

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
JULY 19, 2016
6:30 P.M.

Members Present: Dennis Minsky, Lynne Martin (arrived at 7:13 P.M.), Barbara Prato and Mark Irving.

Members Absent: Alfred Famiglietti (excused) and Scott Donahue (excused).

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

PUBLIC HEARING

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

1) PUBLIC COMMENTS:

Victor Seltsam appeared and introduced himself to the Commission. He has submitted an application for a position on the Commission.

2) PUBLIC HEARINGS:

a) **Notices of Intent**

i) Application by **Alfred J. Pickard, Jr.** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) (land subject to coastal storm flowage), DEP File # SE 058-0549 to raze and reconstruct an existing two-unit cottage at the property located at **129 Commercial Street.**

Presentation: Attorney Lester J. Murphy and William N. Rogers, II appeared to present the application. The project involves the razing and replacement of an existing two dwelling unit structure in poor condition and relocation of an existing septic tank. The building will be pulled back from two sidelines and the proposed building will be raised above the current elevation pursuant to flood plain requirements. Downspouts will empty into dry wells to control runoff from the new building. Straw bales and silt fencing will be installed along the limit of work. Mr. Rogers will stake the property and building perimeter lines prior to construction. New concrete piers and footings will be installed and all soil associated with any cut and fill required to construct the proposed building will be kept and maintained on site. Materials will be stored in existing parking and garage areas, away from abutting properties. Debris containers associated with construction will be located in an existing parking area. After the completion of the project, all disturbed areas will be restored and parking spaces delineated.

Public Comments: None.

Commission Discussion: The Commission questioned Attorney Murphy and Mr. Rogers. The Commission requested that the applicant mitigate, if possible, with plantings and submit a plan for those plantings. Attorney Murphy stated that the applicant would be willing to have Paul Shea, of Independent Environmental Consultants, meet with the Conservation Agent in regard to

the plantings. Mr. Minsky said that an area equal to the loss in green area on the lot be planted, which would be approximately 500 sq. ft.

Barbara Prato moved to approve the Notice of Intent pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) (land subject to coastal storm flowage), DEP File # SE 058-0549, to raze and reconstruct an existing two-unit cottage at the property located at 129 Commercial Street, with the Standard Order of Conditions, including protocols for the pouring of concrete, and with the Special Conditions that there be a plan submitted to the Conservation showing mitigative native plantings of about 500 sq. ft. somewhere on the property, Mark Irving seconded and it was so voted, 3-0.

ii) Application by **Stephen Wisbauer**, Provincetown Shellfish Constable, on behalf of the Town of Provincetown, regarding batch permitting of aquaculture on 11 acres of land under the ocean located in the area **east of the West End Breakwater**, DEP File # SE 058-0548, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, and subject to the Division of Marine Fisheries, Army Corps of Engineers and the Provincetown Regulations for Aquaculture Licenses. *(continued from July 21st)*

Presentation: Steve Wisbauer appeared to discuss the application. He stated that a DEP File # was assigned to the project.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Wisbauer about the project and a letter from the Division of Marine Fisheries regarding the project's need for review by the DMF's Shellfish Program. Mr. Wisbauer explained that there are 9 different applicants and DMF has been able to give biological approval based upon its survey to 6 of those. Based upon his communication with DMF, the others will be approved soon and one will be denied because of its proximity to eelgrass. The entire 11-acre project will not be approved until each separate applicant has been approved. No activity will occur without all approvals from all relevant state and local entities. Corner buoys will delineate the parameters of the area.

Dennis Minsky moved to approve the Notice of Intent regarding batch permitting of aquaculture on 11 acres of land under the ocean located in the area east of the West End Breakwater, DEP File # SE 058-0548, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, and subject to the Division of Marine Fisheries, Army Corps of Engineers and the Provincetown Regulations for Aquaculture Licenses with the Standard Order of Conditions and with the Special Condition that the Conservation Agent be notified of any changes in the project and contingent upon the approval of the DMF's Shellfish Program, Mark Irving seconded and it was so voted, 3-0.

b) Administrative Reviews

i) Application by **Thomas Sproat** and **John Sumaj** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetland Protection By-Law, Chapter 12 (buffer to a forested swamp and we meadow) for a deck expansion at **10 Meadow Road**.

