

**PROVINCETOWN CONSERVATION COMMISSION  
JUDGE WELSH ROOM**

**April 18, 2017  
6:00 P.M.**

**Members Present:** Dennis Minsky, Mark Irving, Alfred Famiglietti (arrived at 6:08 P.M. and left at 8:00 P.M.), Nathaniel Mayo, Kiah Coble, and Robert Brock.

**Members Absent:** Gregory Howe (excused).

**Others Present:** David Gardner (Assistant Town Manager), Tim Famulare (Conservation Agent) and Ellen C. Battaglini (Permit Coordinator).

**PUBLIC HEARING**

Chair Dennis Minsky called the Public Hearing to order at 6:01 P.M. He called for a motion to go into Executive Session pursuant to M.G.L. c. 30A, s. 21(a)(3) to discuss litigation strategy where an open session may have a detrimental effect on the Town's litigating position and the Chair so declares, for the following cases: Aqua King Fisher, 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 and to then return to open session.

Mark Irving moved to enter into Executive Session pursuant to M.G.L. c. 30A, s. 21(a)(3) to discuss litigation strategy where an open session may have a detrimental effect on the Town's litigating position for the following cases: Aqua King Fisher, 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 and to then return to open session Nathaniel Mayo seconded the motion and there was a roll call vote: Mark Irving: Yes, Nathaniel Mayo: Yes, Kiah Coble: Yes, Robert Brock: Yes, and Dennis Minsky: Yes. 5-0-0.

The Commission returned to open session at 6:41 P.M.

1) **PUBLIC COMMENTS:**  
None.

2) **PUBLIC HEARINGS:**

a) **CON-17-129: 76R Bayberry Avenue** (*request to continue to the meeting of May 16<sup>th</sup>*)  
**Notice of Intent** application by **Chris Wise** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to dig trenches in roadways and campsites to bring electric, water and sewer connections to 183 campsites. Work to take place within NHESP Estimated and Priority Habitat, Bordering Land Subject to Flooding and the 100-foot Buffer Zone to a Bordering Vegetative Wetland. Chris Wise appeared to request to continue the matter to the May 16, 2017 Public

Hearing at 6:30 P.M. *Alfred Famiglietti moved to grant the request to continue CON-17-129 to the Public Hearing of May 16, 2017 at 6:30 P.M., Mark Irving seconded and it was so voted, 5-0.*

b) CON-17-133 7 Duncan Lane (continued from the meeting of March 21<sup>st</sup>)

**Notice of Intent** application by the **Bennett Environmental Associates, Inc.**, on behalf of **Thomas Boland** and **James Farley**, pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to demolish an existing dwelling and construct a new dwelling within the existing footprint, upgrade a septic system and associated site work and grading. Work to take place within the 100-foot Buffer Zone to a Bordering Vegetated Wetland. Dennis Minsky and Nathaniel Mayo recused themselves because of conflicts of interest. Mark Irving, Alfred Famiglietti, Robert Brock and Kiah Coble sat on the case.

**Presentation:** David Bennett, Tom Boland and Jim Farley appeared to discuss the application. Mr. Bennett explained that the plans submitted had been revised based upon the concerns of the Commission related to the proximity of the foundation to the lot line and the abutting wetland area. The building has been raised by an additional 2', such that any excavation will be minimized, the limit of work has been extended to reflect the granting of temporary access onto an abutting property for the purposes of construction and a copy of a letter from the abutter giving that permission has been provided, in addition to a site plan in a larger format at the request of the Commission. A construction sequencing plan has also been provided describing areas where work would be staged from as has a restorative planting plan showing a 3-1 mitigation over what vegetation currently exists and which represents a substantial improvement in terms of habitat and food source to the resource area. All disturbed areas, both on the subject property and the abutter's property, will be re-vegetated.

**Public Comment:** None. There were 2 letters in support of the application from the abutter, Charles 'Stormy' Mayo, who has given permission to use his property during the construction process.

**Commission Discussion:** The Commission questioned Mr. Bennett. He indicated that with the new revised plan, no sheet piling would be used during the construction process. Mr. Bennett explained that the applicants did not want to lose any basement area where mechanicals and a washer and dryer could be located so permission was then requested from Mr. Mayo and the decision was made to limit the amount of grading to 6' onto his property. Mr. Irving noted that a DEP file number has been assigned to the project with no comments.

