

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

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

Members Absent: None.

Others Present: Attorney Gregg Corbo (Town Counsel via telephone), Gloria McPherson (Town Planner), Deb Albenberg (Conservation Agent), Ellen C. Battaglini (Permit Coordinator) and Steve Mague and Bob Durand (environmental consultants to the Town of Provincetown).

PUBLIC HEARING

Chair Dennis Minsky called the Public Hearing to order at 6:04 P.M.

Dennis Minsky so declared that the Conservation Commission would move into Executive Session at 6:04 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, Mark Irving: Yes, Lynne Martin: Yes and Alfred Famiglietti: Yes. 5-0-0.

Dennis Minsky reconvened the Open Session at 6:28 P.M.

1) **PUBLIC COMMENTS:**

None.

2) **PUBLIC HEARINGS:**

a) **Notices of Intent**

vi) **CON #16-041 RENOTIFICATION** (*continued from June 7, 2016*)

Application by **Christopher P. Santos** pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding the construction of a two-bedroom residence, installation of a Title 5 septic system, retaining wall, parking area and associated site work and re-grading at the property located at **668R Commercial St.** The work will take place within the NHESP Estimated and Priority Habitat.

Presentation: Paul Shea, of Independent Environmental Consultants, on behalf of the applicant, appeared to discuss the application. He said that a site plan with a revised limit of work had been

submitted to the Commission. He explained that he had been hired to do a botanical survey and habitat assessment on the site. The report was submitted in July and updated on August 30th. He explained that the limit of work had been tightened up around the entire property resulting in a 10' limit of work around the house, the septic system, the proposed driveway and the proposed retaining wall to the west of the house on the sloped embankment and subsequently, recommendations had been added to the report. All work will be done from the eastern, lower portion of the property. By limiting the square footage of alteration, the impact to the existing habitat will be limited. MESA has issued a letter of 'no take' for the project. The northern end of the property will remain forested and the house will be located towards the eastern side of the property. He said that it was a busy and noisy neighborhood and therefore hard to do an accurate habitat assessment survey. Quite a few mature trees and shrub species will be lost on the property. Some of the plants that need to be removed, such as Northern Arrowwood and Sweet Pepperbush, will be replanted in a different area of the property.

Public Comment: None. There were no letters in the file.

Commission Discussion: The Commission questioned Mr. Shea about the percentage of vegetation that will be saved as a result of tightening the limit of work and about the stability of the slope on the property. He thought between 7 and 10% of vegetation would be saved. He added that by putting in the retaining wall, the need to excavate further into the slope would be alleviated. The revised limit of work line will be staked out on the property for the Commission's review. The Commission reviewed Mr. Shea's report and the negative effects on the habitat enumerated in it. Mr. Minsky asked about a detailed planting and restoration plan. Mr. Shea explained that there would only be room for 6 plantings given the space available. Instead of a planting plan, in consultation with the Conservation Agent, Mr. Shea had decided to tighten the limit of work in order to maintain as much of the native plantings, ground cover and onsite soils as possible. The Commission discussed mitigation. Mr. She offered to submit a limited planting plan.

Mark Irving moved to approve the NOI application by Christopher P. Santos pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding the construction of a two-bedroom residence, installation of a Title 5 septic system, retaining wall, parking area and associated site work and re-grading at the property located at 668R Commercial St. with the Standard Order of Conditions and with the Special Conditions that the revised limit of work be staked on the site for review by the Conservation Agent at the pre-construction meeting, that a limited planting plan be submitted and approved by the Conservation Agent and that photographs be submitted showing the existing situation at the site, Barbara Prato seconded and it was so voted, 5-0.

3) **ADMINISTRATIVE MATTERS:**

a) **Presentation of the proposed tree by-law:** Rich Waldo, DPW Director and Tree Warden, and Margaret Murphy, Trees Provincetown, Inc.: Mr. Waldo and Ms. Murphy appeared to discuss the proposed by-law that they plan to put on the warrant for spring Town Meeting and asked for the Commission's support. Mr. Waldo explained that this would be a local by-law based upon M.G.L. c. 87, the Public Shade Tree Act, a state law that protects shade trees. He reviewed the proposed by-law. Ms. Murphy explained that the by-law would include the formation of a tree advisory group to assist the Tree Warden and get input from Town Boards that have tree interests in order to coordinate tree activity in Town. The

Commission briefly questioned Mr. Waldo and Ms. Murphy and will discuss the issue during a future Work Session.

iii) **CON #17-026**

Application by **Joseph & Betty Carreiro** pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding excavation and vegetation removal for an existing septic tank and new leach area for an existing dwelling at the property located at **3 Tiny's Way**. The work will take place within NHESP Estimated and Priority Habitat.

