

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
September 20, 2011
6:30 P.M.

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

Members Absent: None.

Others Present: Ilana M. Quirk, Esq. (Town Counsel), Brian Carlson (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

Chair Denis Minsky called the Public Meeting to order at 6:45 P.M.

PUBLIC STATEMENTS:

None.

OLD BUSINESS:

Request for a Certificate of Compliance (continued from September 6, 2011)

Application for a request for a Certificate of Compliance for work conducted at the property located at **Moors Road – Cape Cod National Seashore** in Provincetown.

Brian Carlson has consulted with the Seashore and has done a site visit. He reported that the work has been completed.

Hank Janowsky moved to grant a Certificate of Compliance for work conducted at the property located at Moors Road – Cape Cod National Seashore, David Hale seconded and it was so voted, 5-0.

Notice of Intent (continued from September 6, 2011)

Application by the **Joyce Holupka & Pamela Cyr**, represented by **Coastal Engineering Company, 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 proposed scope of work will include a new sheet pile bulkhead at the property located at **485 Commercial Street** in Provincetown.

Presentation: Jay Norton, of Coastal Engineering, and Ann Maguire, Trustee for Chandler House, and Billy Rogers appeared to discuss the application. Mr. Norton reiterated the scope of the project. The proposed sheet vinyl wall has to be tied into the abutting concrete seawall on Ms. Maguire's property. Mr. Norton consulted with Mr. Rogers about methodology during construction and requirements needed in order to satisfy Ms. Maguire as to the safety of the structures on the abutting property. The revised proposal will move the sheet pile wall in front of where the existing brick foundation and structure is located on the abutting property and will be installed by jetting and/or excavating the sheets into the ground instead of by oscillation. The wall will be contiguous with the Jackett wall on the east side. The existing drift fence will remain. Ms. Maguire requested that the contractor have sufficient bond in place before the project begin in case there is damage to structures on her property, that access over the applicant's property to the back of her property be allowed as has been customary in the past,

that the work be performed off season and that she be allowed to vet any written agreement with her attorney before work commences. Mr. Rogers requested that someone from his office be allowed to be on site while the seawall is being installed.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Norton, Ms. Maguire and Mr. Rogers. The Commission emphasized that the main reason that this project is being discussed is that there is strong historical evidence that there had been a seawall on this property, therefore this is a replacement, not a new structure. Given that there are seawalls on both abutting properties and that there is evidence of dramatic erosion occurring on this property, the Commission is allowing an armored structure to be constructed on the beach. The Commission discussed imposing the conditions of annual inspections and re-nourishment of vegetation behind the drift fence if necessary.

Hank Janowsky 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 for proposed work to include a new sheet pile bulkhead at the property located at 485 Commercial Street with the Standard Order of Conditions and with the Special Conditions that the existing drift fence remain, that an annual inspections take place and, at those times, if necessary, the applicant shall re-nourish or replace vegetation in order to bring it up to conditions existing in 2011 prior to the project and that access to the beach will be from Kendall Lane, Barbara Prato seconded and it was so voted, 5-0.

Request for an Amended Order of Conditions (continued from September 6, 2011)

Application by **Merrill Lynch Trust Co. – Mary Kass Trust**, represented by **Coastal Engineering Company, Inc.**, for a **Request for an Amended Order of Conditions** 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 proposed sheet pile wall along the previously approved concrete wall repair at the property located at **571 Commercial Street** in Provincetown.

Presentation: Jay Norton appeared to discuss the application. The proposed project involved an amendment to the Order of Conditions involving the repair of a concrete wall with an option to install a sheet pile wall in front of that wall. The Commission would not approve two alternatives for a Notice of Intent. The applicant has made the decision to request the installation of a vinyl sheet pile wall only. Mr. Norton expressed his opinion that the concrete remediation would have more of a negative impact on the resource area than the installation of a vinyl sheet pile wall, even though the latter involves the removal of 34 sq. ft. of that resource area.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Norton. The project will take approximately 2 weeks and access to the beach will be via Kendall Lane. The Commission discussed its concern about the loss of resource area that would occur as a result of this project.