**Mark Irving moved to approve Notice of Intent application CON-17-133 by Bennett Environmental Associates, Inc., on behalf of Thomas Boland and James Farley, pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to demolish an existing dwelling and construct a new dwelling within the existing footprint, upgrade a septic system and associated site work and grading at the property located at 7 Duncan Lane, shown on a plan dated 2/8/17, pages 8-10, with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-12 and Post-Conditions numbers 1-4 and with the following variances from the Conservation Commission regulations as requested: septic tank and pump chamber to be located less than 50' from the wetland and soil absorption system less**

*than 100' from the wetland and with the Special Conditions that no sheet pilings be utilized during the construction process, Alfred Famiglietti seconded and it was so voted, 4-0.*

c) CON-17-136 **225 Commercial Street** (continued from the meeting of March 21<sup>st</sup>)  
**Notice of Intent** application by **Robert Anderson** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to expand a deck and lower the grade of an existing patio to achieve ADA compliance within the outside service area of a restaurant and to place temporary tables and seating beyond the seawall. Work to take place within a Coastal Beach, Coastal Dune and Land Subject to Coastal Storm Flowage.

**Presentation:** Loic Rossignon appeared to present the application. He indicated that a new DEP file number had been assigned to the project, which is SE-058-0566. He briefly reviewed the project, which includes replacing a deck in the rear and changing the grade to become an ADA-compliant area and expanding the area of service to the rear of the property, farther towards the water, to include a portion of the beach.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Rossignon and discussed the project. The applicant seeks to utilize the area seasonally, from April 1<sup>st</sup> to mid-January. Mr. Minsky, after making a site visit, reiterated the Commission's concerns, which were about the use of the beach and coastal dune and included preserving beach grass, moving two small parcels of beach grass, and mitigating for that in two other areas and providing signage and fencing. The western fencing will be snow fencing and the remainder of the fencing will be twine and post, or some other appropriate configuration. Mr. Minsky requested that fence description in writing. It was requested that the signage be informative and attractive. He reiterated that the use of the area would be for picnic tables, a sofa, a fire pit, chaise lounges and Ping-Pong tables, all of which are seasonal. The stairs over the seawall, for which the Commission has no plans, were discussed and would need to be State Building Code compliant. The Commission would be requesting a trash removal protocol for the property given its fragility and prevailing seasonal weather conditions. Mr. Famulare suggested that the sign proposal be attached to the Order of Conditions and reference the location of the fencing on the site plan.

*Nathanial Mayo moved to approve the Notice of Intent application, CON-17-136, by Robert Anderson pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to expand a deck and lower the grade of an existing patio to achieve ADA compliance within the outside service area of a restaurant and to place temporary tables and seating beyond the seawall at the property located at 225 Commercial Street with the following Special Conditions:*

- *that there be, at a minimum, daily policing of site for trash or trampling of vegetation and maintenance of the integrity of the fencing and a submission to the Conservation Agent for his approval before construction begins of a protocol for those activities;*
- *that seasonal use of the area south of the seawall be from April 1<sup>st</sup> through mid-January;*
- *that at least two educational signs explaining the importance of the beach grass; one facing the beach and one facing in the opposite direction be placed on the property as discussed;*

- *that the snow fencing be of standard height and as located on the site plan submitted to the Conservation Commission, contingent upon revision with specific dimensions to be submitted to the Conservation Agent;*
  - *that the beach grass be re-located as shown on said site plan and survive in perpetuity;*
  - *that there be only a minimal level of expansion of the footprint of the stairway and the installation of handrails to bring them into compliance with the State Building Code;*
  - *that the modification of the deck is as presented on said site plan; and*
  - *that construction access be from the abutting parking lot and not from the beach.*
- and with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-4 and 8-12 and Post-Conditions numbers 3 and 4, Dennis Minsky seconded and it was so voted, 5-0.*

d) CON-17-141 **Shank Painter Road (between the Bark Park and Cumberland Farms)**

**Local By-Law Filing** by the Provincetown Department of Public Works pursuant to Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law, for the replacement of a damaged groundwater monitoring well in a location adjacent to the existing monitoring well. Work to take place within NHESP Estimated and Priority Habitat. Dennis Minsky, Mark Irving, Nathaniel Mayo. Robert Brock and Kiah Coble sat on the case.

**Presentation:** The applicant was not represented. Mr. Minsky informed the Commission that he had met with Rich Waldo, Director of the Dept. of Public Works, and did a site visit. A monitoring well is being replaced and located closer to the road. He said that there would be some grass disturbance, but no destruction of vegetation.

