

PROVINCETOWN CONSERVATION COMMISSION

December 8, 2009

6:30 P.M.

Members Present: Dennis Minsky Lynne Martin, David Hale, Jack McMahon and Richard Silver.

Members Absent: None.

Others Present: Brian Carlson (Conservation Agent), David Gardner (Assistant Town Manager) and Ellen C. Battaglini (Recording Secretary).

PUBLIC MEETING

Dennis Minsky called the Public Meeting to order at 6:34 P.M. and explained how the Public Meeting would be conducted. Celine Gandolfo asked a question about the 'Public Statement' portion of the agenda.

The Commission had conducted a site visit at 4:00 P.M. to the staging areas associated with the Notice of Intent filed by the Town of Provincetown's Department of Public Works.

PUBLIC STATEMENTS:

Robin Evans encouraged the Town and the Commission to establish a land use plan for wild life habitat on Town conservation land, including cataloging those parcels, placing restrictions on their use and providing a format, *i.e.* a public hearing, if that plan were to be changed in any way. Many people in Town, she continued, are under the impression that there are other parcels of open space, aside from that designated as belonging to the Land Bank, that are under some sort of protection. She also suggested that the Commission's fees be raised because many violators are willing to pay the existing fee as punishment instead of conforming to the respective regulations.

MINUTES: September 9, September 22, October 17, October 27 and November 10, 2009 – postponed until the next hearing.

Notice of Intent

Application by **Town of Provincetown, Department of Public Works**, represented by Thomas Touchet of AECOM for a **Notice of Intent** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law Chapter 12. The applicant has filed an After-The-Fact NOI for the construction of three staging areas in association with the Phase III municipal sewer expansion project.

Lynne Martin disclosed that she has disclosed a potential conflict of interest related to this application by filling out and submitting a form entitled, "Disclosure of Financial Interest by Municipal Employee and Determination by Appointing Authority", as required by M.G.L. c. 268a, §19. She has subsequently been approved by the Board of Selectmen to sit on the case.

Presentation: David Guertin, DPW Director, Thomas Touchet, chief environmental scientist for AECOM and Rob Adams, chief project manager of AECOM, appeared to present the application. Mr. Guertin readily admitted that an error had been made in clearing the staging areas that are the subject of this NOI, in preparation for the next phase of the sewer project. He stated that he believed that the issue to be discussed with the Commission is what the next step is to be, to give the Town direction on what should be done in these kinds of situations in the future and to inform the Town as to what land is available for use as a staging area.

Mr. Adams gave a general overview of the circumstances that led to the situation as it currently exists. He reminded the Commission that the staging areas in questions were not included in the original NOI for Phase III of the sewer project that the Commission heard, and approved, in the spring. It wasn't until recently, when the contractor started delivering material for the project, that there was a dialog between a subcontractor and the DPW about possible locations for the storage of materials. Three areas along Route 6 were identified and eventually cleared as staging areas. He admitted that it was a mistake not to have filed an NOI before the clearing took place.

Mr. Touchet then informed the Commission about his investigation of the boundaries of the cleared staging areas and what his proposed mitigation plans would be. He wanted to get an idea of what vegetation was impacted in an effort to create an appropriate planting plan for each of the areas. For Staging Area 1, he viewed the adjacent planting community right outside the level of disturbance and GIS photographs of what vegetation was there previous to the disturbance. The main species he identified were pitch pine, false heather, bearberry and a variety of grasses as well as a few scrub and black oaks. These are the plantings that will be replaced and will include a New England coastal grass mix. Staging Areas 2 and 3 had similar plant profiles, thus the assemblage of plant material will be similar to that of Staging Area 1, although the density of replacement may vary according to what previously existed. Mr. Touchet also informed the Commission that the fill will be removed from the Staging Areas before any planting commences.

Commission Discussion: Dennis asked Mr. Guertin to explain the chronology of the events that led up to this point. Mr. Guertin stated that the clearing and graveling was begun on November 2 and it wasn't until November 10 that he was informed that there was an encroachment on the wetland. He stated that other sites were screened as staging areas, including the DPW garage, the Dog Park and the transfer station. The areas along Route 6 were chosen over these areas because in previous phases of the sewer construction, areas along Route 6 beyond Shank Painter Road had been used. On October 27, the staging area data was conveyed to the Board of Selectmen and the administration and no one commented on it. After Mr. Guertin was told about the incursion by 34' into the wetland buffer zone, it was redressed on November 10 by the removal of the hard material, including stored pipes, and the replacement of the silt fencing.

The Commission questioned Mr. Guertin, Mr. Adams and Mr. Touchet. Dennis reviewed the Order of Conditions that were issued to the Town as part of the June NOI, noting that several of those conditions were violated at the three staging areas, including not using clean fill at the site and locating staging areas in sandy areas with minimal vegetation. The Commission was particularly disturbed about the type of fill that was brought in and questioned Mr. Guertin about what immediate remediation actions will be taken to remove the fill in the staging areas.

