

**PROVINCETOWN
CONSERVATION COMMISSION
CAUCUS HALL
March 15, 2016
6:00 P.M.**

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

Members Absent: Mark Irving (excused).

Others Present: Anna Meade (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

Chair Dennis Minsky called the Work Session to order at 6:00 P.M.

WORK SESSION: Discussion of Permit Review Threshold and Application Guidelines:
The Commission discussed revisions to the draft application review guidelines. Lynne Martin presented an updated fee schedule for the Commission's review.

Dennis Minsky adjourned the Work Session at 6:30 P.M.

PUBLIC MEETING:

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

PUBLIC STATEMENTS:

None.

OLD BUSINESS:

3 Heather's Way: Enforcement Order issued February 4, 2016. Potential additional enforcement action from further work done on site:

Paul Shea appeared on behalf of Robert Sheehan, the new property owner. He briefly reviewed the Conservation permitting history for the site. He informed the Commission that Mr. Sheehan hired a landscaper who removed the shrubs that had been planted according to a planting plan approved by the Conservation Agent in 2012. The landscaper then planted arborvitaes along the top of the embankment at the property line. The shrubs that were removed are still stockpiled on the property. Mr. Shea met with Dennis Minsky at the property and they observed fill comprised of sand, gravel and crushed asphalt varying in depth from about 4" to a foot deep. Mr. Shea spoke with Mr. Sheehan who indicated that he wanted to build a patio in the back of the house. After a discussion with Mr. Shea, Mr. Sheehan has agreed to replant all the shrub species as shown on the original planting plan, which were originally planted with the intent of delineating the 50' buffer zone, and to replace any that have died. He has also agreed to remove the fill on the property and the fill encroaching onto a neighbor's property. Mr. Shea suggested to Mr. Sheehan that he could build a pervious patio along the edge of the house in the area where the

deck is. Mr. Shea is requesting that the Commission allow the arborvitae to remain on site and that Mr. Sheehan be permitted to replant all the shrubs that were in the original planting plan and to remove the fill on the property, after which he will file for a second Notice of Intent for the addition of a patio. Mr. Sheehan would bring in clean crushed stone to put under the pervious pavers for the patio.

The Commission questioned Mr. Shea. The Commission discussed the suggested mitigation measures, which included the planting plan from the arborvitae line to the 50' buffer zone proposed by Mr. Shea, removing the crushed asphalt and fill from the property, including rectifying the off-property deposition over the embankment, and the removal of invasives. *Lynne Martin moved to ratify the Enforcement Order for 3 Heather's Way to include the submission of a planting plan from the arborvitae line to the 50' buffer zone, removal of crushed asphalt and other fill on the property, removal of the fill deposited beyond the limit of work and removal of invasives, Barbara Prato seconded and it was so voted, 4-0.* The Commission requested the submission of Mr. Shea's planting plan on or before April 12, 2016.

Dennis Minsky moved to levy two Type II violations; one for the removal of vegetation without a permit (\$300) and one for the deposition of fill without a permit (\$300), David Hale seconded and it was so voted, 4-0.

3 Oppen Lane: This matter is postponed to the April 19, 2016 Public Meeting. *Barbara Prato moved to postpone the matter concerning an Enforcement Order at 3 Oppen Lane, Dennis Minsky seconded and it was so voted, 4-0.*

NEW BUSINESS:

Notice of Intent

Application by **Bay Harbour Homeowners' Association**, represented by **Paul Shea**, of **Independent Environmental Consultants** 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 raking (by hand) of seaweed, removal and proper disposal of seaweed and other debris without the use of mechanical equipment, and the proper disposal of seaweed and other debris of coastal beach and dunes at the property located at **Bay Harbour, Harbour Drive**, in Provincetown.

Presentation: Paul Shea appeared to present the application. Mr. Shea stated that all proposed work activities would be done by hand, using hand tools (rakes). The applicant will be responsible for the proposed beach maintenance and cleaning of the beach. The raked seaweed and debris would be collected and removed by hand from the beach and disposed of properly off site. The majority of the work will be performed at the wrack line on the coastal beach and only seaweed and debris brought in with the tide will be removed. MESA determined that there is estimated habitat on the site, however the project may be undertaken with its proposed conditions to be included in the Order of Conditions issued by the Commission. The agency specified that the applicant has the responsibility to protect the breeding Piping Plovers and state-listed species of terns that may be attracted to the beach in the area where the raking will occur and that no raking shall occur between April 1st and August 31st, unless certain conditions are fully implemented. Those conditions were outlined in a letter from MESA to the applicant dated

March 3, 2016. Mr. Shea recommended that in addition to the MESA conditions that the Commission require a certified monitor be present on site while the raking is happening. The Department of Environmental Protection file number for the project is SE058-0544.

Public Comment: Paul Richardson asked a question about the project and why the Commission would encourage the work.

Commission Discussion: The Commission questioned Mr. Shea about the project. Mr. Shea clarified that the work will not extend beyond the wrack line. The Commission discussed its concern about potential damage to beach grass during the removal process.

