

**PROVINCETOWN
CONSERVATION COMMISSION
JUDGE WELSH ROOM
October 6, 2015
6:30 P.M.**

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

Members Absent: David Hale (excused).

Others Present: David Gardner (Acting Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

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

PUBLIC STATEMENTS:

None.

WORK SESSION:

Presentation by Gordon Peabody, Director of Safe Harbor Environmental Services on the following topics:

1. **310 CMR.10 and Town of Provincetown Wetland By-Law Chapter 12.** Defining the term “Performance in the Public Interest”. Performance-based definitions of the Town’s Resource Areas; Basic types of permitting thresholds; Performance standards to be addressed through permitting; basic erosion control, storm water management and re-vegetation strategies.

Mr. Peabody reviewed Provincetown’s resources, including coastal beaches, barrier beaches, intertidal zones, coastal dunes, salt marshes and ponds, including their definitions, importance and how they perform as resource areas.

2. **MESA as administered by NHESP and as administered by the Town of Provincetown Wetlands By-Law Chapter 12.** Model “Low Impact Habitat Protection Mitigations”.

Mr. Peabody said that the local MESA by-law has increased the Commission’s jurisdiction. The Town has a parallel interest with the Commonwealth in protecting habitat. Dennis reviewed the local by-law for activity taking place in a MESA area, which is dealt with as an Administrative Review. Mr. Peabody then gave an overview of MESA and reviewed possible mitigation for any project that would interrupt the movement of animals. MESA is interested in protecting the life cycle habitats of endangered plant and animal species. However, he added that it is MESA policy not to inform the public the exact location of these species. He said that MESA approves about 85% of projects, approves about 12% with conditions and only a small percentage need re-design. He said that a project should endeavor to avoid exclusionary fences, horizontal barriers or wide-open areas that are not linked that would interrupt the predator/prey relationship of animal species, especially if the project is on a slope or a slope near a wetland area. If proposed, these barriers would need to be modified or made into a natural slope. He reviewed the standard conditions that should be included on an application to MESA, or for the local by-law, in a project management plan, which would ideally integrate conditions for a project with a narrative.

The conditions should include retaining the critical biomass/geomass linkage that contains critical nutrients. When excavating on a job site, he recommends that the material be saved and used for re-vegetation. He reviewed some of the re-vegetation techniques that are used by Safe Harbor.

3. **ACEC's 200-foot Buffer Zones** and compliance thresholds.

Mr. Peabody said that these areas have 200-foot buffer zones to projects, however they do not have performance standards. As long as a project is not impacting the nearest resource area, it can proceed, however if there will be an impact, additional mitigation may be needed.

4. **MA Division of Marine Fisheries. Collaborative Management of Land Under Water.**

Mr. Peabody said that it is essential that Commissioners work in collaboration with DMF. Any project being done below high water needs its review. Projects, including pilings and bulkheads, should not move forward without DMF approval.

5. **Chapter 91.** Protocol for permitting any structures on beaches below 1938 High Water line.

Mr. Peabody reviewed Chapter 91 and the new FEMA flood standards and what triggers their implementation. Due diligence in regard to Chapter 91 is required of applicants, especially when a property changes hands. If there is a structure on Commonwealth tidelands, mitigation is required, unless it is a water-dependent use. If a project that involves a new structure comes before the Commission, the Chapter 91 license needs to be revised and mitigation is required. This mitigation can be off-site if on-site mitigation is not possible. He said that if a structure on the coast is improved by more than 50% of its assessed value, it must conform to FEMA flood zone standards, which require that the lowest structural member of a building be a certain elevation above grade. The Commission briefly questioned Mr. Peabody about Chapter 91.

Mr. Peabody reviewed managing storm energy and hydro-mass. He related how the issue was dealt with when the pilings were replaced at Fanizzi's, which had chronic issues with property loss during winter storms. He explained how the position of the pilings was critical to the issue of mitigating wave action at the property. He suggested that if the energy can be managed, the energy will manage the hydro-mass. It is water-borne debris that causes the most damage, not the waves themselves.

He was concerned about the issue of vegetation and the unnecessary loss of electricity in Town. The Town has a large amount of non-native elms, which cannot handle heavy snow loads in the winter. He said what is needed are hardwoods, such as white oak trees, and the elimination of invasive black locusts in order to avoid power loss and bring back the native habitat.

He next reviewed the basic elements of the permitting process, which include defining the scope of a project, identifying the resource and determining jurisdictions. A Conservation Agent needs to be authorized to make field decisions on job sites, which are decisions that do not need to be

reviewed by the Commission. These could be the result of unexpected changes to the project, or issues of vegetation removal.

He reviewed how to determine the appropriate level of permitting, including what kind of project would be subject to an Administrative Review and what types of projects would require a Determination of Applicability or a Notice of Intent.

6. **Suggestions for Compliance Monitoring.** What to look for on site visits; use of Commission members as project liaisons; Pre-Activity site meetings; Offering support for low impact strategies.

Mr. Peabody reviewed site visits and what should be expected at a site visit. He emphasized that it is important that the paperwork for a project is correct and that the Commissioners have basic information about the project, such as the correct address, the locations of the resource area, the 50-foot and 100-ft. delineations, the limit of work, where erosion controls usually are, and that access paths and corners are clearly marked at the site.

He recommended that each Commissioner be assigned approved projects and act as project liaisons, to monitor progress and report back to the Commission about issues and concerns. He suggested that the Order of Conditions be laminated and posted, as well as the DEP file number, at a project work site.

7. **Performance Standards and Habitat Protection.**

Mr. Peabody said that understanding performance standards is the key to being a good Conservation Agent. He defined and reviewed performance standards. He said that resource areas perform in the public's interest, as flood control, habitat and for storm water management. The Wetlands Protection Act protects the performance of resource areas. He reviewed several successful compliance strategies for projects and how to keep energy, such as carbon, geomass and storm water, on site and how to control the construction activity once a project is started. These strategies should be outlined in detail and should be part of any management plan. The Commission questioned Mr. Peabody. He explained how to install erosion control features at a site and the best material to use, and how to control concrete over-pour using projects that he has worked on as examples. He reviewed helical piles that require no concrete or excavation and advocates that they be used. He added that invasive management plans should be part of any project.

MINUTES: September 15, 2015 – The approval of the minutes is postponed.

ANY OTHER BUSINESS:

Dennis said that the Commission should schedule a meeting with Rich Waldo to discuss various topics, such as beach nourishment. He would also like an update on the 31 Point Street project, although the Commission agreed that most likely nothing was going to happen until the spring.

ADJOURNMENT: *Barbara Prato moved to adjourn at 8:00 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2015

Dennis Minsky, Chair