

# PROVINCETOWN CONSERVATION COMMISSION

December 14, 2004  
6:30 P.M.

**Members Present:** Dieter Groll, John Santos, George Bryant and Paul Tasha.

**Members Absent:** Elaine Anderson (excused).

**Others Present:** Doug Taylor (Building Commissioner), David McLean-Perkins (Conservation Commission Secretary) and Ellen C. Battaglini (Recording Secretary).

Co-Chair Dieter Groll called the meeting to order at 6:36 P.M.

## **PUBLIC STATEMENTS:**

None.

## **UPDATE:**

### 1. DAVID GUERTIN, DPW DIRECTOR – MT. GILBOA:

**Presentation:** David Guertin stated that the Town is planning to recoat the water storage tank at Mt. Gilboa. The limited use private access road leading up to the tank is located adjacent to a shrub swamp. The Town plans on providing erosion barriers along the road. Mr. Guertin was looking for further guidance from the Commission in respect to the project.

**Commission Discussion:** The Commission questioned Mr. Guertin about the project and came to the conclusion that no action on their part was required.

### REPAIR TO THE FLOATING DOCK SYSTEM:

**Presentation:** David Guertin stated that the repair to the floating dock system will be comprised of two phases. Phase I has already been approved by the Board of Selectmen. Phase II has not been voted on yet. The system will have the same footprint as the old and will be hoisted out of the water each year. As per the Pier Corporation recommendation, the Conservation Commission has 30 days in which to register any objection they may have to the project to the Department of Environmental Protection. If there are no objections, the Pier Corporation will issue a maintenance permit for the project.

**Commission Discussion:** The Commission questioned Mr. Guertin. The Commission wholeheartedly endorses the project, but requested that detailed engineered drawings are submitted to them as soon as they become available. They would also like the opportunity to revisit the Order of Conditions that is still in effect from when the original construction of the floating system took place.

*John Santos moved that the Conservation Commission accept notification from the Town of the intended repair work on the floating dock system at MacMillan Wharf and approve same with the provision that construction details be submitted when available prior to their approval and that the Order of Conditions still in force be revisited, George Bryant seconded and it was so voted, 4-0.*

*John Santos moved to amend his motion to add that a protocol for dismantling the floating dock system is included with the construction detail, George Bryant seconded and it was so voted, 4-0.*

### 2. VAUGHN CABRAL, CABRAL ENTERPRISES – PIER FIRE/RE-CONSTRUCTION:

**Presentation:** Vaughn Cabral appeared to discuss the project. The three buildings damaged by

the fire will be repaired and will have the same footprint and height. Mr. Cabral seeks guidance on how to proceed with the reconstruction.

**Public Comment:** Pete Markunas, of Coastal Engineering, stated that the applicant needs to file a request for Determination of Applicability, which includes a plan for reconstruction and a construction protocol.

Doug Taylor commented that the Building Department will have concerns regarding materials, procedure and construction protocol.

## **OLD BUSINESS:**

### ***Determination of Applicability*** (continued from 09/14/04 and 11/23/04)

Application by David Nicolau for Request for Determination of Applicability 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. The applicant seeks approval for the installation of a pool in the 100' buffer zone at the property located at **5 Maple Court** in Provincetown.

**Presentation:** David Nicolau appeared to discuss the application. Mr. Nicolau reiterated that the water to fill the pool will be trucked in and trucked out when the pool needs to be emptied. The construction will take place on the south side of the property and not in the buffer zone.

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

**George Bryant moved to grant a Negative #3 Determination for the installation of a pool in a 100-foot buffer zone on the property located at 5 Maple Court, with the additional condition that the water for the pool be trucked in and trucked out, Paul Tasha seconded and it was so voted, 4-0.**

### ***Determination of Applicability*** (continued from 11/23/04)

Application by Kimball Residential Designs, representing Anton Van Dereck, for Request for Determination of Applicability 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. The applicant seeks approval to remove and reconstruct existing west-facing shed dormer and to remove, reconstruct and extend existing damaged boardwalk along west side and extend to and wrap around south (ocean) side to connect to new egress door. Applicant also seeks approval to replace south-facing windows on second floor with three double-hung windows on the property located at **463**

**Commercial Street** in Provincetown. Dieter Groll and George Bryant recused themselves because of conflicts of interest. A quorum was not available.

**Presentation:** Neal Kimball and Mike Czyoski appeared to present the application. The applicant has revised his intentions and now only seeks to replace what is existing. The applicant will amend the application to reflect this change. The case is continued until the January 4, 2005 hearing.

## **NEW BUSINESS**

### **PUBLIC HEARING:**

#### ***Notice of Intent***

Application Coastal Engineering, Inc. representing 599 Commercial Street Realty Trust, Elizabeth Villari, Trustee, for a 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. Applicant seeks approval for and addition to a single-family dwelling and modifications to accommodate handicap accessibility for the property located at **599 Commercial Street** in Provincetown.

