

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
JUNE 21, 2016
6:00 P.M.

Members Present: Dennis Minsky, Lynne Martin, Barbara Prato, Alfred Famiglietti (arrived at 6:10 P.M.) and Scott Donahue.

Members Absent: Mark Irving (excused).

Others Present: Gloria McPherson (Town Planner), Deb Albenberg (Conservation Agent) and Ellen C. Battaglini (Permit Coordinator).

WORK SESSION

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

Community Preservation Committee reappointment: Mr. Minsky announced that Barbara Prato's three-year term as the Commission's representative to the Community Preservation Committee was expiring.

Barbara Prato nominated herself for another term as the Commission's representative to the CPC, Dennis Minsky seconded and it was so voted, 5-0.

Site Visits: The Commission discussed options for conducting site visits. It was agreed that Commissioners would utilize the 'buddy system' when conducting site visits, unless the project under review was large, such as the pier project at 9 Ryder Street Extension or the Airport, in which case a site visit would be scheduled and legally noticed.

Review of examples of Standard Order of Conditions for Construction Projects for revision consideration: Ms. Albenberg reviewed Mashpee's Conservation Commission Standard Order of Conditions. Ms. McPherson added that she thought there was a lack of understanding by the Commission of what is automatically required of an applicant and project under the Wetlands Protection Act. The Commission discussed the issue, including what should be part of the Standard Order of Conditions for the local by-law. The Commission reviewed the Mashpee Order. Ms. McPherson suggested that only conditions that apply to a particular project should be included in the Standard Order and could be checked off from a list. Mr. Minsky said that he had been working on a list of performance standards for the local MESA by-law which he had emailed to Commissioners for review and discussion at the next meeting. Ms. Martin said that she had been working on an application for the local MESA by-law and has asked the Conservation Agent for a cover sheet for instructions on how to apply.

PUBLIC HEARING

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

PUBLIC STATEMENTS:

None.

NEW BUSINESS:

Local By-Law Filing

Local By-Law Filing by **Thomas S. Thurston** pursuant to the Provincetown Wetland Protection By-Law (Chapter 12) regarding the addition of a screen porch at the property located at **258 Bradford Street** in Provincetown.

Presentation: Tom Thurston appeared to discuss the project.

Public Comment: None.

Commission Discussion: The Commission briefly discussed the project. Mr. Minsky said he had done a site visit with the Conservation Agent and one Commissioner and stated that the entire project was in an already disturbed and developed area, a lawn. He saw no need for action and the Commission agreed.

Dennis Minsky moved that no action be taken, Barbara Prato seconded and it was so voted 5-0.

Notice of Intent

Application by the **Town of Provincetown** represented by **Stephen Wisbauer, Provincetown Shellfish Constable**, for a **Notice of Intent** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands By-Law, Chapter 12 and subject to the Division of Marine Fisheries, the Army Corps of Engineers and the Town of Provincetown's Regulations for Aquaculture Licenses regarding batch permitting of aquaculture on 11 acres of land under the ocean located in the area **east of the West End Breakwater**. Alfred Famiglietti recused himself because of a conflict of interest.

Presentation: Steven Wisbauer appeared to present the application. He indicated that the project had not yet been assigned a Department of Environmental Protection File Number. The application involves 9 new grants. Applicants will go through a process for the right to grow shellfish on private aquaculture ground. He said that it is a highly regulated process and each state regulating authority's approval is contingent upon the others'. Thus the Commission's approval is contingent upon the other state regulating agencies listed in the application packet. After getting the approval of the regulating agencies, a propagation permit is issued to the applicant, which has to be renewed on an annual basis. Mr. Wisbauer said that his application contains some of the existing conditions that have been placed on aquaculture growers and could be used as basis for the Commission's. The Division of Marine Fisheries has surveyed the site and has approved the activity at the site with conditions in regard to eelgrass and existing shellfish. He said that the next step for applicants is to seek the approval of the Army Corps of Engineers. Each individual is responsible for adhering to conditions, but if the Commission could put together an approval for the area as a whole, the process could be somewhat

streamlined. He asked if there was anything beyond the existing regulations that the Commission was interested in discussing. Access to these plots would be by boat or foot. There was a letter from DMF in the packet stating that it has reviewed the NOI by Mr. Wisbauer with respect to potential impacts to marine fisheries resources and habitat, however DMF's Shellfish Program has not yet reviewed the project. Until that review is complete, DMF's Environmental Review Program "lacks the requisite information for proper review."

Public Comment: Loretta Santos spoke in support of the application.

Commission Discussion: The Commission questioned Mr. Wisbauer and expressed concern about the potential for entanglement of marine mammals by floating gear at the site. He said that DMF has issued draft special conditions regarding floating gear, which he reviewed. The Commission continued the application to the July 19, 2016 Public Hearing at 6:30 P.M. in order to review the Order of Conditions it issued for the aquaculture site located in the east end of the Harbor and because the project has no DEP File Number at this time.

Administrative Review

Application by **Anne Paradis** for an Administrative Review pursuant to the Provincetown Wetland Protection By-Law (Chapter 12) for a deck expansion at **69 Howland Street**.

Presentation: Paul Kelly, representing Anne Paradis, appeared to discuss the application.

Public Comment: None.

Commission Discussion: Mr. Minsky explained that the expansion was minor, it was occurring in a disturbed area and would cause no damage to the buffer zone in which it is located. The Commission agreed.

Dennis Minsky moved that no action was necessary, Lynne Martin seconded and it was so voted, 5-0.

Administrative Review

Application by **Dean Bloch** for an Administrative Review pursuant to the Provincetown Wetland Protection By-Law (Chapter 12) for a deck expansion at **13 Hobson Avenue**.

