

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**May 17, 2016**  
**6:00 P.M.**

**Members Present:** Dennis Minsky, Lynne Martin, Barbara Prato, Alfred Famiglietti and Scott Donahue.

**Members Absent:** Mark Irving (excused).

**Others Present:** Deb Albenberg (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Dennis Minsky called the Work Session to order at 6:11 P.M.

**Oyster Aquaculture Proposal:** Memo from Gordon Peabody and discussion in regard to information from Shellfish Constable:

Mr. Minsky reviewed the topic and said that at the last meeting, Mr. Wisbauer had discussed several different options for aquaculture propagation that included culching, bottom cages, floating cages and netting. The Commission briefly discussed the techniques. Mr. Peabody, of Safe Harbor Environmental, had sent the Commission a memo in regard to these techniques. Mr. Minsky summarized the memo's point, which was that it might not be economically feasible to utilize any of the aquaculture techniques because of drifting sand in Provincetown Harbor. He said that this was not the concern of the Commission, but that the effects of those techniques on the resource area were of concern. The Commission discussed the subject.

Harbormaster Rex McKinsey appeared and said he had spoken with Mr. Wisbauer about the aquaculture propagation issue earlier in the day. According to Mr. McKinsey, Mr. Wisbauer is following a set of steps to permit the aquaculture grants through the Division of Marine Fisheries and pursuant to state law. One of these steps requires consultation with the local Conservation Commission. Mr. Wisbauer is also trying to create a template that will allow growers to go through the permitting process easily and to be able to bring information to the Commission upon which it can then act and he will be filing a Determination of Applicability application with the Commission for its review. Mr. Minsky said that he was most concerned with marine animal entanglement issues.

Paul Tasha commented that the placement of the cages is usually slightly above the bottom of the Harbor, such as on stakes, to allow the normal movement of sand under the cages and to avoid any build-up against formation of any barriers.

Mr. Minsky reviewed several topics for discussion by the Commission, including re-reviewing the permitting template, specifically for tree removal and for downgrading tree-cutting from an Administrative Review by the Commission to an Administrative Review by the Conservation Agent, the option of issuing violation notices for minor infractions to establish a paper trail and an explanation of Conservation fees. Lynne Martin suggested that the Commission review and

clarify the local by-law application process, including developing an actual application for submission, and clarifying fees for improving the application in-take process in the Building Department.

Chair Dennis Minsky adjourned the Work Session at 6:31 P.M.

## **PUBLIC HEARING**

Chair Dennis Minsky called the Public Hearing to order at 6:31 P.M.

### **PUBLIC STATEMENTS:**

Paul Tasha reported that he had been seeing fewer box turtles in the woods in the last couple of years. His friend, Beau Gribbin, has seen three empty turtle shells in the woods, more than in the previous several years. He was presenting this information with the hope that the Commission might have an idea about how to research the issue.

*Dennis Minsky so declared that the Conservation Commission would move into Executive Session at 6:35 P.M. pursuant to M.G.L. c. 30A, Section 21(3) in order to discuss strategy with respect to litigation related to Aqua King Fisheries, LLC v. Conservation Commission, Barnstable Superior Court, C.A. No. 2015-00064; Conservation Commission v. Stellwagen Bank Fisheries Corp., Barnstable Superior Court, C.A. No. 2015-00387 and Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386, as discussion in an open meeting may have a detrimental effect on the litigating position of the Conservation Commission and to return to Open Session at the conclusion of the Executive Session. The motion was so voted by roll call: Dennis Minsky: Yes, Barbara Prato: Yes and Lynne Martin: Yes, Alfred Famiglietti: Yes; and Scott Donahue: Yes.*

## **PUBLIC HEARING**

Chair Dennis Minsky reconvened the Public Hearing at 6:48 P.M.

### **OLD BUSINESS:**

#### **Certificate of Compliance**

Request by William N. Rogers, II, on behalf of Peter Kazon and Paul Cunningham for the installation of stone walls with appurtenances and planting according to a planting/mitigation plan involving native species within the jurisdiction of the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, within a bordering vegetated wetland at the property located at **5 Creek Round Hill Road** in Provincetown.

**Presentation:** William N. Rogers, II appeared to present the request.

**Commission Discussion:** The Commission discussed the request. Ms. Albenberg said that she and Mr. Minsky had done a site visit and that everything looked consistent with the plan. She reviewed the conditions of the project, which were outlined in the minutes of the Conservation Commission meeting in November of 2014.

