

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
AUGUST 2, 2016
6:30 P.M.

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

Members Absent: None.

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 6:33 P.M.

1) **PUBLIC COMMENTS:**
None.

2) **PUBLIC HEARINGS:**
a) **Notices of Intent**

iv) **CON #17-018**

Local By-Law filing under the Provincetown Wetlands Protection By-Law, Chapter 12, for construction of a single-family residence with driveway, septic system and associated site work and grading at **5 Pilgrim Heights**.

The work to take place within NHESP Estimated and Priority Habitat significant to the interest of wildlife habitat and endangered species. Mr. Minsky said that this matter had been erroneously advertised, as the address of the property is 5 Pilgrim Landing. The Commission postponed Case #17-018 until the next meeting on September 6, 2016.

i) **CON #17-014**

Application by **Mark Legere** for a Notice of Intent pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, for construction of a single-family residence, septic system, deck, porch, retaining walls driveway, and associated site work and grading at **806 Commercial Street**. The work to take place within NHESP Estimated and Priority Habitat and within the 100-foot buffer to Isolated Vegetative Wetlands significant to the interests of erosion and siltation control, groundwater recharge, water quality, wildlife habitat and endangered species.

Presentation: Kiernan Healy, a land surveyor with the BSC Group, appeared to present the application. Mr. Healy said that the applicant seeks to build a single-family structure, which will be located in the middle of a lot that has isolated vegetated wetlands on both the east and west sides. The structure will be built more than 100' from the westerly, larger wetland and the

foundation will be 73' from the easterly, smaller wetland. He said that a second story overhang on the structure is 68' from the same wetland. The site is entirely within a NHESP habitat. Total site disturbance for the project will be 4,023 sq. ft., including the clearing of 1,943 sq. ft. and grading of 350 sq. ft. of land. Also included in the proposed construction will be an 821 sq. ft. driveway. All disturbed areas will be loamed and seeded to lawn or landscaped. Mr. Healy had a list of trees to be removed and proposed vegetation to be planted in mitigation areas. A 5' wide strip on the easterly and northeasterly side are the proposed mitigation areas, an area totaling 470 sq. ft. Arborvitae will be planted on the westerly side once the straw bales are removed and the project is stabilized. Mr. Healy also explained that in regard to the septic system, they have decided to switch the location of the future reserve area with the proposed septic location and move it 12' back from the street in order to save 10 trees.

Public Comment: Celine Gandolpho, on behalf of the Provincetown Conservation Trust, spoke in opposition to the project. There were 2 letters in opposition to the project in the file.

Commission Discussion: The Commission questioned Mr. Healy. It expressed concern about the foundation encroaching into the 100' buffer zone. The planting plan, created by Matthew Creighton of the BSC Group and submitted by Mr. Healy, was discussed, as was the Commission's suggestion that a detailed habitat assessment be done for the site, a plan that would enumerate the number of tree species and their DBH and the existing groundcover. The Commission was concerned about the stability of the slope on the site after construction has been completed. Mr. Healy said that approximately 40-45 trees would be removed from the site. The Commission requested a more detailed planting plan, including a list of what vegetation would be lost and how that loss would be mitigated with new plantings. The Commission asked if the structure could be redesigned in order that the foundation is at least 100' from the wetland and requested a revised plan showing the new proposed location of the septic system. Ms. McPherson suggested that the applicant may want to change the position of the dwelling and rotate it by 90° to run parallel to the contour lines. She discussed the proposed grading on the site with Mr. Healy and suggested the Commission require a more detailed grading plan. Mr. Healy requested a continuance and will return with revised plans.

Dennis Minsky moved to grant the request to continue Case #CON-17-014 to the September 6, 2016 Public Hearing at 6:30 P.M., Barbara Prato seconded and it was so voted, 5-0.

ii) **CON #17-004**

Application by **David Berarducci, Mark Walsh, and Bryan Rafanelli** for a Notice of Intent pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, for moving the last of three cottages off the temporary pier and onto the permanent pier subsequent pier reconstruction, removal of the temporary pilings and deck boarding, and site restoration following an expired Order of Conditions issued in 2013 at the property located at **99 Commercial Street**. The work to take place within a Coastal Beach significant to storm damage prevention, flood control, protection of wildlife habitat and Land Containing Shellfish significant to shellfish and marine fisheries.

Presentation: Attorney Julie Barry, Attorney E. James Veara and David Berarducci appeared to present the application. Attorney Barry, representing Mr. Walsh and Mr. Rafanelli, explained that the Order of Conditions expired days before the project was scheduled to finish. Administrative approval was sought and given to complete certain tasks, but the Commission

denied the request at the last meeting for an Emergency Order of Conditions in order to finish the project.

