

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
October 18, 2011
6:30 P.M.

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

Members Absent: Barbara Prato (excused).

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

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

PUBLIC STATEMENTS:

None.

MINUTES: September 20, 2011 – *David Hale moved to approve the language as written, Hank Janowsky seconded and it was so voted, 4-0.*

OLD BUSINESS:

Request for an Amended Order of Conditions (continued from September 20, 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 and Gary Locke appeared to discuss the application. Attorney Murphy reviewed the revised plan for the project. The changes include the removal of Building #3 from the project, locating Building #4 50' at its closest point away from the resource area and installing a second floor cantilevered deck no larger than 10' by 8' on the side of the structure facing the resource area and moving Building #5 50' away from the resource area. Building #2 is 62' from the resource area. Attorney Murphy has contacted the owners of 10 Oak Drive and 6 Oak Drive and gotten permission to access the resource area through those properties in order to remove phragmites. He has not gotten in touch with the third owner whose property abuts the resource area as yet. He also has a check for \$8000 to fund the gift account in order to insure sufficient funds to complete the removal of phragmites. In his communication with Town Counsel, Attorney Murphy has requested several modifications to the proposed Exhibit A Findings under the Wetland By-Law with Special Conditions, including properly referencing the final amended plan, confirming that the Restrictive Covenant will run to the benefit of the Town and will be overseen by the Conservation Commission, adding language to the gift account regarding the ability to pull funds out of that account to pay for the work as it is ongoing and requesting that the property owner have the ability to come back to the Commission to seek installation of a shed on the property if it would be so needed in the future.

Commission Discussion: The Commission questioned and discussed the requests by the applicant for changes to the proposal set forth by Town Counsel.

Dennis moved that the following amended Order of Conditions for the application by Demetrios Daphnis under DEP Permit No. SE 058-0414 for the property located at 67 Harry Kemp Way in Provincetown, based on the plan amended through October 13, 2011 and on Exhibit A, Special Conditions, and including the gift agreement attached along with previous covenants as referenced in item 9 of Exhibit A, is hereby approved based upon all the unusual circumstances and conditions that exist for this particular project, including a change in the Town's wetlands protection by-law, the adoption of unprecedented state legislation that extended Orders of Conditions in specific situations and an agreement by the parties that protracted and expensive litigation over the status of earlier approvals should be avoided and the agreement by the applicant to all the terms and conditions set forth in this decision, including the removal of invasive species from the property, and adjacent properties after obtaining the permission of those property owners, by the applicant at the applicant's expense and the applicant's agreement not to appeal any term or condition contained in this decision and the applicant's agreement to voluntarily and simultaneously fund a gift account to allow the Town to undertake the invasive species removal if the project is not timely completed, David Hale seconded and it was so voted, 4-0.

NEW BUSINESS:

Request for Determination of Applicability

Application by the **Town of Provincetown** 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 road work and installation of bike and pedestrian pathways along the roadway known as **Province Lands Road and Bradford Street Extension** in Provincetown. There was a request to continue the Request for Determination of Applicability until the November 1, 2011 Public Hearing.

David Hale moved to grant the request to continue the Request for a Determination of Applicability until the November 1, 2011 Public Hearing, Dennis Minsky seconded and it was so voted, 5-0.

ANY OTHER BUSINESS:

Shank Painter Pond Study:

David Hale asked if there has been any progress at Shank Painter Pond. Brian read an e-mail he received in regard to the Shank Painter Pond study. The Commission would like to invite the people doing the study to the next Public Hearing for a report on their progress.

2 Commercial Street:

Mr. Storer was scheduled to commence the removal work last Wednesday. Dennis would like find out who did the work and to arrange a site visit.

Winthrop Street Cemetery:

Lynne updated the Commission on proposed work at the Winthrop Street Cemetery, which includes a management plan, conservation work on stones, clearing around the stones and an inventory of names and dates on stones. The Commission briefly discussed the issue.

Suzanne’s Garden:

Tracy Primavera wants to make her temporary installation at the Garden permanent. The property is managed by the Recreation Commission.

Americorps:

Pfeif is returning as the Town’s Americorps Service Member. He will be working on Wednesdays and Thursdays through July. He will continue some of the work he started during his previous tenure.

Phragmites:

There is a small pond off Route 6 near Clapp’s Pond that needs attention in regard to the growth of phragmites. Dennis made a site visit with Paul Tasha. There is a larger area at Shank Painter Pond. The Commission briefly discussed the issue.

Old Colony Nature Path:

Dennis got a letter from Paula Sperry in opposition to turning the Old Colony Nature Path into a bike pathway. The Commission briefly discussed the issue.

B Street Garden:

There will be a fall clean-up and shed and general winterization work at the Garden on Friday and Saturday from 11:00 A.M. to 1:00 P.M.

ADJOURNMENT: *Lynne Martin moved to adjourn at 7:40 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