Presentation: Thomas Sproat and Todd Westrick appeared to present the application. Mr. Westrick explained that the applicant seeks to remove an existing deck that is in disrepair and

replace it with a larger deck. The deck is on an already disturbed area and will be elevated off the ground and supported with helical footings.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Westrick and Mr. Sproat. The Commission noted that pursuant to its regulations, structures could not be located closer than 80' from the resource area, which the existing and the proposed deck are. The Commission's concerns are that the one of the stakes denoting the location of the new deck is next to a retaining wall and the stability of the deck and the slope. Mr. Westrick explained that the deck would be cantilevered and that the helical footings would disturb the least amount of ground and would be placed deep enough not to be subject to any movement of the retaining wall, which has failed in the past. He said that the existing retaining wall had shifted because it was built on fill. The responsibility of the repair of the retaining wall and any plantings associated with that repair is the condominium association's, not the applicant's.

Barbara Prato moved to approve the Administrative Review pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetland Protection By-Law, Chapter 12 (buffer to a forested swamp and wet meadow) for a deck expansion at 10 Meadow Road with the Standard Order of Conditions, Lynne Martin seconded and it was so voted, 4-0.

ii) Application by **The Escape Plan, LLC** for restoration planting and fence installation at the property located at **105 Bradford Street Extension** following a 3/30/16 Enforcement Order for the violation of the Provincetown Wetlands Protection By-Law, Chapter 12, destruction of plant life including the cutting of trees without a permit (MESA).

Presentation: Faith Lacostie appeared to present the application. The applicant seeks to remove the five trees in order to expand the usable area for their guests and still respect the environment. Ms. Lacostie reviewed the photographs of the trees that were submitted to the Commission. Four of the trees are part of a larger group of nine planted on the property belonging to the applicant by abutters to the property. There is a tree on the property that is infested with wasp eggs. An arborist has examined the tree and given it an injection and Ms. Lacostie is hoping that it will recover and it will not need to be removed. Another is a dead pine tree next to a retaining wall that has cracked.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Lacostie and discussed the restoration plan previously approved by the Commission that is separate from this project. She said that the planting plan was designed to be layered in height and that she would like to plant a hedge to camouflage the neighbor's fence. Knockout roses and hydrangeas will be planted in front of the hedge and low-growing flowers, for more color, will border off the hydrangeas. The Commission requested that a native species be used for the hedge.

Dennis Minsky moved to approve the Administrative Review for restoration planting and fence installation at the property located at 105 Bradford Street Extension as proposed, with the condition that the applicant consults with the Conservation Agent and/or submits a list of proposed native plantings for approval, Barbara Prato seconded and it was so voted, 4-0.

iii) Application by **Kennedy Studios Trust** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law,

Chapter 12, (LSCSF) to expand and rebuild a deck at the property located at **353 Commercial Street**.

Presentation: Chris Rego appeared to present the application. The project involves the expansion of an existing deck in the rear of the structure by 60 sq. ft. to provide egress for the second floor unit.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Rego.

Dennis Minsky moved to approve the Administrative Review pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, (LSCSF) for a deck rebuild and expansion at the property located at 353 Commercial Street, Lynne Martin seconded and it was so voted, 4-0.

iv) Application by **David Mayo** to replace a front entrance deck by making existing step flush with deck and installing new stairs pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, (LSCSF and Flood Zone VE) at the property located at **617 Commercial Street**.

The applicant did not appear.

Commission Discussion: The Commission reviewed the plans and discussed the project, which involves the replacement of a set of deck stairs.

Lynne Martin moved to approve the Administrative Review to replace a front entrance deck by making existing step flush with deck and installing new stairs pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, (LSCSF and Flood Zone VE) at the property located at 617 Commercial Street, Dennis Minsky seconded and it was so voted, 4-0.