Dennis Minsky moved to approve for a Notice of Intent by Bay Harbour Homeowners' Association under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and the Provincetown Wetlands By-Law, Chapter 12 for work to include raking (by hand) of seaweed, removal and proper disposal of seaweed and other debris, without the use of mechanical equipment, and the proper disposal of seaweed and other debris of coastal beach and dunes at the property located at Bay Harbour Drive with the Standard Order of Conditions and with the Special Conditions as specified verbatim in a letter from the Division of Fisheries and Wildlife to the applicant, dated March 3, 2016, that a certified monitor be on site while work is being performed to ensure that there is no damage to flora and fauna and that the activity not take place beyond the wrack line, Barbara Prato seconded and it was so voted, 3-1 (David Hale opposed).

Notice of Intent

Application by **Francis J. Santos**, represented by **Don K. Munroe**, of **Coastal Engineering Co.**, 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 expansion of the current marina known as Flyer's Boat Yard by moving the current float system to deeper water, lengthening the existing wharf to 216' by adding an 8' by 617' pile-supported pier and moving an existing float system to deeper water at the property located at **131A Commercial Street** in Provincetown.

Presentation: Don K. Munroe and Noah Santos appeared to present the application. Mr. Munroe stated that the applicant proposes to expand a marina that has been operating for more than 20 years. The marina currently services 80 boats and is limited by space to service of more customers who want to access Provincetown Harbor. He said that the Provincetown Harbor Plan encourages the protection of existing water-dependent uses and new water-dependent uses whenever appropriate in response to expressed need. The proposed project will allow more residents access to the Harbor. He reviewed the performance standards narrative submitted with the application.

Dennis Minsky read a letter from the Division of Marine Fisheries submitted to the Commission with concerns regarding the project for its consideration. In the letter, DMF suggests that if the project is approved that an eelgrass-monitoring program be established to quantify any effects of the expansion on eelgrass beds in this region. It also requests the opportunity to review the monitoring plan design prior to the commencement of the project to determine that it meets the previously stated objectives and that monitoring results be sent to DMF and regulatory agencies for annual review. In addition, if the project is approved, DMF suggests that habitat loss associated with piling structures and shading require mitigation at the state and federal levels of the permitting process. As an example of that mitigation, it stated that conventional moorings in

the area might be converted to conservation moorings. Mr. Munroe responded to the DMF concerns and stated how the issues would be addressed and mitigated. He noted that DMF didn't comment on the fact that what is being proposed is an improvement to the existing dock system in terms of some of its concerns. The Division of Fisheries and Wildlife also submitted a letter to the Commission reiterating its previous determination, in 2012, that the project would not adversely affect the resource area habitat of state-protected rare wildlife species and would not result in a 'take' of state-listed rare species.

Public Comment: Dennis Minsky read parts of a letter submitted in opposition to the project. Mr. Munroe and Mr. Santos responded to the concerns stated in the letter. Alfred Pickard, an abutting business owner, stated his concerns about, and support of, the project.

Staff Comment: Rex McKinsey, Harbormaster, commented on the project. He noted that he had issues with DMF regarding eelgrass and the extent of its location in the Harbor. Contrary to DMF's contention in its letter that eelgrass has declined by 20% in the past decade, he is convinced that the growth of eelgrass in Provincetown Harbor is expanding. He and Charlie Costello from DEP will be investigating the presence of eelgrass in the Harbor this summer in an effort to update eelgrass maps. He supports this project and pointed out some of its benefits. He would support an eelgrass monitoring system. He suggested that the Commission use the Special Order of Conditions submitted for the MacMillan Pier project as a template for all marina and pier or wharf projects. He submitted a draft Special Order of Conditions, based on the MacMillan Pier project Order, on which he and the Conservation Agent have been working. He reviewed some of the conditions in the Order.

Commission Discussion: The Commission questioned Mr. Munroe and Mr. Santos. The Commission noted the DMF concerns and discussed the draft Special Order of Conditions as it concerned eelgrass.

David Hale moved to approve the application by Francis J. 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 for work to include an expansion of the current marina known as Flyer's Boat Yard by moving the current float system to deeper water, lengthening the existing wharf to 216' by adding an 8' by 617' pile-supported pier and moving an existing float system to deeper water at the property located at 131A Commercial Street with the Standard Order of Conditions and with the draft MacMillan Pier Special Order of Conditions, Lynne Martin seconded and it was so voted, 4-0.

Notice of Intent

Application by **Charles LaGasse, Provincetown Marina**, represented by **Ken Fields, of Fort Point Associates, 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 reconfiguration of docking facilities at Fisherman's Wharf (formerly known as Cabral's Wharf), including the removal and replacement of existing marina structures, the construction of 2,052 linear feet of new floating dock and the installation of utilities, including water, electricity and pump-out connections. 58 piles will be installed to support 38 new floats to support 20,721 sq. ft. of new dock at the property located at **9 Ryder Street Extension** in Provincetown.