Attorney Christopher J. Snow, representing Siobhan Carew, a unit owner at 99 Commercial Street, had a procedural question and an issue with the validity of the application. He stated that there was an error on the application, as it had the name of a previous unit owner at the property, Lora Papetsas, as a co-applicant. He argued that his client's name should be on the application, as she had a 77.5% ownership interest in the common areas of the condominium.

Attorney Veara, representing Mr. Berarducci, explained that the pier that is the subject of the NOI application was an exclusive use area owned and controlled not by Ms. Carew, but by the other unit owners in the condominium, Messrs. Berarducci, Walsh and Rafanelli. The erroneous NOI application, referred to by Attorney Snow, is the previous one that was in effect when Ms. Papetsas still owned units in the condominium, as the scope of the work that was authorized 3 years ago included 11 feet of area underneath her units. The current NOI before the Commission is for work to finish the last 20-30' of the pier that is over the Harbor and that is the exclusive use area of his and Attorney Barry's clients. He reviewed the scope of the work that needed to be completed, including putting the sheds back onto the pier and eliminating the temporary pilings that the sheds currently sit on, which are located in the resource area and are under the jurisdiction of the Commission. He said that the work could be completed within a matter of days. He explained how the sheds would be placed back on the pier. In response to a concern of the Commission at the last meeting about an incorrect DEP File No. posted at the site, he indicated that the number had been written on the sign at the site incorrectly and unintentionally, in that a couple of the digits had been transposed. The DEP File No. for the new NOI is SE 058-0552

Public Comments: Attorney Snow spoke of his client's concerns about the work that had been done at the site, alleging that the applicants had taken away structures during construction, including a deck and a sea wall, and not restored them. This violated an agreement with the previous owner of the property, Lora Papetsas. He is asking that the Commission require that the applicant restore the damaged area to its original condition. Lora Papetsas stated that the removal of the deck at the property was a mistake, was made by construction personnel working at 101 Commercial St. and was done to provide them access to the pier project. She said that she had an agreement with the company that removed the deck, Cape Cod Docks, that they would restore the structure by April 15th of 2016, which was not done. She added that this had allowed the beach to be exposed to weather since the time of its removal. The removal of the deck was never part of the proposed project or the original NOI. Attorney Alan Lipkin, representing Greg Connors, the property owner of 101 Commercial St., spoke in favor of the application. Gary Reinhardt and Roxanne Peres, both abutters, Mikaela Murphy and Bob Kelly, spoke in favor of the application.

There were 20 letters in support of the application and 1 letter of no objection. Ms. Albenberg reviewed the Division of Marine Fisheries comments for the Commission's consideration and the Shellfish Constable's assessment of the project.

Commission Discussion: Mr. Minsky reviewed the expired Order of Conditions. The Commission discussed the project, including how the temporary pilings of the pier upon which the dwelling units were sitting would be removed. Attorney Veara agreed to a pre-construction

meeting with the Conservation Agent to discuss the procedure. The Commission discussed conditions.

Lynne Martin moved to approve the application of David Berarducci, Mark Walsh, and Bryan Rafanelli for a Notice of Intent pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, for moving the last of three cottages off the temporary pier and onto the permanent pier subsequent pier reconstruction, removal of the temporary pilings and deck boarding, and site restoration at the property located at 99 Commercial Street with the Standard Order of Conditions and with the following Special Conditions:

- *that the work barge be used only pursuant to the DMF specifications as to the tide and the 2' minimum to avoid grounding and will be stored in deep water when not in use;*
- *that debris on the site be removed on a daily basis with monitoring by the construction supervisor;*
- *that there be a pre-construction meeting with the Conservation Agent;*
- *that the performance standards and the narrative and construction protocols submitted by the applicant be included, striking the requirement that "working machinery will minimize travel on the beach"; and*
- *that Lora Papetsas' name be removed from the NOI application.*

Alfred Famiglietti seconded and it was so voted, 5-0.

iii) **CON #17-015**

Application by **Provincetown Department of Public Works** for a Notice of Intent pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, to widen and repave the road, install a new drainage system. The work to take place within the 100-foot buffer to an isolated vegetated wetland and NHESP Estimated and Priority Habitat on **Conwell Street between Route 6 and Cemetery Road**, significant to the interests of erosion and siltation control, groundwater recharge, water quality, wildlife habitat and endangered species.

Presentation: Eric Larsen appeared to present the application. This is a maintenance and improvement project on a public road. He has not yet received comment from MESA in regard to the project.

Public Comment: None.

Commission Discussion: The Commission briefly questioned Mr. Larsen.

Lynne Martin moved to approve Case CON#17-015, application for a Notice of Intent by the Provincetown Department of Public Works pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands Protection By-Law, Chapter 12, to widen and repave the road, install a new drainage system for work to take place within the 100-foot buffer to an isolated vegetated wetland and NHESP Estimated and Priority Habitat on Conwell Street between Route 6 and Cemetery Road, significant to the interests of erosion and siltation control, groundwater recharge, water quality, wildlife habitat and endangered species with the Standard Order of Conditions and with the Special Conditions that no work be performed before MESA has commented on the project and that if MESA does make a determination that a 'take' will result from the proposed work that the applicant file another Notice of Intent, Dennis Minsky seconded and it was so voted, 5-0.

