

# PROVINCETOWN CONSERVATION COMMISSION

**MAY 23, 2002**

**6:30 P.M.**

**Members Present:** John Bennett (Chair), Peter Souza, Sheila Benzer, Robin Evans

**Members Absent:** Robert Guerreiro (unexcused), Susan Avellar (excused)

**Others Present:** Roger Dias (Conservation Agent), Ellen C. Battaglini (Recording Secretary)

## PUBLIC MEETING

Chair John Bennett called Public Meeting to order at 6:30 P.M.

### I. PUBLIC STATEMENTS

Jim McGowan spoke about his concerns in regard to the use of pressure-treated lumber on MacMillan Pier. He asked why it was being used on the pier, if it would cause contamination of the bay and if so, would it then be removed. He also wondered whether the engineering firm of Fay, Spofford & Thorndike had known about the dangers of pressure-treated lumber and when they knew it.

### II. EVIDENTIARY HEARINGS

1. DPW Director David Guertin, representing the Town of Provincetown, appeared to discuss the use of pressure-treated lumber at MacMillan Pier. Mr. Guertin began his presentation by submitting a memo to the Commission that had also been sent to the Building Committee. He stated that the public had been notified, through a Notice of Intent in 1998, that this type of lumber would be used on the Pier. However, he stated that, back then, the dangers of using pressure-treated lumber were not yet known. He reminded the Commission that the restrictions on its use currently only apply to residential applications.

Mr. Guertin continued by saying that the Town had a fiduciary responsibility to consider when exploring solutions. Currently, staff is without substantive information on how to deal with the situation short of total removal, a costly and time-consuming alternative. In light of this, he indicated that staff did not think it an unreasonable risk to not do anything about it until there was more information and a documented method for dealing with it, such as a stain or sealant.

He added that the Town would like to keep pace with what the building industry is doing and serve notice to the Pier Corporation that in six months or in two years there could be further information that would allow the Town to make a prudent decision about pressure-treated lumber.

The Building Committee voted 4-0 not to take action on the issue. Yet if a solution did appear, they reserve the right to act.

**Commission Discussion:** Chair John Bennett questioned Mr. Guertin about why the Conservation Commission did not receive his report earlier. The Commission questioned

Mr. Guertin about the leaching risks associated with pressure-treated lumber and about the chance for absorption of chemicals into the systems of marine animals and into the marine ecosystem in general. Peter Souza said he had noticed sawdust blowing in the air on the Pier after the workmen had departed for the day. He displayed some shavings of pressure-treated lumber that he had picked up on the beach the day before. On another day, Mr. Souza observed sawdust from pressure-treated lumber swirling around tourists exiting whale watch boats. Sheila Benzer wondered whether a cleanup of the site was not one of the conditions of the Notice of Intent.

Mr. Souza then recommended that the Conservation Commission undertake an independent study of the effects of pressure-treated lumber leaching into the environment. He asked Mr. Guertin if there was money available to the Town for that.

Chair John Bennett questioned Mr. Guertin about possible temporary measures that could be undertaken to mitigate the effects of the lumber. He was especially concerned about the area where Town kids dive for coins in the water.

Sheila Benzer raised the issue of the hazards of the pressure-treated sawdust being absorbed by the skin. She stated that she felt the Commission had an ethical responsibility to act to protect the public. Mr. Guertin replied that he wished there was a remedial solution but was waiting for a more balanced approach than wholesale removal. Mr. Guertin agreed to consult with the Building Committee about covering the area where kids dive for coins. He promised to do more research if the Commission itself would undertake its own research.

The Commission recommended that interlocking mats be placed on the pier where the kids dive for coins as a temporary measure.