***Dennis Minsky moved to grant a Certificate of Compliance for the installation of stonewalls with appurtenances and planting according to a planting/mitigation plan involving native species within the jurisdiction of the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, within a bordering vegetated wetland at the property located at 5 Creek Round Hill Road, Barbara Prato seconded and it was so voted, 5-0.***

Chair Dennis Minsky announced that the Commission would hear the applications involving 3 Heather's Way and the Provincetown Airport out of order, as they would take less time to complete than the other remaining applications on the agenda.

### **NEW BUSINESS:**

Application by **Robert Sheehan**, represented by **Paul Shea, of Independent Environmental Consultants**, under the Provincetown Wetlands By-Law, Chapter 12. The scope of work to include the construction of a wooden deck along the back of the existing house, along with new plantings within the 50-100' buffer to an Isolated Vegetated Wetland at the property located at **3 Heather's Way** in Provincetown.

**Presentation:** Paul Shea appeared to present the application. The proposed project includes the construction of a new wooden deck located along the back of the structure on the property. The deck is in an upland area and will be located within the buffer zone of an IVW. The deck will be separated from the isolated vegetated wetland by an existing natural buffer zone and by new plantings, including trees and shrubs, which have been planted within the buffer zone. The new plantings will provide new protective shelter, food sources, escape cover, travel corridors, nesting and resting habitat for a variety of wildlife. The deck will be located against the structure and as far from the resource area as possible. Mr. Sheehan has removed all the fill material, per the Commission's request, that had been brought into the backyard, returning it to its original grade. He has also planted a line of arborvitae trees at the top of the embankment above the resource area. The area between these plantings and the deck will be re-planted with native shrubs. The habitat at the property will be improved and no impervious surfaces will be added.

**Commission Discussion:** Mr. Minsky told Mr. Shea that the area where the proposed deck will be located was not staked out when he and others did a site visit. The Commission questioned Mr. Shea.

***Dennis Minsky moved to approve the application under the Provincetown Wetlands By-Law, Chapter 12 for a scope of work to include the construction of a wooden deck along the back of the existing house, along with new plantings within the 50-100' buffer to an Isolated Vegetated Wetland at the property located at 3 Heather's Way, with the Standard Order of Conditions and with the Special Conditions that all work be performed from the front of the structure, that the area be policed daily for debris, that the Conservation Agent be consulted and do a site visit before the completion of the project, Barbara Prato seconded and it was so voted, 5-0.***

**Request for Determination of Applicability**

Application by **Provincetown Airport** by **Jacobs Engineering** under the Massachusetts Wetlands Protection Act M.G.L. c. 131, §40 for a scope of work to include the replacement of base-mounted fixtures and the installation of new direct-buried conduit and cable adjacent to the edge of pavement at the property located at the **Provincetown Airport, 176 Race Point Road** in Provincetown.

**Presentation:** Mary Ann Magner, an environmental scientist, and Irvin Baptiste, an engineer, both with Jacobs Engineering and Butch Lisenby, Airport Manager, appeared to present the application. According to Ms. Magner, the proposed project includes the removal and replacement of the existing Runway 7-25 High Intensity Runway Lighting edge-light system, which is used to outline the edges of the runways during periods of darkness or restricted visibility conditions. The work will be done in November when Eastern box turtles are inactive. The required trenching for the project will not disturb the species. Work will take place within the managed grassland buffer zone. All temporary impacts to the grassland will be restored with a native seed mix that is saltwater tolerant. Straw wattles will be staked between the work area and resource areas. The erosion control will remain in place until the area has been seeded, but would then be removed in order to re-open the runway. She said that Natural Heritage had reviewed the project and found that it would not have an adverse effect on the habitat of any state-listed species. Mr. Baptiste reviewed the trenching work.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Ms. Magner and Mr. Baptiste.

***Dennis Minsky moved to grant a Negative #3 Determination under the Massachusetts Wetlands Protection Act M.G.L. c. 131, §40 for a scope of work to include the replacement of base-mounted fixtures and the installation of new direct-buried conduit and cable adjacent to the edge of pavement at the property located at the Provincetown Airport, 176 Race Point Road with the conditions that the work be conducted as presented in the month of November with straw wattles and using the dormant Cape Cod seed mix, Barbara Prato seconded and it was so voted, 5-0.***

**OLD BUSINESS:**

**Notice of Intent** (continued from April 26<sup>th</sup>)

Application by **BPJS, LLC**, represented by **David Michniewicz, P.E.**, of **Coastal Engineering**, 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 to include demolition and removal of existing vacant structure and associated paved parking area walkways and sewage disposal system and other utilities and construction of seven housing buildings containing thirteen dwelling units, pervious pavement driveway and parking areas, shell walkways, and a Title 5 compliant sewage disposal system at the property located at **350 Bradford Street** in Provincetown.