**Public Comment:** None.

**Commission Discussion:** The Commission briefly discussed the project.

*Mark Irving moved to approve Local By-Law Filing, CON-17-141, by the Provincetown Department of Public Works pursuant to Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law, for the replacement of a damaged groundwater monitoring well in a location adjacent to the existing monitoring well at the property located at Shank Painter Road, between the Bark Park and Cumberland Farms, with the Standard Order of Construction Conditions number 1, Nathaniel Mayo seconded and it was so voted, 5-0.*

e) CON-17-142 **579 Commercial Street**

**Notice of Intent** application by the **Coastal Engineering Co.**, on behalf of **Joseph Realmuto and Paul Korenberg**, pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, for a vegetation management plan to upgrade and raise an existing single-family home at least 2' above the base flood elevation by replacing a concrete block foundation with a FEMA-compliant pile foundation. Work to take place within Land Subject to Coastal Storm Flowage and the 50-foot Buffer Zone to a Coastal Beach. Dennis Minsky, Mark Irving, Nathaniel Mayo. Robert Brock and Kiah Coble sat on the case.

**Presentation:** Jay Norton, of Coastal Engineering, Paul Bateman, structural engineer, Joseph Realmuto and Paul Korenberg appeared to present the application. Mr. Norton reviewed the conditions on the site and the proposed project of raising the structure due to FEMA flood

regulations. He directed the Commission's attention to the alternatives analysis and the construction protocol submitted with the application. All access will be from Commercial Street and a crane may be needed to lift material to the rear of the property. A mini-excavator will be utilized to install the helical anchors once the building is exposed and lifted. All existing conditions will be restored.

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

**Commission Discussion:** The Commission questioned Messrs. Norton, Bateman and Korenberg about the project and the process of construction.

*Nathaniel Mayo moved to approve Notice of Intent application, CON-17-142, by the Coastal Engineering Co., on behalf of Joseph Realmuto and Paul Korenberg, pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, for a vegetation management plan to upgrade and raise an existing single-family home at least 2' above the base flood elevation by replacing a concrete block foundation with a FEMA-compliant pile foundation at the property located at 579 Commercial Street with the Standard Order of Pre-Construction Conditions numbers 1 and 3-5, Construction Conditions numbers 1, 2, 4, 5 and 10-12 and Post-Construction Conditions number 4 and with the Special Condition that no access shall be from the beach, Dennis Minsky seconded and it was so voted, 5-0.*

f) CON-17-143 Ryder Street Extension, Bennett Pier (Old Fuel Dock)

**Determination of Applicability** application by **Stephen Wisbauer, Provincetown Shellfish Warden**, pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to install 5 helical piles to support repairs to an existing pier. Work has already been performed within Land Under the Ocean. Nathaniel Mayo recused himself because of a conflict of interest. Dennis Minsky, Mark Irving, Kiah Coble and Robert Brock sat on the case.

**Presentation:** Steve Wisbauer appeared to present the application. He explained that the Town wanted to provide a timber pier for shellfish growers to use as a nursery. To that end, the Town added helical piles to support greater weight. He said that similar helical anchors were also being used for moorings in the Harbor. They are installed with a pneumatic device on a skiff and a drive head with a boom head against an existing piling. The helical anchor is a 1.5" square corkscrew within a 4.5" piece of PVC pipe. Only a small portion of land under the ocean has been disturbed.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Wisbauer about the installation.

*Mark Irving moved to grant a Negative #2 Determination with no conditions for the application by Stephen Wisbauer, Provincetown Shellfish Warden, pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to install 5 helical piles to support repairs to an existing pier, Dennis Minsky seconded and it was so voted, 4-0.*

3) **Enforcement Orders:**

a) **76R Bayberry Avenue**

Unauthorized dumping of leaf and other vegetative debris within inland bank, Priority Habitat of Rare Species, Estimated Habitat of Rare Wildlife, Bordering Land Subject to Flooding, and associated 100-foot Buffer Zone to a Bordering Vegetated Wetland.

**Presentation:** Chris Wise appeared to discuss the issue. He explained that the dumping of leaves in the area had been going on for many years, admitted that it was an error to continue the practice and apologized to the Commission.

**Commission Discussion:** The Commission questioned Mr. Wise and discussed the issue. Mr. Minsky read the E.O. He said that he had done a site visit. Mr. Famulare explained the pictures in the E.O. and indicated the location of temporary dumping spot for the leaves and options for alternate, more appropriate areas that would be better for the environment. He suggested a site visit by the Commissioners in order to come up with the best solution subsequent to Mr. Wise's submission of a Notice of Intent. The Commission briefly discussed the issue.