Presentation: Chuck LaGasse and Ken Fields appeared to present the application. The applicant proposes to reconfigure and improve the docking facilities at Fisherman's Wharf. The proposed work includes the removal of existing pilings, docks, floats and gangways and the installation of

new pilings, docks, floats and gangways. Approximately 49 pilings and 14,369 sq. ft. of floats and docks will be pulled out of the water. All material removed will be resold, recycled or disposed of in accordance with state and local laws. The work will include dock assemblage in daisy chains, concurrent with the installation of anchor piles, which will be driven into the bottom of the Harbor using a vibratory hammer. Utilities, including water, electricity and pump-out connections will follow dock and float installation. Pump-out facilities will be available at all slips. 58 new piles will be installed to support 38 new floats. The latter will be wider and more robust than what exists and will act as wave attenuators. Mr. Fields explained that the applicant had hired a marine biologist to do a current assessment of the eelgrass in the area. He reviewed the eelgrass report, an entire copy of which will be submitted to the Commission. He said that no eelgrass would be impacted by the removal or the installation of pilings for the project. He reviewed the performance standards and said that the applicant was meeting all of the standards to reinstall what currently exists at the marina. He added that dredging and the installation of a floating wave attenuator are proposed for the future. He said that the project was outside MESA jurisdiction and there were no shellfish beds in the area of the marina. The DEP file number for the project is SE 058-0545.

Public Comment: None.

Staff Comment: Rex McKinsey commented on the project, pointing out its benefits and recommended that the Commission include the MacMillan Pier Special Order of Conditions in its decision for this project as well.

Commission Discussion: The Commission questioned Mr. Fields and Mr. LaGasse.

Dennis Minsky moved to approve the application by Charles LaGasse, Provincetown Marina, represented by Ken Fields, of Fort Point Associates, 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 for work to include the reconfiguration of docking facilities at Fisherman's Wharf (formerly known as Cabral's Wharf), including the removal and replacement of existing marina structures, the construction of 2,052 linear feet of new floating dock and the installation of utilities, including water, electricity and pump-out connections. 58 piles will be installed to support 38 new floats to support 20,721 sq. ft. of new dock at the property located at 9 Ryder Street Extension with the Standard Order of Conditions and with the Special Order of Conditions being worked on by the Harbormaster and the Conservation Agent in regard to demolition, spill control, construction activities and notifications, David Hale seconded and it was so voted, 4-0.

CONSERVATION AGENT REPORT:

Old Colony Path: Illegal Dumping: Anna Meade explained that the Department of Public Works had received a report about illegal dumping on Old Colony Path. A police investigation was initiated and a report has been issued. Mail addressed to Jenna Halloran was found in the trash that was dumped. Dumping on conservation land is a violation of local by-laws and regulations. The police report concluded that identification of the person who illegally dumped the trash was not possible. Ms. Halloran appeared to address the situation and alleged that the trash was dumped by Kyle Jackett who the landlord hired to remove trash from the property where she lived. The Commission discussed the issue with Ms. Halloran.

12 Somerset Road: Anna Meade called the contractor and several sub-contractors regarding the silt fencing, but has not yet spoken with Jerome Albright, the owner of the property.

401½ Commercial Street: Anna Meade called Kevin Bazarian, the contractor, regarding silt fencing and he indicated that the silt fencing would be fixed.

Application of Alfred Famiglietti to become an alternate member of the Commission:

Dennis Minsky spoke to Mr. Famiglietti who is interested in joining the Commission, but was not able to attend tonight's meeting. He will be at the next meeting.

Provincetown Pier Corporation: The Commission signed the Order of Conditions.

Provincetown Airport Commission: The Commission signed the Order of Conditions.

MINUTES: February 16, 2016 – *Barbara Prato moved to approve the language as amended, Lynne Martin seconded and it was so voted, 4-0.*

155 Commercial Street: Anna Meade said that the owners of the property had asked for an extension of six months to a year regarding the retro-fitting of the fence. After a brief discussion, the Commission was disinclined to grant the requested extension.

Dennis Minsky mentioned Gloria McPherson and Morgan Clark's decision to regionalize the Americorps volunteer.

TOWN MEETING: NATURAL ENVIRONMENT ARTICLES:

In accordance with Section 2-2-1 of the Provincetown Charter, the Provincetown Conservation Commission will hold a Public Hearing to determine the number of Board members in favor or opposed to the petitioned articles concerning the natural environment for the April 4, 2016 Special and Annual Town Meeting. The Commission reviewed the Warrant Articles flagged by Anna Meade for consideration. The Commission decided not to make recommendations on any of the Warrant Articles.

This is Commissioner David Hale's last meeting as a member of the Commission, as he will be resigning. Dennis Minsky thanked him for all of his years of service on the Commission.

ADJOURNMENT: *Barbara Prato moved to adjourn at 9:15 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2016

Dennis Minsky Minsky, Chair