David Hale moved to approve the Request for an Amended Order of Conditions under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12 for work to include a proposed sheet pile wall at the property located at 571 Commercial Street with the Standard Order of Conditions and with the Special Conditions that all heavy equipment will be taken off the beach daily, that the limit of work be as close to the existing seawall as possible, that the backfill be limited to ¾” crushed stone only and that

any existing, deteriorating pilings will be removed from the area, Hank Janowsky seconded and it was so voted, 4-1 (Dennis Minsky opposed).

Request for Determination of Applicability

Application by **Conrad Malicoat**, represented by **Glenn Crafts, G.C. Custom Builders, Inc.**, 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 site work to include repairs and replacement of a landing, handrails, decking and egress at the property located at **312 Bradford Street** in Provincetown.

Presentation: Al Derick, from Glenn Crafts, G.C. Custom Builders, Inc., and Robena Malicoat appeared to present the application. The project involves the construction of an 8' by 8' composite platform with a set of stairs to a concrete landing pad at grade that will measure 4' by 3' 6". Guardrails and handrails will be constructed of treated lumber and be capped with mahogany. The concrete for the sono tubes and landing pad will be hand-mixed.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Derick and Ms. Malicoat. The Commission discussed the possibility of concrete over-pour during construction.

Dennis Minsky moved to grant a Negative #3 Determination under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12 for site work to include repairs and replacement of a landing, handrails, decking and egress at the property located at 312 Bradford Street with the Standard Order of Conditions and with the Special Condition that no concrete over-pour occur, but if it does, that there be a proper disposal of the material, Barbara Prato seconded and it was so voted, 5-0.

Request for an Amended Order of Conditions (continued from September 6, 2011)

Application by **Demetrios Daphnis** for a **Request for an Amended Order of Conditions** under **DEP Permit Number SE 0258-0414** and 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 proposed construction of four new dwellings, fill, retaining wall and appurtenances as delineated on plans for the property located at **67 Harry Kemp Way** in Provincetown.

Presentation: Attorney Lester J. Murphy, Billy Rogers, Paul Shea and Gary Locke appeared to discuss the application. This project has been the subject of modifications and revisions and discussions between Attorney Murphy and Town Counsel. Attorney Quirk recapped the issues related to this property and where the discussion is up to this point. The plan before the Commission is dated April 14, 2011, as revised through August 17, 2011, and the matter goes back to 2006, pre-dating the September 17, 2009 amendments to the Conservation Regulations, and includes the Permit Extension Act that the Legislature has passed. The applicants have voluntarily offered amendments for the Commission's approval, subject to a draft Order of Conditions circulated amongst the parties and presented to the Commission with a revised plan at the October 18, 2011 Public Hearing. The Commission will be provided with that plan and the draft Order of Conditions, as worked out between Attorney Murphy and Attorney Quirk, no later than October 13, 2011. The terms and conditions will be accompanied by a restrictive covenant for the property. Those terms and conditions include the elimination of Building 3, the re-location of Building 4 so the setback from the resource area will be increased from 42' to 50' and allowing a second-story cantilevered deck with a maximum size of 8' by 10', allowing a maximum of 14 bedrooms for the project, no increase in buildings in the future and no change in

footprints of existing buildings once the plans have been finalized, the same Order of Conditions as were previously imposed in the new Amended Order of Conditions and a condition that the applicant will undertake the removal of Phragmites from the adjacent resource area, which extends beyond his property. The removal will take place in two steps, the first of which will be this fall and the second will be a follow-up in the fall of 2012. To fund this removal, \$8000 will initially be placed in an escrow account, upon approval by the Board of Selectmen, and capped at \$20,000. Attorney Quirk advised the Commission that it now needed to make a motion to approve the project with those terms and conditions, subject to the receipt of the draft Order of Conditions and the revised plan by October 13th, to be acted upon on October 18th. Attorney Murphy reported that his client has agreed to extend the time frame for Commission action in this matter to October 28th.

Commission Discussion: The Commission questioned Mr. Shea in regard to the best practices for removing phragmites.