Presentation: David LaJoie, of Felco Engineering, appeared to present the application. He explained that the septic system was being upgraded, as the leach pit had failed. A new leaching area will be created. All work will be performed in a developed area. MESA has determined that there will be 'no take' as a result of the project.

Public Comment: None. There were no letters in the file.

Commission Discussion: The Commission had no questions for Mr. LaJoie.

Mark Irving moved to approve the NOI application by Joseph & Betty Carreiro, pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding excavation and vegetation removal for an existing septic tank and new leach area for an existing dwelling at the property located at 3 Tiny's Way with the Standard Order of Conditions, Lynne Martin seconded and it was so voted, 5-0.

i) **CON #17-014** (continued from August 2, 2016)

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: Kieran Healy and Mark Legere appeared to discuss the project. Mr. Healy reviewed the changes made to the project based upon the Commission's previous suggestions, including moving the foundation outside the 80' no-build zone within the buffer zone, the submission of an itemized list of all plantings, compiled by a wetland scientist, to be removed at the site and the submission of a more complete vegetation plan with an itemized list of the planting areas. He reviewed the latter, including the proposed 2500 sq. ft. of lawn area on the site. The applicant decided not to rotate the house, as had also been suggested by the Commission, in order to get the house off slope down to the wetland on the northeast corner of the property.

Public Comment: Celine Gandolfo, representing the Provincetown Conservation Trust, spoke against the application.

Commission Discussion: The Commission questioned Mr. Healy and Mr. Legere. The Commission was concerned about how the lawn would be maintained given that there was no well on site. The Commission questioned Mr. Healey about the need for a parking area on the existing driveway, given that a two-car garage is being proposed. If the area were removed, the vegetation could be kept in its existing state. The applicant agreed to remove the parking area from the proposal. The Commission discussed options for stabilizing the slope down to the

wetland, such as incorporating more plantings like shrubs and ground cover in the planting plan. The applicant agreed to plant more ground cover near the house. The Commission discussed further conditions and recommended possible plantings. Mr. Healy said that from the westerly side of the deck going due north and from the front side of the cantilevered deck going due east will have ground cover. The Commission requested that the proposed arborvitae be replaced with vegetation that had more habitat value, such as black oaks or red maples. Further discussion regarding this issue will take place with the Conservation Agent.

Dennis Minsky moved to approve the NOI application by Mark Legere 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 with the Standard Order of Conditions and with the Special Conditions that a revised planting plan showing ground cover from the westerly side of the deck going due north, from the front side of the cantilevered deck going due east and on the southerly portion over the septic system and that a mix of shrubs and trees be planted on the southeast corner, specific details to be worked out with, and approved by, the Conservation Agent and that the northwest panhandle parking area be kept in a natural state, Mark Irving seconded and it was so voted, 5-0.

ii) **CON #17-018**

Application by **Stephanie O’Neill** pursuant to 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 Pilgrims Landing**. The work will take place within NHESP Estimated and Priority Habitat significant to the interest of wildlife habitat and endangered species. There was a request from the applicant to withdraw the application without prejudice.

Barbara Prato moved to grant the request to withdraw CON #17-018 without prejudice, Dennis Minsky seconded and it was so voted, 5-0.

iv) **CON #17-029**

Application by **Diana Prideaux-Brune and Anne E. Mahoney** pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding demolition of two existing structures and replacing them with a single-family residence, septic system and associated site work at the property located at **226B Bradford Street**. The work will take place within NHESP Estimated and Priority Habitat.

Presentation: Gordon Peabody, of Safe Harbor Environmental Management, and Stacy Kanaga, an engineer, appeared to present the application. Mr. Peabody reviewed the applicants’ plans for the project and why the structure is proposed to be located where is. NHESP has determined that the project will not result in a ‘take’ of any endangered plant or animal species. There is a diverse and abundant vegetation on the site and the proposal is to keep what is there by removing it during construction and then replanting it when construction ends. The area will be augmented with vegetation that will improve habitat. He said that the limit of work was overly generous and he advised the contractor about how to adjust it to suit the site conditions. He reviewed his ideas about tree removal and planting on the site. He will return to the site to determine which trees need to be removed and which will left alone.

Public Comment: None. There were no letters in the file.

Commission Discussion: The Commission questioned Mr. Peabody. Mr. Minsky would like to join Mr. Peabody in revisiting the site to determine tree removal. The Commission scheduled a site visit for September 20th at 3:00 P.M. Mr. Peabody requested to continue the case until the September 20, 2016 Public Hearing.

