

**PROVINCETOWN
CONSERVATION COMMISSION
JUDGE WELSH MEETING ROOM
December 3, 2013
6:30 P.M.**

Members Present: Dennis Minsky, Lynne Martin and Barbara Prato.

Members Absent: Mark Irving (excused), David Hale and Jesse Cartwright.

Others Present: Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

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

PUBLIC STATEMENTS:

Ken Shea, a retired National Park service employee, has been conducting scientific studies within the Seashore and the Massachusetts Audubon property in Wellfleet. He is involved in inventory and monitoring studies of dragonfly populations on the outer Cape. He is seeking approval to conduct studies of dragonfly species at Shank Painter Pond. He is willing to make his studies available to interested parties or Boards. He would be looking to walk the margins of the Pond or launch a kayak in the Pond. The Commission discussed the proposal. The Commission requested that Mr. Shea submit a written plan.

MINUTES: Postponed.

NEW BUSINESS:

Emergency Certification

Application to conduct work at Cabral's Pier, also known as Fisherman's Wharf in Provincetown.

Presentation: Peter Markunas, representing the Cabral family, and Attorney Christopher J. Snow, representing Cabral Enterprises, appeared to discuss the request. The applicant seeks to perform structural repairs of the above-water structure of the Pier. This is a continuation of on-going annual maintenance activities. This involves a replacement of the concrete decking that is supported by timber piers and the replacement of rotten timbers. A recent inspection by a structural engineer caused the shutdown of approximately a third of the Pier by the Building Commission for public safety reasons. According to Mr. Markunas, the Building Commissioner wanted the Cabral family to hire a structural engineer, which they did. Coastal Engineering, the firm hired, looked at the report by the initial structural engineer and made recommendations about what work needed to be done. According to this initial Coastal report, the piles are structurally sound so there was no in-water work required, however one recommendation made was that cross-bracing be incorporated into the Pier. The full Coastal report is not yet complete, but when it is a Notice of Intent will be filed for any new work or in-water work to be performed. The complete Coastal report should be completed by the end of the year. In the meantime, in order to insure that the Pier opens in the spring, the Cabral family wanted to continue with

maintenance work that has already been started and contacted Mr. Markunas about permitting requirements. Based on the Cabral family's history of doing this regular maintenance work yearly without having to obtain additional permits, Mr. Markunas advised that the work could continue. Some rotten timber material was dropped into the water during the work process, a not uncommon incident when working in this environment. After being contacted about the issue and conducting a site visit, Brian called Mr. Markunas to discuss the situation. He suggested that Mr. Markunas apply for an emergency certification request with the Commission to establish standards for the work. If the Commission issued the Emergency Certification, Mr. Markunas would then apply for a Notice of Intent within 30 days in order to complete the necessary work. And he would come back if there is any additional work that needs to be performed, such as cross-bracing. Attorney Snow confirmed that the work that has been done at the Pier is routine maintenance work that has been done for years, notwithstanding the enforcement action taken by the Building Department. Debris in the water is a by-product of this type of work on the water and he assured the Commission that any material that does end up in the water will be captured and collected aggressively.

Commission Discussion: Dennis outlined the issues of concern to the Commission. He stated that a phone call was made by a member of the public who observed workers on the Pier sweeping construction debris and paint into the water. The Health Inspector went out to investigate and found the complaint valid as there were brooms present and openings in the Pier where debris could be swept into the water and a dumpster was present that had plastic garbage bags in it and not construction debris. Brian also made a site visit and witnessed wooden construction debris falling into the water below the Pier. This issue would constitute a Type I violation of the local by-law, which carries a fine of \$300 per day of the violation, as would be working without a permit, notwithstanding the history of that kind of maintenance work. He admitted that it was probably an oversight on the Commission's part that this work was allowed to continue over the course of several years without the filing of a Notice of Intent. Dennis asked Mr. Markunas and Attorney Snow to explain why the emergency certification was being applied for and why it was necessary for the health and safety of the public. Attorney Snow alleged that the emergency was the fact that public access to the resource area was being denied by the closure of a third of the Pier. The Commission questioned Attorney Snow and Mr. Markunas further about this issue.

Public Comment: Desiree Duda and Vaughn Cabral spoke in support of the request.

Commission Discussion continued: Gloria stated that in her opinion this does not constitute an emergency certification and that a violation did occur. The Commission requested a description from the structural engineer of exactly what work was going to be done in order to incorporate that into the enforcement order. Gloria suggested that an enforcement order be issued and the applicants fined. They should then explain what needs to be done based on the structural engineering report, which will limit the work to be done immediately until a Notice of Intent is filed within 30 days. Dennis clarified that the Commission has to decide whether it proceeds under an emergency certification or whether an enforcement order is issued. The Commission discussed the issues. The Commission decided to issue an Enforcement Order that will cover a specific set of work to be done to remediate the situation as it stands, with the understanding that a Notice of Intent will be filed within 30 days for that work and future work needed as stated in the structural engineer's report. Mr. Markunas stated that he would return within 30 days and file a Notice of Intent for proposed work even if the structural engineer's report had not been issued. Dennis suggested that the open grates present on the Pier now be dammed to prevent debris from

entering the water. Mr. Markunas stated that there would be a work barge (Boston Whaler) beneath where work was being performed to catch falling debris. The Commission discussed how to remediate the situation as it currently exists and how to prevent material from entering the resource area with Mr. Markunas and Frank Duda, an agent of the Cabral family currently doing work on the Pier. Gloria reviewed the Enforcement Order for construction debris within the resource area. The Order involves filing a Notice of Intent on or before January 30, 2014 for routine maintenance and structural repairs. Reading from the Enforcement Order, she stated that the applicant shall take the following actions to prevent further violations: remove debris on the surface of the Pier and replace horizontal members above the waterline, make sure that there is a work boat under the work area, protect drains with berms around the perimeter or silt sacks and remove construction debris on a regular basis. The Conservation Agent should be contacted on a weekly basis by the applicant during the performance of the maintenance work.