**Presentation:** David Michniewicz, Attorney Lester J. Murphy, Phil Cheney, Chris Wise and Gordon Peabody appeared to discuss the project. Mr. Michniewicz said that supplemental information had been submitted per the request of the Commission, including a preliminary shoring plan for the construction of Units 9 through 13, a construction narrative and protocol and a DEP file number (SE 058-0546), a more detailed landscape planting plan and to indicate the

limit of work on the site plan. He said that a construction fence would be placed around the site for security purposes. Mr. Peabody reviewed the ground cover to be planted outlined on page 4, section 6, and bullet 1 of his environmental management plan for the project. Mr. Cheney reviewed proposed trees for screening along the property line, including shad, maple, red cedar and pitch pine, and indicated that the current street trees would not be saved. Mr. Michniewicz reviewed the shoring plan for the construction of Units 9 through 13.

**Public Comment:** Bob Hazard commented about the location of proposed trees at the property vehicle access and the potential to block driver views when exiting the property.

**Commission Discussion:** The Commission discussed the project and questioned Mr. Michniewicz about the plan for the removal of demolition debris.

***Dennis Minsky 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 the scope of work to include demolition and removal of existing vacant structure and associated paved parking area walkways and sewage disposal system and other utilities and construction of seven housing buildings containing thirteen dwelling units, pervious pavement driveway and parking areas, shell walkways, and a Title 5 compliant sewage disposal system at the property located at 350 Bradford Street with the Standard Order of Conditions and with the Special Conditions that the Conservation Agent and a liaison from the Conservation Commission be involved on a weekly basis, that the landscape planting plan, environmental management plan and stormwater and pollution prevention plan entitled, "Stormwater Management Report and Operations & Maintenance Manual", submitted by the applicant be adhered to and that there be a three-year survivability requirement for all plant material, Barbara Prato seconded and it was so voted, 5-0.***

### **Notice of Intent**

Application by **Charles LaGasse**, Provincetown Marina, LLC, represented by **Ken Fields**, of **Fort Point Associates**, 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 to include the construction of a public access walkway, dredging around shallow floats and expanding docking facilities at the property located at **9 Ryder Street Extension** in Provincetown. Rex McKinsey joined the discussion.

**Presentation:** Ken Fields and Chuck LaGasse appeared to present the application. Mr. Fields updated the status of the proposed project and reviewed the permitting for the property. Before Mr. LaGasse purchased the property, there were several outstanding permitting matters, including a Notice of Intent that had been approved in 2015 with an active Order of Conditions that covers the current maintenance work, the decking and the timber structures. In addition, a 2008 stormwater management report was the subject to a previous Order of Conditions, which has expired. Mr. Fields said that the report and the installation of trident filters were included in the 2015 Order and that Mr. LaGasse would be able to implement the stormwater management improvements without another hearing.

An Environmental Notification Form has been filed with Massachusetts Environmental Protection Agency, as has a Chapter 91 license application to authorize the existing parking on the deck. The Massachusetts Department of Environmental Protection is still reviewing the application. The applicant has filed for a change on the ENF for the dock expansion project.

The NOI filed earlier with the Commission was to reestablish the docking facilities that previously existed in the same footprint, using larger floats that provide wave attenuation, are more durable and can remain in the water year round. The applicant also filed a reconfiguration request with DEP to authorize the maximum amount of square footage under Chapter 91. The Commission had received a copy of the reconfiguration plan. The decision for the notice of project change under MEPA is expected shortly, as is the public notice for the Chapter 91 application related to dredging, the boardwalk and the dock expansion.

The NOI before the Commission currently is for the dock expansion, the operation of a small dredge between Fisherman's Pier and MacMillan Pier, an expansion of the public access walkway adjacent to the deck, an expansion of that walkway at the seaward end of the Pier, making it wider and allowing people to walk around the building at the end of it and the expansion of the public access walkway from the landward end of the Pier across the beach up to the brick plaza in front of the kite store. The latter aspect is a benefit to the Town, as it will provide a dedicated connection from the Pier to the downtown area. Attenuator docks will be placed around the seaward end of the Pier.