Dennis Minsky moved to continue CON#17-029 until the September 20, 2016 Public Hearing at 6:30 P.M., Barbara Prato seconded and it was so voted, 5-0.

v) **CON #17-030**

Application by **509 Commercial Street, LLC**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and to the Provincetown Wetlands Protection By-Law, Chapter 12, for the renovation of a single-family residence, replacement of an existing raised deck in the same footprint, patio and driveway resurfacing, enclosing a two-story deck and fence replacement. The work will take place within the 100' buffer to a Coastal Beach and Coastal Dune and within Land subject to Coastal Storm Flowage.

Presentation: Lyn Plummer, an owner of the property, and Steve Cook, project designer, appeared to present the application. Mr. Cook said that the project involves the replacement of siding, a new roof, new doors and new windows and trim on the structure. In addition, a rear deck will be rebuilt with an addition underneath and a new stairway to the rear patio. The property has a gravel driveway on the west side, a flagstone and concrete patio in the rear, and a concrete retaining wall with a wooden deck to the north of the coastal dune. The concrete block wall will be removed when the deck is rebuilt and existing vegetative beds will be replanted on the west and east sides. Pavers will be used to rebuild the patio and two paver strips with grass in between and on the sides will be used to rebuild the driveway. A new stone retaining wall and a wooden platform with railings will be built on the street side. A new picket fence will be built on the coastal dune side. The dilapidated west side fence will be repaired. The new raised deck will be supported by timber footings. The site is in a flood zone, but not in a MESA area. The limit of work is where the existing structures sit. Mitigation of 300 sq. ft. of landscaped area with American beach grass is proposed. There has been no DEP file number assigned to the project.

Public Comment: None. There were no letters in the file.

Commission Discussion: The Commission questioned Mr. Cook. He requested a continuance to the September 20, 2016 Public Hearing because of the lack of a DEP file number. Ms. McPherson clarified that the building itself will continue to be an obstruction, as the velocity zone elevation is higher than the building, even though footings will be installed.

Barbara Prato moved to grant the request to continue CON#17-030 until the September 20, 2016 Public Hearing at 6:30 P.M., Dennis Minsky seconded and it was so voted, 5-0.

b) **Administrative Reviews**

i) **CON #17-022**

Application by **Christopher J. Snow, Esq.**, on behalf of **Siobhan Carew**, for the construction of a stairway at **99 Commercial Street, #7** on a Coastal Beach and LSCSF Zone VE following an Enforcement Order issued on 7/1/16 (8/2/16 submission from attorney for 101 Commercial St. in packet).

Presentation: Attorney Christopher J. Snow, on behalf of Siobhan Carew, appeared to discuss the Review. Attorney Snow reviewed the project and requested that the Commission find Ms. Carew's application complete.

Public Comment: None.

Commission Discussion: Mr. Minsky reminded the Commission that it had received a comment from Attorney Alan Lipkind, representing an abutter in opposition to the project.

Dennis Minsky moved to approve the Administrative Review by Attorney Christopher J. Snow, on behalf of Siobhan Carew, for the construction of a stairway at 99 Commercial Street with the Standard Order of Conditions, Barbara Prato seconded and it was so voted, 4-1 (Mark Irving opposed).

ii) **CON #17-038**

Application by for the construction of a fence at **97 Commercial St.** on a Coastal Beach and LSCSF Zone VE following a Violation Notice issued on 8/23/16 by the Department of Community Development (letter in packet).

The applicant requested a postponement to the September 20, 2016 Public Hearing.

Dennis Minsky moved to grant the request to postpone to the September 20, 2016 Public Hearing, Barbara Prato seconded and it was so voted, 5-0.

iii) **CON #17-040**

Application for a party on 10/4/16 from 4-7 P.M. on the beach utilizing a sandy pathway from the patio to the beach behind Tin Pan Alley restaurant at the property located at **269 Commercial Street.**

Presentation: Paul Melanson appeared to present the application. He said that the Soup Kitchen had requested that the restaurant host its employee party.

Commission Discussion: The Commission briefly questioned Mr. Melanson. The Commission requested that the pathway to the beach be staked and delineated to make it obvious to event goers.