3) **ENFORCEMENT ORDERS:**

i) Ratification of an E.O. issued on 6/27/16 to David Berarducci, Bryan Rafanelli and Mark Walsh, property owners at **99 Commercial St., Units 1-3**, for pier reconstruction performed under an expired Order of Conditions. Enforcement Order pursuant to 6/24/16 Emergency Conservation Commission Meeting wherein property owners were ordered to cease and desist work and file a new Notice of Intent for the completion of the pier reconstruction work. Mr. Minsky said that this E.O. had already been ratified at an Emergency Commission Meeting on 6/24/16.

ii) Ratification of an E.O. issued on 7/1/16 to Siobhan Carew, property owner at **99 Commercial St., Units 4-7**, for the construction of a stairway on a Coastal Beach and LSCSF, Zone VE, without filing an application with the Conservation Commission. Property owner ordered to submit an Administrative Review application and appear before the Commission on 8/2/16.

Attorney Christopher J. Snow, representing Siobhan Carew, appeared to address the E.O. He stated that the stairway in question had always been in existence, as it was when Ms. Carew purchased the property. If it has been altered or replaced, it was not by his client. He alleged that the stairway does not service the units that are the subject of the E.O. It is a mystery to both him

and his client as to what motivated the issuance of an E.O. He claimed that the stairway would be the necessary and only means of egress from the wharf for the other three units in the condominium. The individuals could not access the wharf except through Ms. Carew's restaurant on the premises. He argued that this was just the latest in a series of misdirected E.O.s issued by the Commission to prevent Ms. Carew from opening her restaurant and has been an annoyance for his client.

The Commission discussed the issue. Mr. Minsky said that the stairs appeared brand new. Ms. McPherson reviewed Building Department actions, including the Building Commissioner's site visits, the first in December when no stairs were evident and the second this month when they were, and emphasized that the E.O. has not prevented Ms. Carew from opening her restaurant. The Commission continued its discussion with Attorney Snow.

Barbara Prato moved to ratify the Enforcement Order and require the applicant to submit an application for an Administrative Review by Thursday morning, Mark Irving seconded and it was so voted, 3-1 (Dennis Minsky opposed).

iii) Follow-up to an E.O. issued on 6/16/16 for 300 sq. ft. of beach grass removal at **401A Commercial St.** (resource areas: Coastal Beach, LSCSF Zone VE). A \$300 fine was also issued on 6/22/16 as ordered by the Conservation Commission on 6/21/16. The property owner was required to successfully replant beach grass in the entire area in which it was removed by 7/11/16, and the Conservation Agent contacted for inspection upon the completion of beach grass, snow fence and sign installation.

Elena Hall appeared to discuss the issue. She presented some history about the beach behind her property. She explained that she was removing grass planted by a neighbor that was on her property and alleged that the species was invasive. Instead of the Commission request that she re-plant an invasive species of grass, she requested that the Commission allow her to monitor the re-growth of the grass that she removed and, if it is not replenishing itself by the late winter, that she re-plant a non-invasive plant in the spring and that the Commission allow her to clear a 3' wide pathway to the beach for her customers and guests. She would have preferred that the Commission given her a warning and not an Enforcement Order and fine. She said that it was not prudent to be re-planting and watering grass at this time of the year. Ms. Albenberg gave an update on the issue and reviewed her actions.

The Commission discussed the issue with Ms. Hall. The Commission requested a Notice of Intent for the creation of a 3' path and some type of evidence, such as photographs, of the monitoring of the re-growth. Ms. Hall agreed to put a sign, as soon as possible, to keep the public off the grass in the area where the grass is re-growing.

Public Comment: None.

Dennis Minsky moved to retract the \$300 fine issued to Elena Hall in the interest of good will and moving forward in a positive way, Lynne Martin seconded and it was so voted, 3-1 (Barbara Prato opposed).

Ms. McPherson recommended that the E.O. be amended.