Barbara Prato moved to approve the Amended Order of Conditions on all the terms and conditions discussed with the Commission this evening and with a draft Order of Conditions together with the revised plan to be provided to the Commission for the October 18, 2011 Public Hearing, and with final approval once the Commission has looked at the revised plan and the draft Order of Conditions to make sure they are in proper order, Dennis Minsky seconded and it was so voted, 5-0.

Barbara Prato moved to accept the extension of the time frame for Commission action on the matter to October 28, 2011, Lynne Martin seconded and it was so voted, 5-0.

The applicant requested a continuance to the October 18, 2011 Public Hearing.

David Hale moved to grant a continuance until the October 18, 2011 Public Hearing, Dennis Minsky seconded and it was so voted, 5-0.

NEW BUSINESS:

Request for Determination of Applicability

Application by **David W. Allen** represented by **East Cape Engineering, Inc.**, 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 site work to remove, rebuild and enlarge existing decks, construct a new deck and porch and excavate for deck footings at the property located at **55 Bayberry Avenue**, in Provincetown.

Presentation: Tim Brady, of East Cape Engineering, Inc., appeared to present the application. There will be three decks erected on the structure. All excavation will be done by hand and all materials will be brought in by hand, as no heavy equipment can access the area. The deck will be 86' from the resource area at its closest point. Ten posts will be installed around the perimeter of the deck.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Brady. The Commission discussed the applicant's willingness to mitigate by re-vegetating disturbed areas. Mr. Brady volunteered to meet with the Conservation Agent and any Commission members to discuss mitigation on site when the project was near completion.

David Hale moved to grant a Negative #3 Determination under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12 for site work to remove, rebuild and enlarge existing decks, construct a new deck and porch and

excavate for deck footings at the property located at 55 Bayberry Avenue with the Standard Order of Conditions, including a staked limit of work 6' outside the structure, no concrete over-pour, but if some over-pour does occur that there be a proper disposal of that excess material, native vegetation be planted in disturbed areas, the Conservation Agent be contacted to make a site visit and there be only hand-digging of post holes, Dennis Minsky seconded and it was so voted, 5-0.

MINUTES: September 6, 2011 – David Hale moved to approve the language as amended, Barbara Prato seconded and it was so voted, 3-0-2 (Dennis Minsky and Hank Janowsky abstaining). The minutes of August 16, 2011 will be approved at the next Public Hearing.

ANY OTHER BUSINESS:

B Street Garden:

Brian reported that the solar pump has been installed by Bernie, the electrician. Three plots were abandoned and will be re-assigned in the spring. David reported that a letter will be written, on behalf of the Commission and the B Street Garden, to the editor of The Banner recognizing and thanking Bernie publicly for his work on the solar pump. An invoice from Bernie needs to be obtained in order to pay him. Between 1000-\$1500 was raised for this purpose. Brian reported that the County has awarded a \$2000 grant for Phase 3 projects at the Garden, including habitat restoration, re-vegetation, fencing and the removal of invasives. The Commission discussed formulating a master plan for the Garden before any new project is approved. The Commission discussed the issue.

CONSERVATION BOARD STATEMENTS:

Dennis and Brian met with Robert B. Our in regard to de-watering at Commodore Avenue. They approved a route to the beach with conditions regarding sedimentation control, no vegetation disruption and no scouring.

Paul Tasha contacted Dennis about phragmites near a pond off Route 6. There has been an increase in phragmites at Shank Painter Pond as well. He alleges that it has increased tenfold. Dennis suggested staking it to monitor its progress. Brian will contact Americorps about possible help with its removal. Paul also gave Dennis a picture of the ocean bottom off Herring Cove showing damage from hydraulic clamming. Paul thinks the Commission should pay to have the area surveyed. He also informed Dennis about ferry back-jetting and said that the ferry should not be doing it.

Dr. Brian O'Malley showed Dennis boulders that have moved onto the beach east of Kendall Lane and are related to a seawall project to the east of the Town Landing. Brian will investigate.

Brian will be attending an information session on Mass Bay grant program. The Commission will be applying for a grant again this year.

No update on the Shank Painter Pond study.

The bentonite clay removal has not yet been done at 2 Commercial Street.

ADJOURNMENT: *Lynne Martin moved to adjourn at 8:20 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