Dennis Minsky moved to approve the application for a party on 10/4/16 from 4-7 P.M. on the beach utilizing a sandy pathway from the patio to the beach behind Tin Pan Alley restaurant at the property located at 269 Commercial Street, with the condition that the pathway be delineated in an obvious manner and that the area be policed for debris after the event, Barbara Prato seconded and it was so voted, 5-0.

c) **Enforcement Orders**

i) **ENFCON #17-003: 963 Commercial St.**

Discussion of conditions of the Enforcement Order with impacted property owner at 706 Shore Rd., Truro:

Maria and Thanassi Kuliopolus appeared to discuss the EO. Ms. Kuliopolus stated that the rope and sign installation erected around the perimeter of a beach grass restoration area to keep people out of the area is unsightly and encroaches on her easement. Mr. Minsky reviewed the situation. An abutter reported the removal of beach grass and complained about it. The Commission's response, in order to encourage the natural restoration of the beach grass, was to have the

complainant install a rope and signs. Ms. Kuliopolus has an easement across a portion of the property and the rope and sign are partially in the easement. She alleged that it was a danger at night because there was no lighting in the area. The Commission discussed the issue with Ms. Kuliopolus. She is requesting that the rope and sign installation be removed by March of 2017. Mr. Kulipolus suggested that short wooden signs be installed every 30' or so and that the rope and metal poles should be removed. Mr. Minsky suggested that a couple of Commissioners would meet the Kulipolus' on the site to consult about the best location for the smaller wooden signs. The Commission will contact a Trustee from the condominium at 963 Commercial St. as well. The matter will be continued until after the site visit.

ii) **ENFCON #17-005: 259-263 Commercial St.**

Ratification of an Enforcement Order issued on 8/2/16 to Judith Cicero for the release of gray water and grease underneath a building, deck and an alley between a building and the adjacent property. The discharge was released within two Wetlands Protection Act jurisdictional resource areas: Land Subject to Coastal Storm Flowage and Buffer to a Coastal Beach.

Judith Cicero appeared to discuss the issue. Mr. Minsky said that there had been a break in a pipe, however the situation had been remedied and an environmental report had been issued. Ms. Albenberg reported that backfilling still remains to be completed.

Dennis Minsky moved to ratify the Enforcement Order in ENFCON #17-005 in regard to the discharge of gray water and grease beneath a building located at 259-263 Commercial St., Alfred Famiglietti seconded and it was so voted, 5-0.

iii) **ENF #17-006: 321 Commercial St.**

Ratification of an Enforcement Order issued on 8/8/16 to Joy McNulty for the release of raw sewage and grease underneath a building and unpermitted removal of contaminated sand to an undisclosed location. The discharge was released within two Wetlands Protection Act jurisdictional resource areas: Land Subject to Coastal Storm Flowage and Buffer to a Coastal Beach. Applicant required an appearance before the Commission.

Joy and Tim McNulty appeared to discuss the issue. Ms. McNulty said that she regretted the situation and explained what she and her son did to try to remedy the situation. They hired Bennett Environmental Associates for remediation and hired a company to take the contaminated sand and were waiting for test results. Ms. McNulty apologized for the incident and said that she and Mr. McNulty were planning to remove the area beneath the dish area in order to access and replace the pipes that corroded and caused the discharge.

Ms. McPherson said that the McNultys had been called before the Commission because the discharge was not reported to the Conservation Commission or the Board of Health when it occurred and that the remediation was moderate and not completed in a manner acceptable to the DEP. Ms. Albenberg said that she was waiting for test results. The McNultys would like to do the repairs after the restaurant is closed for the season, however the DEP would like the area backfilled sooner rather than later. Ms. Albenberg will check with Brian Dudley in regard to whether the backfilling should proceed or if it can be postponed until pipe repairs have been completed.

Dennis Minsky moved to ratify the Enforcement Order in ENFCON #17-006, Mark Irving seconded and it was so voted, 5-0.

3) ADMINISTRATIVE MATTERS:

b) Conservation Agent Report

i) Community Garden Update (minutes in packet): Mr. Familigietti reviewed the minutes. The Commission discussed the issue of dogs and fences, deciding to recommend to the Advisory Group that a three-post split-rail fence and a sign concerning no allowing dogs in the garden area beyond a certain point be installed. Ms. Albenberg will convey that to the AG. Mr. Minsky reviewed Sherry Dranch's letter to the Commission regarding the water source at the Garden and the drought situation.

ii) 31 Point Street Update (GP Update in packet): Ms. Albenberg updated the Commission about the property. She said that the owners are meeting the benchmarks set by the Commission. 9 Oppen Lane has submitted an application under the local by-law to replant on their property as a result of the loss of vegetation in the recent fire on the 31 Point Street property.

iv) Letter from Charter Commission (letter in packet) for next Work Session

c) **Approval of Minutes: 8/2/16: *Dennis Minsky moved to approve the language as written, Mark Irving seconded and it was so voted, 5-0.***

8/23/16: *Dennis Minsky moved to approve the language as written, Barbara Prato seconded and it was so voted, 5-0.*

No Commissioners had questions about the Administrative Review applications approved the Conservation Agent that were listed on the agenda.

ADJOURNMENT: *Barbara Prato moved to adjourn the Public Meeting at 9:20 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2016
Dennis Minsky, Chair