

PROVINCETOWN CONSERVATION COMMISSION

JUNE 27, 2002

6:30 P.M.

Members Present: Susan Avellar (Acting Chair), Peter Souza, Sheila Benzer, Robin Evans

Members Absent: None

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

PUBLIC MEETING

Acting Chair Susan Avellar called the Public Meeting to order at 6:35 P.M. She expressed deep regret and sorrow for the recent death of the Chair of the Conservation Commission, John Bennett, adding that his death is a great loss to the Commission and to the community. She conveyed the Commission's heartfelt condolences to his family and friends.

I. NEW BUSINESS:

1. DPW Director David Guertin, et al, representing the Town of Provincetown, regarding the use of pressure-treated wood at MacMillan Pier (continued from May 23, 2002 meeting).

Presentation: Ted Bailey, resident engineer on the Town Sewer Project, expressed Mr. Guertin's regret that he could not attend the meeting. No other representative of the Town attended to speak on the issue.

Commission Discussion: The Commission briefly discussed the dangers of pressure-treated wood, Sheila Benzer presented material that she and Peter Souza had gathered from the Massachusetts Department of Public Health and the Environmental Protection Agency on the hazards of its use, particularly with regard to the leeching of arsenic into the environment. The Town failed to send a report to the Commission as it was requested to do at the May 23, 2002 meeting. Acting Chair Susan Avellar indicated that she had spoken to Mr. Guertin who informed her that the Town was working on the problem. Robin Evans's recollection of the May 23, 2002 discussion of the issue included the decision that the Commission and the DPW were supposed to meet after further research and hammer out a compromise.

Peter Souza moved to instruct the Town of Provincetown to have the pressure-treated wood removed, or covered, so that the arsenic component of the wood will not leech into the harbor.

Robin Evans moved to amend the motion to add the phrase, "after discussion with DPW."

Shelia Benzer moved to amend the motion to include the word, "yearly" after "cover," Robin Evans seconded the amendment and it was so voted, 4-0.

The Commission voted to approve the amendment, 4-0.

2. Wetland violation on Town-owned property – DPW garage.

Presentation: Todd Palmatier, from Coastal Engineering and environmental monitor for the Sewer Project, appeared to address this issue. The violation is the result of run-off into a wetland area. This problem arose at the DPW garage because of a topographical feature that allowed excess water to accumulate. There is a natural swale at the site that holds water, and the process of washing stones for the Sewer Project that is currently

occurring there exacerbated this situation. The excess water produced by the washing process is draining into the wetland. They have erected silt fence along the trench, filled in the lower reaches of the trench and installed riprap to stabilize the slope. As of today, there is no run-off, but only slight ponding at the site. Mr. Palmatier's proposal to further mitigate the disturbed area is to fill the trench in with material and install a sediment trap to catch the run-off.

Commission Discussion: The Commission questioned Mr. Palmatier about the project. Sheila Benzer worried about the potential for a mosquito breeding ground to arise in the pooling water. She asked Mr. Palmatier if the washing of the stone could possibly occur at any other site, perhaps at the Jerome Smith parking lot. The Commission was not aware that the washing would be occurring near a wetland. Ted Bailey joined in the discussion. Peter Souza recommends finding another area in which to wash the stone. Robin Evans concurred with the idea of moving the stonewashing area if the mitigation proposal outlined by Mr. Palmatier failed to solve the problem. The Commission concluded that the mitigation proposal seemed only a temporary solution and that a permanent storm water plan be developed for the whole site at some point in the future. Acting Chair Susan Avellar suggested that the Town come back to the Commission with a more permanent solution to the problem. Ted Bailey stated that the Town would look into relocating the stonewashing site.

Susan Avellar moved to instruct the Town restore the excavated area (trench) with the original excavated material, restore the disturbed buffer zone to prevent further storm water infiltration into the wetland, move the stonewashing operation so as not to impact a wetland or resource area, and to further instruct the Town to return to the Conservation Commission with an application for an on-site storm water drainage plan, Sheila Benzer seconded and it was so voted, 4-0.