Dennis Minsky moved to approve an Enforcement Order for Cabral Enterprises, Inc. as read, Lynne Martin seconded and it was so voted, 3-0.

The Commission discussed whether to impose a fine. Attorney Snow suggested that a solution has been reached and the applicants should not be penalized and further suggested that the Commission table the issue.

Lynne Martin moved to direct the Conservation Agent to issue a Type I violation and that a fine of \$300 be levied, Barbara Prato seconded and it was so voted, 2-1 (Dennis Minsky opposed).

Notice of Intent

Application by **Chris and Amanda Burden**, represented by **Independent Environmental Consultants, 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 installation of a proposed in-ground swimming pool and landscaping activities within Lot 15, DEP File No. SE 058-0521, at the property located at **8 Harbour Drive**, in Provincetown.

Notice of Intent

Application by **Jason E. Stone**, represented by **Independent Environmental Consultants, 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 installation of two proposed in-ground swimming pools and landscaping activities within Lot 14, DEP File No. SE 058-0520, at the property located at **10 Harbour Drive**, in Provincetown. The Commission heard the two applications together.

Presentation: Billy Rogers, Paul Shea and Jen Malila presented the application. The applicant seeks to install an in-ground salt water pool adjacent to the existing structures on each lot in an altered area outside the resource area. The plant material that will be moved will be reused. DEP had no comments about the project and MESA issued a letter for both lots, determining that no 'take' would result from the project. The saline pools will not be located closer seaward of the existing decks on each structure. The required fences surrounding the pools will line up with the edge of both decks. The pavement around each pool will be pitched towards gravel borders to collect runoff and then piped to dry wells. There will be a one-to-one ratio of material re-planted

for mitigation purposes due to the increase in impervious surfaces and the relocation of native beach grass due to the installation of the pools.

Public Comment: There were several letters of support from abutting properties supporting the project.

Commission Discussion: The Commission questioned Mr. Shea and Ms. Malila briefly. The Commission noted that the pool locations had not been staked when Commission members did site visits.

Barbara Prato moved to grant a 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 proposed in-ground swimming pool and landscaping activities within Lot 15, DEP File No. SE 058-0521, at the property located at 8 Harbour Drive with the Standard Order of Conditions, Dennis Minsky seconded and it was so voted, 3-0.

Barbara Prato moved to grant a 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 proposed in-ground swimming pool and landscaping activities within Lot 14, DEP File No. SE 058-0520, at the property located at 10 Harbour Drive with the Standard Order of Conditions, Dennis Minsky seconded and it was so voted, 3-0.

Notice of Intent

Application by the **Town of Provincetown Department of Public Works**, represented by **Martin R. Donoghue of Coastal Engineering Co., 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 proposed stormwater system improvements at the property located at **Johnson Street municipal parking lot** in Provincetown.

Presentation: Reggie Donoghue presented the application. The proposed project includes stormwater system improvements at the Johnson Street lot. It will collect, treat and recharge stormwater from a substantial portion of the lot and include the installation of a double grate, deep sump catch basin with oil/water separation capabilities. A sediment barrier will be installed between the down-gradient side of the lot and the beach area. The sediment barrier will be maintained throughout the project and remain in place until the stabilization of areas disturbed by construction. The proposal includes an operation and maintenance plan that will specify measures for the long term operation and maintenance of the stormwater system. The DEP File No. is 058-0522.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Donoghue about the project.

Lynne Martin moved to grant a under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12 for proposed stormwater system improvements at the property located at Johnson Street municipal parking lot with the Standard Order of Conditions, Barbara Prato seconded and it was so voted, 3-0.

Amended Order of Conditions

Application by **K.I.P., LLC**, represented by **William N. Rogers, II**, under the Provincetown Wetlands By-Law Chapter 12. The scope of work will include a request for an **Amended Order of Conditions** for work permitted at the property located at **3 Heather's Way** in Provincetown.

Presentation: Billy Rogers presented the application. The Commission had approved an Order of Conditions for the construction of a house for the original owner of the property, John Reed, earlier this year. He has since sold the property and the new owner hired Mr. Rogers and has asked to change the location of the building. Mr. Rogers explained that the distance to the wetland will be smaller and that there will be a proposed concrete retaining wall added to the property.

Public Comment: None.

Commission Discussion: Dennis clarified that the Commission must decide if the changes requested by the applicant would require an Amended Order or if the scope of the project has increased requiring the filing of a new Notice of Intent. The Commission decided that the applicant needed to file a new Notice of Intent as the scope of the project had increased.

Dennis Minsky moved to deny the Amended Order of Conditions, Barbara Prato seconded and it was so voted, 3-0. The request is denied and the applicant must file a new Notice of Intent.

CONSERVATION COMMISSION STATEMENTS:

Dennis is working on white cedar swamp rehabilitation project.

There will be a work party on December 16, 2013 at the Hawthorne property to install a trail.

Barbara noticed that there were ground level solar panels going up at the Transfer Station. Trees were being taken down to move the wood chipper in order to make room for the panels. She wants Brian to do a site visit.

Dennis mentioned that Michelle Jarusiewicz called Brian and said that she did not think that the Shank Painter project did not qualify for CPA funds. He agreed with her.

ADJOURNMENT: Barbara Prato moved to adjourn at 8:30 P.M. and it was so voted unanimously.

These minutes were approved by a vote of the Conservation Commission at their meeting on _____, 2014

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2014
Dennis Minsky, Chair