

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

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

**Members Absent:** None.

**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 6:05 P.M.

Roy Hawthorne, the Town's AmeriCorps volunteer, introduced himself and updated the Commission on the projects he was working on.

1) **Review proposed amendments to the Conservation Application Review Guidelines:** The Commission reviewed the draft dated 12/6/16. *Dennis Minsky moved to accept the revisions to the Conservation Application Review Guidelines, Alfred Famiglietti seconded and it was so voted, 3-1 (Mark Irving opposed).*

2) **MESA Performance Standards:** The Commission discussed the draft that Mr. Minsky had revised following the Commission's discussions at the last meeting. He had added the definition of 'wildlife habitat', benchmarks and what projects are subject to, and exempt from, the regulations. The Commission discussed the by-law's threshold. He will continue to revise the draft.

Chair Dennis Minsky adjourned the Work Session at 6:30 P.M.

**PUBLIC HEARING**

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

1) **PUBLIC COMMENTS:**  
None.

2) **PUBLIC HEARINGS:**

a) Case # CON-17-066: **1& 7 Duncan Lane** (*postponed from November 1, 2016*)

Request for a **Determination of Applicability** by James Farley and Tom Boland pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to remove five trees located at 1 Duncan Lane and one tree at 7 Duncan Lane. (Isolated Vegetated Wetland and Isolated Land Subject to Flooding). Mr. Minsky recused himself because of a conflict of interest. Mr. Famiglietti chaired the hearing.

**Presentation:** Tom Boland and Jim Farley appeared to present the application. Mr. Boland said that there were only five trees that were in question, one of which is on their property and four of which are on an abutter's property. He explained that it had been determined that one of the original trees, a tall oak referenced in the application, would remain, as it was still healthy. The applicants had met with this abutter about the tree and had also met with an insurance appraiser who recommended that the trees be removed.

**Public Comment:** Charles 'Stormy' Mayo, the abutter, spoke in support of the application, but requested that a sassafras tree not be removed.

**Commission Discussion:** The Commission questioned Mr. Boland about other trees in the vicinity of the project and how the trees would be removed. Mr. Boland said that they had consulted with an arborist about the removal. The Commission discussed the project.

**Mark Irving moved to grant a Negative #3 Determination of Applicability pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to remove four trees located at 1 Duncan Lane and one tree at 7 Duncan Lane with the condition that the sassafras tree discussed and the adjacent 10" oak are not removed, Lynne Martin seconded and it was so voted, 3-0.**

b) Case # CON-17-084: **620 Commercial Street**  
DEP File No. 058-0559

**Notice of Intent** application by the **Elise Kaufman-Henchy and Seamus Henchy** pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to perform foundation repairs to an existing single-family dwelling. Work to take place within Land Subject to Coastal Storm Flowage.

**Presentation:** Bob Perry, of Cape Cod Engineering, appeared to present the application. Mr. Perry explained that the project involved renovations to a segment of the existing building foundation. All access to the site will be via the driveway off Allerton Street. One-third of the work will occur in the VE flood zone and two-thirds will take place in the X flood zone. No change in grade is proposed. Most work will occur within the footprint of the existing building. The foundation work will involve limited excavation to apply temporary support beams for the rear building segment, small machine and hand excavation to access and remove the existing foundation supports and further hand excavation within the building footprint to prepare the ground for form placement. The form placement excavation will occur along the designated building perimeter within a work limit as shown on the site plan. The yard will be returned to pre-construction condition to recover during the growing season.

**Public Comment:** Jen Mignone, on behalf of Tatiana Von Furstenberg, an abutter, had no objections to the application. There was 1 letter of no objection from an abutter.