*Peter Souza moved to continue the discussion of this issue until the next meeting. In the meantime, the Commission would exhibit due diligence on their part in further researching the issue and the Town will research what methods are available for detecting the presence of arsenic in the environment, Robin Evans seconded and it was so voted, 4-0.*

2. Ted Bailey, from Environmental Partners, and Todd Palmatier and Martin R. Donoghue, from Coastal Engineering Co., Inc., joined David Guertin to give a report on the water main break and its effect on the wetlands and proposed mitigations.  
**REPORT:** On May 1, 2002, there was a break in the water main and 4.5 million gallons of water lost. Mr. Donoghue arrived on the scene within two hours and issued a report. Coastal Engineering has since come forward with a mitigation proposal that it submitted to the Department of Regulatory Management, copies of which were included in the Commissioners' packets. David Guertin recommended that Coastal Engineering Co., Inc., replace the firm of Horsley & Witten, Inc., who are currently providing environmental monitoring at the site. Chair John Bennett expressed his wish to have Coastal Engineering Co., Inc. hired as environmental monitors under the auspices of DPW. Mr. Bennett wanted to emphasize the fact that Coastal would owe a fiduciary responsibility to the Conservation Commission and operate as monitors under the direct authority of the Commission. He wants to make clear that the environmental monitor at the site should work for the Commission and not for the Town. Sheila Benzer, he suggested, would be the Commission's liaison to Coastal Engineering Co., Inc.

*Peter Souza moved to hire Coastal Engineering Co., Inc. as the agent for the Conservation Commission, whose direct contact person will be Sheila Benzer. The payments and contracts between Coastal Engineering Co., Inc. and the Conservation Commission will be authorized by the Commission and administered by DPW, John Bennett seconded and it was so voted, 4-0.*

**MITIGATION PROPOSAL:** Coastal then presented their mitigation and sediment removal protocol to the Commission. The water from the leak washed out the sediment barrier and washed sediment into the buffer zone. Protocol dictated that the sediment barrier be reestablished. The buffer zone did protect the wetland from being invaded by sediment, but vegetation in the buffer zone suffered damage. Most of that vegetation, such as poison ivy, choke cherry, etc., is hardy and will come back by itself. A lot of sand ended up in the buffer zone and this sand must be removed by hand and wheelbarrow and this will begin as soon as the Commission approves of the proposal.

*Chair John Bennett moved that the Conservation Commission approve the mitigation and sediment removal protocol submitted by Todd Palmatier and Reggie Donoghue of Coastal Engineering Co., Inc. and that the Commission order the Town to proceed with the work in accordance with that mitigation and sediment removal protocol forthwith, Peter Souza seconded and it was so voted, 4-0.*

### III. PUBLIC HEARING

#### Notice of Intent

Application by Felco, Inc. representing Diane K. Dutton for Notice of Intent under the Provincetown Wetlands By-Law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the property located at **26 Race Road**, Provincetown.

**Presentation:** Alan Cabral, from Felco Inc., appeared to present the application. An existing building is being renovated and there is a small addition being built. A portion of the addition falls within a 100-foot buffer zone.

**Commission Discussion:** The Commission questioned the applicant about the work limit, which is now defined by a silt fence and hay bales. There is currently no construction protocol in place for the project. Sheila Benzer felt that too much vegetation was removed, but Mr. Cabral stated that this had occurred before Felco, Inc. had been hired. Robin Evans suggested that sonotubes should be used to support the deck instead of concrete.

*Chair John Bennett moved to approve the Notice of Intent subject to the general construction protocol with special conditions and to delegate Sheila Benzer to draft and issue those special conditions, including a requirement for the use of sonotubes for support of the deck, extending the work limit and adding hay bales five feet south of the large willow tree, re-vegetating the disturbed areas, including any area north of the existing willow trees and not removing any willow trees from the property, Peter Souza seconded and it was so voted, 4-0.*

#### Notice of Intent

Application by Maria Kuliopulos under the Provincetown Wetlands By-Law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the property located at **6 Sandy Hill Lane**, Provincetown.

**Presentation:** Maria Kuliopulos presented the Commission with the green card responses from

abutters to the project.