Dennis Minsky moved to amend the Enforcement Order language to include the cease and desist portion and to order the applicant to erect a sign, as soon as possible, to keep people off

the grass and to file an application for a Notice of Intent to manage the beach grass on the property and establish a 3' wide pathway by 12/31/16, Lynne Martin seconded and it was so voted, 4-0.

iv) To be issued to: Beach Point Club Condominium association at **963 Commercial St.** for beach grass removal within the last 4 weeks on property within a coastal dune and flood zone (LSCSF). This violation of 10-15 feet along the entire dune was brought to the attention of the Commission by the property owner who contends that this alteration was performed by someone other than the property owner, although no violator has been identified. Ms. Albenberg explained that the Commission had a draft E.O. in their packets.

Presentation: Jerry Goedken, a property owner at 963 Commercial Street, appeared to discuss the issue. He claims that his Truro neighbors at the Blue Sea are removing beach grass from property located in Provincetown. There is severe wind erosion in the area and property owners do not want the grass removed.

Public Comment: Attorney Snow recommended that the Commission write a letter to the Truro Conservation Commission regarding the violation.

Commission Discussion: The Commission discussed the draft E.O. and the violation. Ms. Albenberg agreed to write a letter to Truro regarding the issue.

Dennis Minsky moved to ratify the Enforcement Order for 963 Commercial Street with the provisions outlined in Attachment A, Barbara Prato seconded and it was so voted, 4-0.

4) EMERGENCY CERTIFICATIONS:

i) Discussion with the Town Planner regarding Emergency Certifications and email from Town Planner (copy of email in meeting packet). Ms. McPherson reviewed Emergency Certifications procedures and an email from Town Counsel regarding the issue.

ii) Full Commission vote on Emergency Certification issued to **Coastal Acres Campground** on 6/27/16 for removal of 13 pine trees on power lines. Mr. Minsky explained the situation about the Emergency Certification regarding this property and that the process used by the Commission was not done correctly. The Commission briefly discussed the issue.

Barbara Prato moved to issue an Emergency Certification for Coastal Acres Campground regarding the removal of 13 pine trees on power lines, Mark Irving seconded.

The Commission discussed the motion.

The motion was so voted, 4-0.

iii) Request from Attorney Jamie Veara on behalf of property owners at **99 Commercial St., Units 1-3**, for an Emergency Certification by the Conservation Commission to move a cottage from temporary pilings to a reconstructed pier. (Attorney letter in packet). Mr. Minsky read Attorney Jamie Veara's letter.

Presentation: Attorney Julie Barry, on behalf of Attorney Veara, appeared to discuss the issue. She reviewed the situation involving an expired Order of Conditions for the work being done at the property. The work is only days from being completed. She argued for the Emergency

Certification based upon the fact that hurricane season has started and that the cottages on the barge would create a potential public safety hazard and damage to property. Mr. Minsky said that he had contacted Harbormaster Rex McKinsey, who stated that he did not regard the request as an emergency based upon his knowledge and experience.

Public Comment: Gary Reinhardt, a neighbor to the project, spoke in support of the request.

Commission Discussion: The Commission discussed the issue.

Barbara Prato moved to deny the Emergency Certification to move a cottage from temporary pilings to a reconstructed pier at 99 Commercial Street, Dennis Minsky seconded and it was so voted, 4-0.

5) **ADMINISTRATIVE MATTERS:**

a) **Administrative Review Applications approved by Agent** with Standard Order of Conditions issued to the following applications and briefly reviewed by Ms. Albenberg:

i) David Berarducci, Bryan Rafanelli and Mark Walsh for completion of carpentry work including the replacement of wharf boarding and safety railings located on top of a reconstructed pier previously permitted under an Order of Conditions dated 3/13/13 at **99 Commercial St.** (LSCSF, Coastal Beach).

Ms. Albenberg reviewed the matter.

ii) Siobhan Carew to replace a window sash at the northeast corner of a building with an in-kind awning window at **99 Commercial St.** (LSCSF, Coastal Beach).

iii) The Beachcombers, Inc. to re-shingle and replace a window at **465A & 465B Commercial St.** (LSCSF, Flood Zones A and VE).

iv) Susan Whitman Helfgot for new roof shingles, new siding in front of house, trim replacement and gutter installation at **26 Pilgrim Heights Rd.** (MESA, buffer to a forested swamp and wet meadow).

v) Brian Burr for doors, windows and interior work at **10 Commercial St., Unit 16** (LSCSF, buffer to a forested swamp).

b) **Conservation Agent Report:**

i) B-Street Garden water issues: Solar pump generally not working. Bernie Piantadosi, a volunteer electrician, estimates it would cost \$2000 to repair. The Water Department will look into well capacity. Discussion with the Department of Public Works and easement owners about bringing in a water line.