**Commission Discussion:** The Commission questioned Mr. Perry.

**Mark Irving moved to approve the Notice of Intent pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, to perform foundation repairs to an existing single-family dwelling at the property located at 620**

***Commercial Street with the Standard Order of Pre-Construction Conditions numbers 1-5 and Construction Conditions numbers 1-11, Dennis Minsky seconded and it was so voted, 4-0.***

c) Case # CONLGY-17-003: **7 Commercial Street**  
DEP File No. 058-0539

Request for an **Amended Order of Conditions** by **Delft Haven II Condominium** pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to install 3 additional rows of temporary snow fencing seaward of the patio and add a fence seaward of the coastal dune on the eastern edge of the property. Work to take place within a Coastal Dune, Coastal Beach, and Land Subject to Coastal Storm Flowage.

**Presentation:** Bill Dugan and P.J. Gant appeared to present the application. Mr. Dugan said that the applicant is requesting that a previous Order of Conditions be revised. Specifically, he said, Special Condition #4, which states that “a snow fence is allowed to be installed after November 1 and must be removed by May 15. The snow fence shall be installed immediately adjacent to existing fence”. He requested that this be replaced with a Special Condition stating that, “a snow fence is allowed to be installed after November 1 and must be removed by May 15. The snow fence shall be installed in staggered sections, within twenty feet of the existing fence and above the high point of the high-tide line. Additional snow fence shall be installed in a single row at least five feet from the toe of the dunes, parallel to the shoreline, along the high-point of the high-tide line, and ending at the eastern edge of the property line.” According to Mr. Dugan, the change sought will better protect the dunes, the beach and the property during the winter months because the single row of snow fence immediately adjacent to the existing permanent fence has proved inadequate. Currently, extensive sand removal has to be undertaken to clear the gardens, lawn and patio of the closest unit to the area.

**Public Comment:** There was 1 letter from Wilkinson Ecological Design, on behalf of the applicants, attesting to the fact that no adverse impact would result from the revision.

**Commission Discussion:** The Commission questioned Mr. Dugan and Mr. Gant. Ms. Albenberg reported on her conversation with the Department of Environmental Protection about the project. The Commission requested that the Conservation Agent continue to receive de-construction and construction notification from the applicants.

***Alfred Famiglietti moved to grant the request for an Amended Order of Conditions pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to install 3 additional rows of temporary snow fencing seaward of the patio and add a fence seaward of the coastal dune on the eastern edge of the property located at 7 Commercial Street with all the original Orders of Condition in full force and effect and with the additional condition that the Commission be notified of any damage, Dennis Minsky seconded and it was so voted, 4-0.***

e) Case # CON-17-090: **29 Point Street**

**Local By-Law Filing** by Jeffrey R. Larsen pursuant to the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to construct a single family residence, Title 5 septic system and retaining wall. Work to take place within NHESP Estimated and Priority Habitat.

**Presentation:** Gordon Peabody, or Safe Harbor Environmental, and Jeffrey Larsen appeared to present the application. Mr. Larsen introduced his project team, including Attorney Lester J.

Murphy, Stacy Kanega, of Coastal Engineering, Mark Kinnane, of Cape Associates, Inc. and Mike McKenzie, or McKenzie Engineering. Mr. Peabody explained that this project had been approved last year, however the property owner had since revised the plans due to his inability to get zoning relief for the project. He said that Natural Heritage has been contacted about the proposed changes to the project and had no comments. A project narrative and environmental management plan was submitted by Safe Harbor. Mr. Peabody stated that there would be less of an impact to the slope on the property than what was previously proposed, as the structure will now be located 10' from the lot line, closer to Point Street.

**Public Comment:** None. There were 9 letters in support of the application.

**Commission Discussion:** The Commission questioned the team. Ms. Kanega explained the proposed groundwater recharge system. She explained that the swales in the rear would route water around the structure. Ms. Alenberg reviewed the Order of Conditions that was approved for the previous project.