3) ADMINISTRATIVE MATTERS:

a) **Administrative Review Applications approved by Agent** with Standard Order of Conditions:

i) Case # CON17-020: Gut renovation of an existing 2-bedroom condominium with new windows, systems, bathrooms and kitchen and fully enclose a carport area forming a garage at **63 Mayflower Avenue**. The work will take place within a NHESP Estimated and Priority Habitat significant to the interest of wildlife habitat and endangered species. Ms. Albenberg briefly reviewed the project.

b) **Conservation Agent Report:**

i) **Letter from Attorney Christopher J. Snow as follow-up to the Enforcement Order issued to Siobhan Carew at 99 Commercial St., Units 4-7:** Attorney Snow explained the process that he and his client followed per the request of the Commission at the last meeting. The issue is in regard to a set of stairs in the rear of the property that were removed. He said he had affidavits from several residents that the stairs have been at the site for the last 30-40 years. He is asking the Commission to ratify and confirm that the stairs have been there.

Attorney Alan Lipkin, representing Greg Connors, reviewed a letter he had written to the Commission reiterating his client's position that the stairs were located in a different place and had an affidavit from Ted Cormay, a Provincetown resident and former employee of the restaurant, to that effect. He also had a group of exhibits to prove his contention, including a site plan from 1951 showing no stairs coming off the deck at 99 Commercial St. and a 2012 site plan, prepared for Lora Papetsas, and signed and sealed by a licensed land surveyor, indicating the location of "future steps" off the deck at 99 Commercial St., an excerpt from the 2012 Master Deed of the condominium indicating the right of access to and from the pier by Units 1-3 via an easement that included the use of "the future gate and the future steps to the beach area as depicted on the plan" and a 2015 plan submitted by Ms. Papetsas to the Licensing Board showing no steps to the beach. The Commission questioned Attorney Lipkin about the exhibits. He argued that his client has had to comply with the Wetlands Protection Act and the local by-law and he asked that Ms. Carew be required to do the same in regard to the stairs. He contended that the stairs were recently constructed, in late 2015, according to the evidence he submitted to the Commission and have not been there historically. He said that they are an obstruction, are located in the FEMA velocity zone, in an intertidal resource area, and therefore constitute an impact on that resource area and that Attorney Snow and his client should have to prove to the Commission that there would be no impact on the resource area by filing an NOI. He said that the matter should not be considered as administrative.

Ms. McPherson said that an Enforcement Order had been issued regarding the matter and that Attorney Snow and Ms. Carew were supposed to apply for an Administrative Review, which they have not done, and that the Commission should not officially be hearing and discussing the matter at this time. She anticipated that the matter would be on the next agenda and, at that time, the Commission could discuss the issue. If Attorney Lipkin's client has an issue with the Commission's decision, he has the option to appeal to the DEP. The Commission requested that

Attorney Snow, on behalf of Ms. Carew, file an Administrative Review and the issue will be placed on the agenda of the September 6, 2016 Public Meeting.

MINUTES: July 19, 2016 – *Dennis Minsky moved to approve the language as amended, Barbara Prato seconded and it was so voted, 5-0.*

Ms. McPherson updated the Commission regarding the situation at 31 Point Street. Benchmarks set by the Commission have been met. Ms. Albenberg added that Lyn Plummer told her that no more machinery would be placed on the slope. A bobcat will be in the front of the property for the building of a stonewall. Jute mesh has been placed on the slope and has been seeded and watered, and a retaining wall and all backfill and trenching have been completed.

Ms. Albenberg reported that a grease trap located between the restaurant Way Downtown and the Cock and Bull leather store abutting it overflowed recently, releasing grease and gray water onto the beach. Ms. McPherson said that the pipe was repaired and an Enforcement Order which required the repair of the trap, a cease and desist order to restore the area and the hiring of a licensed environmental professional to perform an environmental remediation for the grease and gray water, was issued. The Board of Health recommended the use of a 5% bleach solution. Ms. Albenberg will be contacted and meet with the environmental professional before the work is started and when it has been completed.

Dennis Minsky moved to ratify the Enforcement Order for the grease trap spill between Way Downtown and Cock and Bull Leather, Barbara Prato seconded and it was so voted, 5-0.

Victor Seltsam, an applicant for a position on the Commission, was present to discuss his appointment, however Mr. Minsky said it was not clear whom the appointing authority was and that the issue would need to be clarified. Mr. Seltsam will meet with the Town Manager as a potential candidate for the position and Ms. Albenberg will gather information about what the Commission does.

ADJOURNMENT: *Barbara Prato moved to adjourn the Public Meeting at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2016
Dennis Minsky, Chair