Mr. Minsky reviewed the matter and his and Ms. Albenberg's meeting with the Water Dept. He explained that there would be no cost for the DPW work and a cost of \$200 for a meter to be installed in the street. They can trench the line along an easement and run the line with two or three outlets that would need fixtures. The fixtures would have to be installed by a plumber and DPW recommended Patrick Whitty. Another option would be to put in a power line to run the pump, but there was a concern about ground water capacity. Cody Salisbury, from the Water

Dept., was supposed to give the Commission a report about that issue. The Commission briefly discussed the matter. Ms. Albenberg said that the Advisory Group voted unanimously for the water line option. The latter could advise regarding the location of the fixtures.

Dennis Minsky moved that the Conservation Commission vote to put into effect the establishment of a water line by the DPW at the B-Street Garden, Mark Irving seconded and it was so voted, 4-0.

ii) Revised violation notice issued to **199 Commercial St., #17**, dated 6/28/16 for beach grass removal on the beach (Coastal Beach, LSCSF) requesting the condominium association develop a management plan for the 6 sq. ft. area in which beach grass, along with non-native ornamental grass, was removed. This matter was postponed.

iii) Construction update at **31 Point St.:** Deb Albenberg received a butter complaint about slope excavation and removal of sheet piling. An E.O. had been issued on 5/26/16 for removal of vegetation and excavation of soil and required installation of erosion/sedimentation controls (project timeline and 7/13/16 meeting notes in packet).

Tom Walter, David Sanford, Attorney Eliot Parkhurst, representing Mr. Walter and Mr. Sanford, and Gordon Peabody, representing the owner of the property, appeared to discuss the matter. Attorney Parkhurst reviewed the history of the project at the property and its effect on the dune on the site. He and his clients had met with Mr. Peabody about slope remediation and were encouraged by his plan and vision for completing the project. Attorney Parkhurst is requesting oversight, enforcement and assurances that what Mr. Peabody proposes will happen. He and his clients are appearing in order to voice their support for Mr. Peabody and to get some assurances, if possible, from the Commission. They are unclear as to who the contractor in charge is, and are very concerned about his reckless method of clear-cutting the dune. They are requesting conditions and assurances that are tied to the property in case the owner decides to sell it. They are proposing a surety bond for a two- or three-year period until the project has been completed.

Ms. Albenberg reviewed the timeline of events regarding the property and reviewed the meeting she held with the property owner and Mr. Peabody. She gave a brief synopsis of Mr. Peabody's plan for the project. Ms. McPherson made recommendations regarding what to include in an Enforcement Order.

Mr. Sanford and Mr. Walter related their experiences with the property. Mr. Peabody reviewed his history with, and his plans for, the property. He said it would take a week to plant and install netting in order to stabilize the slope. He reviewed the status of activity on the site.

The Commission discussed the issue and decided to issue an Enforcement Order with a timeline and benchmarks. Ms. McPherson and Ms. Albenberg will work on a draft E.O. tomorrow along with the property owner. Ms. McPherson will show it to two Commissioners for review or hold an extra meeting for the review of the entire Commission 48 hours later. The E.O. can be approved by two Commissioners and then issued by the Conservation Agent and ratified at the next Commission meeting. She guaranteed that there would be fines attached to the E.O.

MINUTES: June 21, 2016 – Dennis Minsky moved to approve the language as amended, Barbara Prato seconded and it was so voted, 4-0.

June 24, 2016 Emergency Meeting – Barbara Prato moved to approve the language as amended, Dennis Minsky seconded and it was so voted, 5-0.

ADJOURNMENT: Barbara Prato moved to adjourn the Public Meeting at 9:45 P.M. and it was so voted unanimously.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2016
Dennis Minsky, Chair