3. Cease and Desist – Placement of non-indigenous material in a resource area, Provincelands Road.

Presentation: No one representing the Town appeared to discuss this issue. Pieces of tar pavement are being washed into the salt marsh at the site. This area is used by the Shellfish Constable to launch his boat.

Commission Discussion: The Commission felt that a concrete ramp should be built by the Town for the Shellfish Constable's boat launching.

Peter Souza moved to instruct the Town to remove all non-indigenous fill from the Provincelands salt marsh. The Commission recommends that the removal shall occur by a combination of hand and machinery and that Acting Conservation Agent, Roger Dias, be notified when it will occur. Further, a representative of the Town shall immediately appear before the Conservation Commission at their next meeting with a Notice of Intent application for the construction of a permanent boat ramp at the site, Susan Avellar seconded and it was so voted, 4-0.

4. Todd Palmatier of Coastal Engineering on modification of mitigation plan with regard to Town of Provincetown water main break and its effect on wetlands.

Presentation: Todd Palmatier and Ted Bailey appeared to discuss this issue. The Town has been unable, up to this point in time, to get a construction company to implement its mitigation plan using wheelbarrows and manpower. Thus, Mr. Palmatier proposes to modify the plan in the following manner:

- a. the method of removal will be by vacuum truck;
- b. a staging area, necessitated by the weight of the vacuum truck, be created for its placement in the buffer zone; and
- c. the creation of a temporary road from Route 6 down to the staging area, with hay

bales erected and stacked to delineate the work area.

This modification will allow the project to progress more quickly and it will generate less of a disturbance and intrusion into the resource area.

Commission Discussion: The Commission questioned the engineers about the amount of vegetation that would be removed as a result of the modified plan.

Sheila Benzer moved to approve the modified mitigation plan, including the placement of straw bales and the hand-installation of a siltation fence around the staging area and the replacement in kind of any vegetation that might need to be removed, Robin Evans seconded and it was so voted, 4-0.

5. William Rogers, informal discussion concerning The Boatslip.

Presentation: Gary Locke, representing William Rogers, and Mario DiGregorio appeared to discuss The Boatslip's septic system. The proposed plan calls for a barrier, or sheet wall, to be erected comprised of 40 mil. polyethelene sheeting. Both Mr. Locke and Mr. DiGregorio are appearing in order to keep the Commission apprised of their progress at the site and to solicit recommendations on how to proceed with the project.

Commission Discussion: The Commission expressed concern about the collateral effect of the barrier wall on adjoining properties. Mr. Locke stated that this solution to the exposure of leeching fields at The Boatslip would prevent pollution and storm water damage at the site. This is a temporary solution until the premises is able to hook up to the sewer. The Commission concluded that a Notice of Intent was needed along with their earlier recommendation that The Boatslip submit a study of the project and site by Graham Giese, a coastal geologist.

II. PUBLIC STATEMENTS:

None.

III. PUBLIC MEETING:

Determination of Applicability

Application by Rex McKinsey, Chair of the Provincetown Harbor Committee, 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 **All Town Landings** in Provincetown.

Presentation: Rex McKinsey appeared to present the application. The Harbor Committee wants to replace the signs on all Town Landings with new signs in conjunction with the requirements of Chapter 91. The signs have international symbols and will be installed by Americorps volunteers.

Commission Discussion: None

Susan Avellar moved to grant a Negative Determination (#2), Peter Souza seconded and it was so voted, 4-0.

IV. PUBLIC HEARING:

Notice of Intent (Continued from April 24, 2002 and May 23, 2002)

Application by Maria Kuliopulos 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 **6 Sandy Hill Lane,**

Provincetown.

Presentation: Maria Kuliopulos appeared to present the application.