Mr. Fields reviewed the impacts of the project on various wetland resource areas, including the coastal beach, the coastal dune, land under the ocean, land containing shellfish, land subject to coastal storm flowage and Natural Heritage and Endangered Species-mapped priority habitat. The majority of the walkway will be placed on pilings, which will allow the wind to blow the sand naturally and the shape and volume of the beach will remain unchanged. Mr. Fields said that the applicant would like to increase the width of the walkway to 12', as the impact would be the same as if the walkway were only 10' wide, as had been applied for initially. He said that the applicant was willing to offer mitigation for the impacts of the land containing shellfish in the form of seeding an amount of land equal to the amount of square footage and density impacted in the Town's shellfish growing areas. He had it listed as 58 sq. ft. of impact. He said that the dune was a critical area as well, although it was not functioning as a dune and was not habitat area either. He suggested mitigating the impact on the dune and since there were going to be 6/12" pilings, a total of 5 sq. ft. in that area, he is offering the planting of beach grass for better habitat and storm damage mitigation. As to the project's impact on priority habitat, it has been determined that the project is within the NHESP habitat for the Common Tern and Arctic Tern, however the impact of 88 sq. ft. of piling should not adversely impact the avian habitat. The applicant is waiting for a NHESP response to determine whether there will be an adverse effect on priority habitat for protected marine mammals.

The proposed dredging will be a one-time activity. It has been shown that benthic organisms will re-populate to the same pre-existing densities. Dredging will be seaward of the bulkhead and will restore previous depths, the topography of which will not result in increased flooding or erosion. There was an eelgrass study done previous to the purchase of the property. There are two small areas near where the walkway will be constructed. Mr. Fields claims that the walkway can be constructed without impacts on those areas. DMF has suggested that the applicant devise a monitoring plan for eelgrass impact, and if there is an impact, a mitigation plan should be developed in coordination with DMF, which will provide technical guidance.

Rex McKinsey commented on the dredging aspect of the project. Mr. Fields said that the dredging area would be contained with a weighted turbidity curtain in the event that work causes temporary bottom sediment suspension in the water column.

Mr. LaGasse discussed the walkway with the Commission. He said that the structure design was still being worked on, but will be composed of a dense natural hardwood, similar to epoxy.

As to coastal storm flowage, the project is designed to withstand impacts from coastal storms through accepted engineering practices. There are no performance standards for land subject to coastal storm flowage. The design will prevent the project from causing pollution from storm damage. The proposed attenuator docks are designed to improve storm damage protection.

The Commission had received a letter from the Division of Marine Fisheries with proposed comments regarding the project for the Commission's consideration.

**Commission Discussion:** The Commission questioned Mr. Fields. Ms. Albenberg raised the issue of hiring an outside consultant to advise the Commission on the eelgrass issue and dredging aspects of the project.

Mr. McKinsey commented on the project and said that he would like to see more than one site for eelgrass control and monitoring. He suggested two or three, sites, measuring a square meter in size. He suggested that eelgrass beds are growing in Provincetown Harbor, but instead of a mitigation planting of eelgrass, that the applicant consider a change in the remaining mooring gear in the mooring field on the west side of the Pier to more of a conservation mooring in order to cut down on scouring around the mooring tackle. He said that the Town needed to wait to find out what the science revealed first about the location of the eelgrass from a proposed study by DMF. He referred to the MacMillan Pier Special Order of Conditions and suggested using it as a template for this project. He then reviewed the changes he recommends. The Commission questioned Mr. McKinsey about about the eelgrass requirements, the dredge spoils and beach grass conditions.

***Dennis Minsky moved to approve 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 scope of work to include the construction of a public access walkway, dredging around shallow floats and expanding docking facilities at the property located at 9 Ryder Street Extension with the Standard Order of Conditions and with the following Special Conditions:***

- ***if an alteration of the coastal dune occurs that mitigation planting of beach grass will take place in an area approved by the Conservation Commission;***
- ***if there is an alteration in the land containing shellfish that a mitigation re-seeding effort will take place as directed by the Provincetown Shellfish Constable;***
- ***if there is an adverse effect on eelgrass that an avoidance strategy be undertaken to avoid areas of, or proximate areas to, eelgrass, that an on-going monitoring plan continue and a design study of potential damage, with a minimum of three sample plots be undertaken by the appropriate authorities, and if there is proven eelgrass damage, that there be mitigation in coordination with DMF and that traditional moorings be replaced with conservation moorings;***

- *that the applicant shall submit a proposed eelgrass monitoring and mitigation plan for the Conservation Commission's and the DMF's review and approval, with the latter providing technical guidance on monitoring methods and design;*
  - *that the time of year restriction shall be February 1st – June 30<sup>th</sup>; and*
  - *that the Marine Project template be applied where appropriate,*
- Barbara Prato seconded and it was so voted, 5-0.*

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

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016

Dennis Minsky, Chair