*Mark Irving moved to approve the Local By-Law Filing pursuant to the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law, to construct a single family residence, Title 5 septic system and retaining wall at the property located at 29 Point Street with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-11 and Post-Construction Conditions numbers 1-4, with the incorporation of the Safe Harbor Environmental Management Plan, dated 11/15/16, including previously-submitted concrete management protocols, with notification of the Conservation Agent at key points in the construction process and with the requirement that the Agent is notified if there is any change in the management of the project, Dennis Minsky seconded and it was so voted, 4-0.*

3) **Information:**

a) Administrative Review Applications Approved by Agent with Standard Orders of Conditions

i) Case # CON-17-085 **65B Howland St.** Remove and replace deck in-kind on existing footings.

ii) Case # CON-17-086 **11 Commercial St.** Remove and replace 6 rear windows in kind.

iii) Case # CON-17-088 **465A & B Commercial St.** Replace window and re-shingle on bay side.

iv) Case # CON-17-089 **277 Commercial St.** Replace 4 double doors along Ryder St. and Commercial St. in kind.

v) Case # CON-17-098 **4 Fortuna Rd.** Replace patio door.

b) Long Point Dike Ecosystem Restoration Project: Mr. Minsky reminded the Commission that a PowerPoint presentation would take place at a Public Meeting on Monday, December 12<sup>th</sup>, 5:00 P.M. in the Judge Welsh Room.

4) **Conservation Agent Report:**

a) 350 Bradford St.: Ms. Albenberg updated the Commission on the progress of construction at the site. The shoring wall is being installed and the upland area is stable and will be re-vegetated in the spring. The foundations will start being poured in 6-8 weeks. Silt fencing per the construction management plan will be installed as will a chain-link fence surrounding the property. She also addressed the reported concerns of abutters regarding the seismic activity on the site as the steel plates were being installed. She said that seismic monitors had been placed in several of the abutters' homes. She also spoke with Chris Wise, the owner and developer of the property, about some trees that he had marked for elimination as a result of the shoring wall installation, the removal of which would not have been in compliance with the Order of Conditions approved by the Commission. She said that she had approved a field change acknowledging that the trees in question needed to be removed and mandating that they be replaced with the same number and similar-size trees, 6" dbh, with a three-year survivability requirement, at the end of the construction process. The Commission briefly discussed the issue. Ms. McPherson said that the issue would be discussed at the next Planning Board meeting, as it had jurisdiction regarding the project as well.

b) 225 Commercial St.: Ms. Albenberg read an email she had received from Loic Rossignon, one of the owners of the property, stating that there was no beach grass located where the tent and the wooden structure have been set up on the beach. He said that they had set up a stick and rope barrier around the beach grass closer to the water to keep the public on the sand pathway and that they did the best they could not to disturb it. There is a structure on the east side of the beach that is attached to the fence and suspended over the beach so a clump of beach grass beneath it is not touched. He also reported that he had detected a strong smell of petroleum in the area since the abutters to the east had started digging up their property where cars had been parked. She has not yet followed up on this issue. She reviewed the conditions for the proposed Holiday Market events. The Commission briefly discussed the beach grass issue. The Commission directed Ms. Albenberg to return to the site to assess the situation and report back.

5) **Approval of Minutes 11/15/16:**

*Dennis Minsky moved to approve the minutes of November 15, 2016 as amended, Mark Irving seconded and it was so voted, 3-0-1 (Lynne Martin abstaining).*

6) **Any other Business:**

Mr. Minsky said that he was at a meeting with Ms. McPherson, other Town officials and Town Counsel regarding the hydraulic dredging issue in preparation for a meeting on Thursday with the Department of Environmental Protection in Lakeville, MA. He said that at the meeting, it had come to his attention that the local dredging by-law needed revising.

Mr. Famiglietti mentioned the existence of a petition, which opposes the construction of any fossil fuel pipeline running through the Commonwealth of Massachusetts. It will eventually be sent to Governor Charlie Baker and he urged the Commission to support it.

*Mr. Famiglietti moved to sign the petition, Dennis Minsky seconded and it was so voted, 4-0.*

Mr. Minsky reported that there was a complaint from an abutter regarding the spraying of herbicides at the Town parking lot off Captain Bertie's Way. Ms. Albenberg said she invited the abutter in to compare the area of work with the map of Commission jurisdiction.

Mr. Minsky noted the Commission's 2017 meeting schedule.

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

Respectfully submitted,  
Ellen C. Battaglini



Approved by  
Dennis Minsky, Chair

on January 3, 2017