favor of the project.

**Commission Discussion:** The Commission questioned Mr. McKinsey and Ms. Turner. It was requested that the material be tested before being moved to the Transfer Station.

*David Hale moved to grant the Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12 for mechanical dredging for one day at the northeast corner of the dredged fairway on the west side of MacMillan Pier to remove less than 100 cubic yards of accumulated organic material with the Standard Order of Conditions and with the requirement that the organic material removed be tested prior to its disposal at the Transfer Station, Dennis Minsky seconded and it was so voted, 5-0.*

**Request for Determination of Applicability**

Application by **Town of Provincetown, DPW**, for a **Request for Determination of Applicability** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12. The applicant proposes cleaning the sand filtration bed of the sump pond on Shank Painter Road and removing any trash in the pond located near **25 Shank Painter Road** in Provincetown.

**Presentation:** Sandy Turner and Rex McKinsey appeared to present the application. Shank Painter Pond has not been cleaned in 20 years. A crane with a clam shell will be used to scrape off silt from the bottom until the sand is clean. The project will promote better drainage in the Pond. The material will then be placed in the Fire Station parking lot. Straw bales and silt fencing will be used around the limit of work and a supervisor will be onsite. After de-watering, the material will be trucked to the Transfer Station. The crane will be used for both this project

and the dredging project in order to save the Town money. The project will start the removal of material from the center of the Pond on the theory that wildlife will seek shelter away from the area of activity. No vegetation bordering the Pond will be dug up.

**Public Comment:** None.

**Commission Discussion:** The Commission requested that the material taken out of the Pond be tested.

*Lynne Martin moved to grant a Negative #3 Determination with the Standard Order of Conditions and with the requirement that the material be tested prior to its disposal at the Transfer Station, Barbara Prato seconded and it was so voted, 4-0.*

### Notice of Intent

Application by **Francis John Santos** 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 constructing a concrete pier extension, boat storage racks, a float storage rack and re-locating the existing ramp and float at the property located at **131A Commercial Street** in Provincetown.

**Presentation:** David LaJoie, of Felco Engineering, and Noah Santos appeared to present the application. The project seeks to re-configure the floating docks and ramps at the property. They will be moved over to the east side of the existing dock because of problems due to the prevailing southwest winds. In the future, the applicant seeks to amend the Chapter 91 license to acquire more storage racks for recreational boats.

**Public Comment:** There was a letter in the file from Attorney E. James Veara, representing an abutter, objecting to the application. Rex McKinsey spoke in favor of the project.

**Commission Discussion:** The Commission questioned Mr. LaJoie and Mr. Santos. The Commission is looking for comments from the Division of Marine Fisheries, who has jurisdiction over the project.

*Lynne Martin moved to approve the Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12 only for re-locating the existing ramp and float as depicted on the Site Plan from Felco Engineering, dated March 23, 2011, at the property located at 131A Commercial Street, with the Standard Order of Conditions and with the contingency that approval from the Division of Marine Fisheries is received, Barbara Prato seconded and it was so voted, 4-0.*

### Notice of Intent

Application by **Debra Poletto**, represented by **William N. Rogers, II, P.E., P.L.S.** 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 applicant proposes the installation of a full foundation under existing building raising the first floor elevation 2.8+/- feet at the property located at **14 Schueler Boulevard** in Provincetown.

**Presentation:** Billy Rogers, Gary Locke, Kay McFadden, Debra Poletto and Laura Seabury appeared to present the application. The house will be lifted in place in order to install a foundation. The house-lifter needs a 10' limit of work around the dwelling. When the foundation is installed, a new first floor will be constructed and the building will be lowered. The resource area will not be impacted by the project. 2.8' is the minimum amount that the first floor needed to be raised.

**Public Comment:** Jim Spraker, an abutter, was concerned about his loss of view as a result of the applicants' house becoming higher and commented on the beach grass issue at Oceanside Condominium.

**Commission Discussion:** The Commission questioned Mr. Rogers, Mr. Locke, Ms. McFadden, Ms. Poletto and Ms. Seabury. Mr. Rogers requested a pre-construction meeting with the Conservation Agent.

*Lynne Martin moved to grant the Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12 for the installation of a full foundation under existing building raising the first floor elevation 2.8+/- feet at the property located at 14 Schueler Boulevard in Provincetown with the Standard Order of Conditions and with the requirement that there is be no more than a 10' limit of work as designated on the site plan, that the property is re-planted in its original condition and that pervious pavers replace the black top in the parking area adjacent to the structure, Jack McMahan seconded.*

David Hale amended the Motion to include:

*In regard to any disturbed surfaces, that either Beach grass or, in previously unvegetated areas, native species, be planted, Barbara Prato seconded the amended Motion and was so voted, 4-0.*

#### **Request for a Certificate of Compliance**

Application for a Request for a Certificate of Compliance for work conducted under DEP Permit Numbers SE-058-0420 and SE-058-0432 for the property located at **157A Commercial Street** in Provincetown.

**Presentation:** Robert O'Malley appeared to present the Request.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. O'Malley.

*Lynne Martin moved to grant the Certificate of Compliance for work conducted under DEP Permit Numbers SE-058-0420 and SE-058-0432 for the property located at 157A Commercial Street, Jack McMahan seconded and it was so voted, 4-0.*

#### **Chapter 91 License Review – 259-263 Commercial Street:**

Len Bowen appeared to discuss the application for a Chapter 91 License with the Commission. DEP requires the Commission to recommend the application and verify the location of the resource areas on the site plan.

*David Hale moved to recommend the Chapter 91 License application for 259-263 Commercial Street and verify the location of the resource areas on the site plan by William N. Rogers, II, P.E., P.L.S., dated June 7, 2006 as submitted, Barbara Prato seconded and it was so voted, 4-0.*

#### **Hawthorne Wildlife Sanctuary Conservation Restriction Review:**

The Commission briefly discussed the issue of the purchase of the Hawthorne property. There are still changes to be made in the document. The Conservation Restriction will be discussed at the next Public Hearing on May 3, 2011.

**Storm Water Drain:**

David Hale has requested storm drain schematics of the pipe that is discharging into Shank Painter Pond from DPW. He understands from the Town Manager that, although it is a low priority, the Town is working on it. The bloom of algae on the Shank Painter Pond has already appeared.

**ADJOURNMENT:** *Jack McMahon moved to adjourn at 8:50 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