**Mark Irving moved to ratify the Enforcement Order, dated 4/12/17, for 76R Bayberry Avenue as written that stipulates a restoration plan and the submission of a Notice of Intent, Dennis Minsky seconded and it was so voted, 5-0.**

**b) 793 & 795 Commercial Street**

Unauthorized removal of vegetation and excavation within a Coastal Dune and associated 100-foot Buffer to a Coastal Dune. Mr. Famulare reviewed the E.O.

**Presentation:** Craig Lyon appeared to discuss the E.O. Mr. Lyon explained that new water lines had been installed and he didn't realize permission from the Commission was needed. He reviewed how and why the situation occurred. The area of disturbance in question measures 7' by 13'.

**Commission Discussion:** Mr. Minsky reviewed the conditions of the E.O., including that the resource area alterations shall be corrected and returned to their original condition, a restoration plan shall be filed before May 16<sup>th</sup> for the disturbed area with a Notice of Intent, silt fencing and hay bales shall be installed at the base of the dune 7' wide and jute netting shall be installed on the disturbed area on the dune and at the top of the dune to prevent erosion and that the Conservation Agent shall be notified. Mr. Lyon discussed the E.O. conditions with Mr. Famulare and the Commission. Mr. Famulare suggested that Mr. Lyon submit a vegetative planting plan as discussed and return to update the Commission on the condition of the plantings in September instead of filing an NOI. He suggested changes to the E.O. to indicate submitting a restoration plan, including Rosa rugosa and dune grass, with the issuing authority on or before April 20<sup>th</sup> and striking the actions of installing a line of silt fence and hay bales at the base of the dune and the installation of jute netting on same.

**Mark Irving moved to ratify the Enforcement Order as amended, Dennis Minsky seconded and it was so voted, 5-0.**

4) **Request by Jonathan Sinaiko to control vole population at Suzanne's Garden:** Mr. Minsky said he found the request vague and recommended that no action be taken until more information was available. He said that the area had a management plan, which he thought would preclude the use of pesticides.

5) **Conservation Agent Update:**

- a) Appointment of Timothy Famulare and Gloria McPherson as agents of the Conservation Commission; **Dennis Minsky moved to appoint Tim Famulare and Gloria McPherson as agents of the Conservation Commission, Mark Irving seconded and it was so voted, 5-0.**

- b) CON-17-134 **24 Ship's Way Road** – Sign Local By-Law Order of Conditions (approved at 3/21/17 hearing). Mr. Famulare asked which Commissioners sat on the case.

Mr. Famulare requested that an item be added to the agenda regarding the request for a Certificate of Compliance for the installation of a septic system at 793-795 Commercial Street. He met the owner at the site and Felco Engineering had submitted a letter attesting to the completion of the installation and that the Commission's conditions were met, but mentioned that the re-vegetation of the site had not yet happened. When he did a site visit, he noticed that the vegetation had been planted and asked the landscape architect to submit a memo of what actually had been planted, as it was slightly different than what had been proposed. ***Mark Irving moved to issue a Partial Certificate of Compliance for the septic system only at the property located at 793-795 Commercial Street, Dennis Minsky seconded and it was so voted, 5-0.***

6) **Information**

Administrative Review Applications Approved by Agent:

- a) 73 Commercial Street – remove two dead pine trees, cut stumps below grade, replace with like-kind, 6-8' in height;
- b) 258A Commercial Street, Unit 4 – remove one dead white elm tree;
- c) 455 Commercial Street – repair seawall and patio.

7) **Approval of Minutes February 21, March 7 and March 21, 2017:**

***Dennis Minsky moved to approve the minutes of February 21, 2017 as amended, Nathaniel Mayo seconded and it was so voted, 4-0.***

***Dennis Minsky moved to approve the minutes of March 7, 2017 as written, Nathaniel Mayo seconded and it was so voted, 5-0.***

***Dennis Minsky moved to approve the minutes of March 21, 2017 as written, Nathaniel Mayo seconded and it was so voted, 5-0.***

8) **Any other Business:**

Mr. Famulare said he got a request for an Administrative Review to move the big blue chair to the Ryder Street beach, which would be a seasonal location only.

Mr. Minsky welcomed the new Conservation Agent, Tim Famulare. He complimented him on the performance of his duties and looks forward to working with him in the future

***ADJOURNMENT: Dennis Minsky moved to adjourn the Public Hearing at 9:20 P.M. and it was so voted unanimously.***

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2017

Dennis Minsky, Chair