Commission Discussion: The Commission had previously requested that the applicant appear with the following items: a sign-off from the Board of Health, a site plan of the proposed second septic installation and proof of dismissal of the court case that involved the owners of the premises. Ms. Kuliopulos presented a copy of a letter from her attorney addressing the issue of the dismissal of the court case. The Commission informed her that her application was still incomplete because she had not yet obtained the Board of Health sign-off. The Commission cannot consider her application without the sign-off. In addition, the applicant needs to submit a site plan that includes the delineation of the resource area and existing elevations drawn by a professional engineer and a plan of the proposed second septic system. Ms. Kuliopulos was asked if she would like to continue her application until the July 25, 2002 meeting and she assented.

V. OTHER BUSINESS:

1. Linda Lisbon, abutter, about possible violation of Order of Conditions at 599 Commercial Street.
Linda and John Lisbon, abutters to 599 Commercial Street, appeared before the Commission. They stated that there are bricks and miscellaneous metal debris littering the beach in front of the Lisbon home. The material comes from a bulkhead that had been removed from the front of a house located at 599 Commercial Street. They contend that this is in violation of the Order of Conditions for work to be performed at 599 Commercial Street which includes the removal of all debris from the beach. They request that the Commission compel the owners of the premises at 599 Commercial Street to clean off the beach in front of both properties. After questioning the Lisbons, the Commission concluded that Acting Conservation Agent, Roger Dias, would investigate the legal options available to the Commission to deal with the situation.
2. Consultants – conflict of interest.
Acting Chair Susan Avellar read a letter from Town Counsel, Kopelman & Paige, concerning the issue of conflict of interest. The Commission had solicited the opinion in regard to environmental engineers who represent both applicants who appear before the Commission and who serve as consultants to the Commission. It was the opinion of Town Counsel that if this situation arose, the engineer should make a disclosure to the Commission. However, if the engineer was not specifically named in the contract with the Town, but was only one of a number of engineers, then that engineer would not have a conflict of interest if he or she were also to represent an applicant who appeared before the Commission.
3. Discussion of proposed regulations.
A copy of the Falmouth Wetland Regulations was distributed to the Commission members. Peter Souza recommends that the Town adopt them, as they were the most comprehensive of the regulations that were researched by Roger Dias. The Commission felt that they should hold a work session to discuss the regulations further before a public hearing was scheduled. The work session is scheduled for July 11, 2002 at 7:00 P.M.
4. Letters.
 - a. A letter from David Guertin requesting a modification of the license for the removal of debris that was dredged from between the wharves. The debris contains highly toxic heavy metals and needs to be disposed of off-Cape.
 - b. A letter from Robert Guerreiro concerning his unexcused absences. Mr. Guerreiro

wants to resign and the Commission needs to generate a letter to the Town Clerk concerning this issue. ***Robin Evans moved to notify the Town Clerk of Robert Guerreiro's three consecutive, unexcused absences, Sheila Benzer seconded and it was so voted, 4-0.***

c. A letter from Stormy Mayo to the Commission regarding David Guertin and the replacement of a drainpipe at Dr. Mayo's property at 1 Duncan Lane farther into a wetland instead of in its original location. In the letter, Dr. Mayo stated that he wants to follow the Commission's recommendations of last autumn, rather than the changes proposed by DPW.

5. Tree replacement at the Old Burn Dump.

The Commission discussed how to compel the DPW to replace the 548 trees that had been uprooted at the Old Burn Dump. All were in agreement that the replacement trees should be chosen for their suitability as wildlife habitat and not for their aesthetic value.

APPROVAL OF MINUTES:

Peter Souza moved to approve the minutes of April 25, 2002 as written, Robin Evans seconded and it was so voted, 4-0.

Peter Souza moved to approve the minutes of May 23, 2002 as written, Robin Evans seconded and it was so voted, 3-1 (Susan Avellar abstaining).

Susan Avellar may be late and Robin Evans will be absent from the July 25, 2002 meeting.

ADJOURNMENT:

Susan Avellar moved to adjourn the meeting at 9:45 P.M., it was so voted unanimously.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2002.