**Public Comment:** Michael Straz and Tracy Bennett, abutters to the project, submitted a memo to the Commission concerning the history of the property under the present owners.

**Commission Discussion:** The Commission questioned Ms. Kuliopulos about whether the Board of Health had approved her plans. The Commission concluded that it would not act on the application without a sign-off by the Board of Health. The applicant then requested a continuance until the next meeting and the Commission granted it.

*Chair John Bennett moved to continue the application until the June 27, 2002 meeting at 6:30 P.M., Sheila Benzer seconded and it was so voted, 4-0.*

#### IV. PUBLIC MEETING

##### Determination of Applicability

Application by Stephan Zemo represented by Coastal Engineering Co., Inc. for Determination of Applicability under the Provincetown Wetlands By-Laws, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the property located at **165 Commercial Street**, Provincetown.

**Presentation:** Stephan Zemo and Mike Taylor appeared to present the application. The applicant is proposing to cut back the asphalt behind the property and re-grade the area.

**Commission Discussion:** Peter Souza expressed concern about erosion due to storm water. Sheila Benzer suggested using Rosa Rugosa and beach grass to replant after the re-grade and the construction of stairs.

*Chair John Bennett made a motion for a Negative Determination (#3) subject to the following special conditions:*

- *Beach grass and Rosa Rugosa will be planted on the graded area;*
- *The applicant will return with a plan if stairs will be added;*
- *The Conservation Commission will be notified if anything unexpected occurs that they should know about,*

*Robin Evans seconded and it was so voted, 4-0.*

##### Determination of Applicability

Application by Daniel A. Mullin represented by John Rice for Determination of Applicability under the Provincetown Wetlands By-Laws, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the property located at **11 Commercial Street**, Provincetown.

**Presentation:** Tom Olsen appeared to present the application. At some point in time a concrete wall was erected to prevent sand from blowing onto the property from the beach. The wall since this time has decayed and the applicant wants to replace the wall with a poured-in-place solid concrete wall reinforced by re-bars.

**Commission Discussion:** Roger Dias asked how the applicant proposed to protect the dune when the wall was removed. Mr. Olsen proposed interlocking steel sheathing to retain the dune or putting up a wall in front of the wall to be removed. Chair John Bennett suggested that the applicant might need a Notice of Intent. He polled the Commissioners about the issue. The

Commissioners agreed that the applicant needed a Notice of Intent.

*Peter Souza moved for a Positive Determination (#1), Robin Evans seconded and it was so voted, 4-0.*

## V. NEW BUSINESS

Chair John Bennett stepped down as Chair to appear before the Commission. He submitted a site plan for his property at 333R Commercial Street. The septic system for the premises is failing and it was determined that the leaching fields for the system were fouled. A wall that was not constructed properly when the system was installed caused the situation. Mr. Bennett needs to dig out the leaching fields and build new ones as a temporary solution until he can hook up to the sewer. He wants to start work immediately and he is asking authorization from the Commission on an emergency basis, subject to a Determination of Applicability to be filed subsequently.

*Sheila Benzer moved to grant the emergency repair as presented with a Determination of Applicability to be filed subsequently, Robin Evans seconded and it was so voted, 3-0.*

## VI. OTHER BUSINESS

1. Discussion of joint meeting at Shankpainter Pond with Conservation Trust members and Open Space Committee members. Chair John Bennett wrote a letter to Town Manager Keith Bergman, and is waiting for a response.
2. Discussion of adoption of Conservation Commission regulations. The Commission discussed the issue of application fees. Sheila Benzer would like to work off the regulations from other towns. Roger Dias agreed to research what other towns charge. The Commission discussed how to proceed with the adoption of regulations. Roger Dias will bring a proposed set to the next meeting that he will cull from a list of regulations from various towns on the Cape.

## ADJOURNMENT:

*Chair John Bennett moved to adjourn the meeting at 9:40 P.M., it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2002  
John Bennett, Chairman