Presentation: Chris Nagle, representing the Bloch family, appeared to discuss the project, which includes the extension of a side and a rear deck. The deck expansion, which will be palletized, is within the buffer zone of a dune.

Commission Discussion: The Commission discussed the project and questioned Mr. Nagle. The Commission determined that the project would have a slight influence on the resource area and discussed mitigation for the loss of that habitat with Mr. Nagle.

Dennis Minsky moved to approve the Administrative Review with the condition that any vegetation that is displaced, removed or in danger of being destroyed, shall be dug up and replanted on another part of the property, Barbara Prato seconded and it was so voted, 5-0.

Tom Sprout asked a question about an Administrative Review for 10 Meadow Road. He said he understood that it was to be on the agenda for tonight's meeting. Ms. Albenberg said that she had spoken to Mr. Sprout and requested that he file an NOI for the project. Ms. Albenberg will set up a meeting with Mr. Sprout to discuss the NOI application process.

CONSERVATION AGENT REPORT:

401-A Commercial Street: Ratify an Enforcement Order dated 6/16/16 for 300 sq. ft. of beach grass removal in a resource area (Coastal Beach, LSCSF). The property owner is required to successfully replant beach grass in the entire area in which it was removed (approximately 300 sq. ft.) by July 11, 2016 and the Conservation Agent contacted for inspection upon completion of beach grass, snow fence and sign installation.

Ms. Albenberg reviewed the issue and her discussions with the property owner, Elena Hall. Ms. Hall indicated that she would attend the next Conservation Commission but would not replant the grass she had removed. Mr. Minsky said that the Commission's job was to ratify the Enforcement Order stipulating that she cease and desist the activity and stipulating that the resource area alteration be corrected. Rather than asking for a restoration plan as it has done with similar Enforcement Orders, the Commission devised its own restoration plan, labeled Attachment A, which includes the successful replanting of beach grass, the installation of a snow fence and sign at the property. The Commission discussed the Enforcement Order.

Dennis Minsky moved to ratify the Enforcement Order for 401A Commercial Street and attach the police report thereto, Barbara Prato seconded.

The Commission discussed a fine for a Type I violation.

James Staniscia recommended that the Commission fine Ms. Hall immediately and stiffen the fine in the future if she doesn't comply, in part because July 19th is beyond the time that beach grass can be planted. The Commission discussed the issue.

The motion was so voted, 5-0.

Dennis Minsky moved to impose a fine of \$300 on the property owner at 401A Commercial Street for a Type I violation for alteration of habitat in a resource area, Barbara Prato seconded.

The Commission discussed the motion.

The motion was so voted, 4-1 (Scott Donahue opposed).

199 Commercial Street: Violation notice sent for 6 sq. ft. of beach grass removal in a resource area. (Coastal Beach, LSCSF). The property owner is required to contact the Conservation Agent to discuss restoration options.

Mr. Minsky explained that a Violation Notice is appropriate in this case, as the area of removal is smaller and it is the lowest level of an enforcement action response available to the Commission. Ms. Albenberg reviewed her site visit and subsequent actions with respect to the property owner. The Commission discussed the issue.

Lynne Martin moved that if there has been no communication by the condominium unit owner with the Conservation Agent within 2 weeks, that the Conservation Commission direct

the Conservation Agent to impose a fine of \$300, issue an Enforcement Order and require the owner to appear at the next Commission meeting on July 19th, Alfred Famiglietti seconded.

The Commission discussed the motion. If the property owner responds within 2 weeks, the Commission ruled that no Enforcement Order would be issued and no fine imposed, however the property owner is still required to attend the next Conservation meeting.

The motion was so voted, 4-1 (Barbara Prato opposed).

ANY OTHER BUSINESS:

Emergency Certification for work at the Herring Cove North parking lot: Ms. Albenberg explained that she and Mr. Minsky did a site visit and that the work will include cleaning the beachfront, removing and disposing of damaged pavement, stabilizing one of the sections and repairing the other section. A row of Jersey barriers will be placed at the most northern section of the parking lot to keep vehicles away from the broken edge of the lot and revetment. A new exit will be constructed beyond the vault toilet. At the south parking lot, a 600 sq. ft. section of the northwest corner of the parking lot shall be removed and beach sand will be placed at the location to help reinforce the eroding sand dune.

Dennis Minsky moved to approve the Emergency Certification for work at the Herring Cove North parking lot, Barbara Prato seconded and it was so voted, 5-0.

Extension for an Order of Conditions: Ms. Albenberg explained that she had had a request for an extension for an Order of Conditions for the property located at 99 Commercial Street. A letter was received from Roy Okurowski, of Land & Sea Engineering, LLC, requesting a two-year extension of the Order because of numerous weather-related delays and delays incurred in the efforts to raise the elevation of the pier on the property. Ms. Albenberg explained that the expired Order of Conditions had been issued in March of 2013 and the owners were almost finished with the work. The Commission discussed the issue.

Dennis Minsky moved to direct the Conservation Agent to convey to the property owner of 99 Commercial Street to stop all work at the property and file a new Notice of Intent and that the Commission cannot extend the Order of Conditions that has already expired, Barbara Prato seconded and it was so voted, 5-0.

Conservation goals for the Board of Selectmen: Ms. Albenberg said that the deadline was tomorrow if the Commission was inclined to submit goals. The Commission briefly discussed goals formulated by Ms. McPherson during the previous budget process.

MINUTES: June 7, 2016 – *Dennis Minsky moved to approve the language as amended, Barbara Prato seconded and it was so voted, 5-0.*

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

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2016

Dennis Minsky, Chair