Public Comment: Clarence Walker, Sherry Dranche, Candace Nagle, Candace Nagle, Celine Gandolfo, Marcene Marcoux, Miriam Collinson, Lincoln Sharpless, Christopher J. Snow, James Buckingham, Bill von der Heydt, Robin Evans and Austin Knight all expressed their disappointment and outrage with the actions of the DPW and AECOM. Several had sharp criticisms about what had taken place and others had questions and suggestions about how to move forward, what kind of remediation should take place and who should pay for it. There was a letter from the Cape Cod Commission, who reviewed the NOI application. The letter stated that the action in question could constitute a modification to the 2001 Development Regional Impact decision issued by the CCC and given to the Provincetown Wastewater Facilities Management Plan, but staff has not had sufficient time to provide the Commission with detailed comments prior to the Public Hearing. The CCC staff will keep the Commission apprised of its review. MESA and the DEP have not completed reviews of the NOI.

Commission Discussion: The Commission discussed several ideas, including levying a fine against the Town and requiring the hiring of a consultant to identify and advise the Commission regarding the issues involved in the NOI. The Commission decided that it is still gathering information about the project and will not yet render a decision at this Hearing. In the meantime immediate remediation at the sites needs to be addressed. The Commission reminded the audience that it did not have jurisdiction over Staging Area 1, as it is not bordering on a wetland.

David Hale moved to recommend that the applicant immediately remove all fill from Staging Area 2, Dennis seconded and it was so voted, 5-0.

David Hale amended his previous motion to read: "... that the applicant remove all fill from Staging Area 2 as soon as feasible and no later than the end of next week...", Lynne Martin seconded and it was so voted, 5-0.

Dennis Minsky moved that the integrity of the existing silt fencing be strengthened and upgraded and embedded into the ground at Staging Areas 2 and 3, and that additional silt fencing be placed along the 34' 'traumatized' buffer zone of the resource area that had been filled and then cleared, Jack McMahon seconded and it was so voted, 5-0.

Lynne Martin moved that an independent consultant be hired, pursuant to Article 9 – Hiring Outside Consultants of the Provincetown Conservation Commission Local Regulations, to advise the Conservation Commission regarding soil analyses at Staging Areas 2 and 3 and concerning the damage these Staging Areas have sustained due to the introduction of non-indigenous fill and to conduct a full review of the proposed mitigation plan, Dennis Minsky seconded and it was so voted, 5-0.

The applicant then requested a continuance until the Public Hearing on January 12, 2010.

Dennis Minsky moved to accept the request for a continuance to the Public Hearing on January 12, 2010, Lynne Martin seconded and it was so voted, 5-0.

ADMINISTRATIVE REVIEW:

The applicant proposes revised plans to show a reduction in proposed development for the property located at 67 Harry Kemp Way under DEP Permit Number 058-0414.

Presentation: Attorney Christopher J. Snow, William N. Rogers, II, Gary Locke and Demetrios Daphnis appeared to present the revised project. Mr. Locke explained the changes on the revised site plan. A split-rail fence and more plantings have been added and a retaining wall has been removed from the site. Also, one entire building has been taken out and a substantial portion of another building has been removed and its location moved further away from the buffer zone.

Commission Discussion: The Commission questioned Attorney Snow, Mr. Rogers, Mr. Locke and Mr. Daphnis.

Lynne Martin moved to approve the request for an extension of the deadline for the Order of Conditions for a period of three years for the project located at 67 Harry Kemp Way, DEP Permit Number 058-0414, and referencing revision #8 dated November 28, 2009, based on an administrative review by the Conservation Agent, Dennis Minsky seconded and it was so voted, 5-0.

DISCUSSION:

27-31 Bangs Street Extension – The Commission discussed the project and the letters received from Judy Mencher and Clarence J. Santos and Maria Moreau concerning access to clean up the wetland area. *Dennis Minsky moved to direct the Conservation Agent, Brian Carlson, to contact Judy Mencher and inform her that she is responsible for clearing the debris in the wetland and that it be completed within one month and subsequently verified by him, Lynne Martin seconded and it was so voted, 5-0.*

The Commission briefly discussed their meeting schedule for 2010 and approved it.

Certificate of Compliance

78 West Vine Street – A Certificate of Compliance has been requested for the property located at 78 West Vine Street by William N. Rogers, II. There was a letter from Mr. Rogers certifying that the

project had been installed in accordance with the “Plan of Land in Provincetown, as surveyed for Susan C. Bestgen, scale: 1 in. = 20 ft., August, 2008, William N. Rogers, II, Professional Civil Engineers & Land Surveyors, 41 Off Cemetery Road, Provincetown, Mass., Revised: October 21, 2008, Plan No. P-08-1905, one sheet”.

DISCUSSION:

Crown & Anchor – Peter Miscikoski, restaurant manager for the Crown & Anchor, sent a letter to the Commission requesting permission to use the beach immediately adjacent to the Crown & Anchor at least twice during Family Week of 2010. The Commission briefly discussed the issue.

Dennis Minsky moved to approve the request by the Crown & Anchor to use the beach immediately adjacent to their property at least twice during 2010 Family Week, as long as a beach access permit is obtained prior to that use, Lynne Martin seconded and it was so voted, 5-0.

CONSERVATION BOARD STATEMENTS:

Dennis Minsky read the letter he wrote to Mass. Wildlife after their announcement that they were going to exclude an area of 53.2 acres of land along the Route 6 corridor from forest re-certification. His letter conveyed the opposition and concern of the Commission about this action and requested more information.

ADJOURNMENT: *Lynne Martin moved to adjourn at 9:45 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Conservation Commission at their meeting on _____, 2010.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2010
Dennis Minsky, Chair