**Presentation:** Pete Markunas, of Coastal Engineering, and Andrew Parkington, builder, appeared to present the application. The applicant seeks to construct a 500-foot addition to the street side of the house, do renovations within the house, construct two decks on the water side of the house and install a handicap access ramp leading up to the house.

**Public Comment:** Kevin Shea, a direct abutter spoke against the application and read a letter written by himself and his partner, Judy Richland, outlining their concerns and asking the Commission to examine

the project carefully. Andrew Parkington addressed the issues raised by Mr. Shea. David Nicolau spoke to the project, stating that the plans had been revised to try and speak to the issues of the abutters. Attorney Lester J. Murphy added that he felt that the current plans are the best for the site and will not be a detriment to the neighborhood. Toni Shiff, co-owner of the premises, stated that the most important issue for her was one of accessibility to her home. Mary Ellen Henry, co-owner of the premises, said that she and Toni had tried to meet with the neighbors to discuss their concerns.

**Commission Discussion:** The Commission questioned Mr. Markunas and Mr. Parkington. The Commission discussed hiring a coastal geologist to study the issues related to flooding in the area. The Commission feels that they need guidance in examining the issues of the mitigation of flooding and storm flowage damage at the premises in light of some of the details of the project, including the location of the handicap access ramp. The Commission also requested that the applicant submit a plan showing the elevation of the structures on the property. Peter Markunas requested a continuance until the January 4, 2005 hearing and stated that the applicant is willing hire a coastal geologist to examine and analyze the project in order to generate alternative plans, irrespective of all other issues, including those related to the Americans with Disability Act and the abutter's issues. The geologist will report to the Commission on the flooding and storm damage issues and the construction of the ramp and decks issue.

*Paul Tasha moved to accept the request for a continuance and the offer of the applicant to hire a coastal geologist to study the project in relation to the mitigation of flooding and storm flowage at the property located at 599 Commercial Street, George Bryant seconded and it was so voted, 4-0.*

## **PUBLIC MEETING:**

### **Request for Negative Declaration: Chapter 91 Amnesty License Application**

1. 661 Commercial Street – The owner of the property, Cecilia Lemley, has applied for a Chapter 91 license. In order for the state to issue a license, a statement from the Conservation Commission is needed stating that they have no objections to Ms. Lemley receiving a Chapter 91 license. There is no work, changes or modifications occurring at the premises.

*Paul Tasha moved to issue a statement that the Conservation Commission has reviewed plans of the property and that the structure on the property does exist and that the Commission has no objections to Cecilia Lemley proceeding with her application for a Chapter 91 license for the property located at 661 Commercial Street and no further action is required by the Commission, John Santos seconded and it was so voted, 4-0.*

## **DISCUSSION:**

1. 2005 meeting dates – The Commission discussed the issue and decided to keep their hearings on Tuesday nights, but try to schedule them on opposite weeks as the Licensing Board.
2. Dieter Groll brought up the issue of the sand in front of the storm drains on the beach. The Commission discussed that the Town should remove the sand and that they should be discussing the issue with David Guertin, the director of the Department of Public Works.
3. The Commission discussed an e-mail from a abutter of the property at 139 Commercial Street. The issue raised concerned the spraying of a weed killer on the property. The Commission would like to look at the site and review the DEP order concerning the site. Doug Taylor volunteered to examine the site for the Commission.
4. The Commission discussed their jurisdiction out to the 40-foot mean low water mark in the bay and the 80-foot mean low water mark in the ocean and the problem of the destruction of the shellfish and fish habitats by boats that are dredging for sea clams. This clam-dredging activity is prohibited by state law without a permit.

5. Invasive species and how they can be removed was also discussed.
6. The problems caused by whale watch boats flushing their sewage three miles offshore while the tides have the tendency to bring it into shore was talked about. The Commission discussed what they could do about the flushing by requesting that it occur further out in the ocean.
7. Doug Taylor stated that he is working with Town Manager, Keith Bergman, to solve the problem of having a Conservation Agent to handle the enforcement of state and local environmental laws and by-laws that are being broken. The Commission felt that the public needed to be put on notice that violations of these laws will be dealt with appropriately. The Commission discussed having a workshop about this issue.

*Paul Tasha moved to issue a cease and desist letter from the Conservation Commission to all participants in the clam-dredging industry, or any other industry that alters the land under the ocean, that they are in violation of Massachusetts state law and local Conservation Commission regulations and that they are not permitted to dredge in water out to the 40-foot mean low water mark in the bay or the 80-foot mean low water mark in the ocean and that the aforesaid Commission will begin to enforce these laws, John Santos seconded and it was so voted, 4-0.*

**MINUTES: November 23, 2004** – John Santos moved to approve the language as written, Paul Tasha seconded and it was so voted, 4-0.

#### **ADJOURNMENT:**

*John Santos moved to adjourn the meeting at 10:10 P.M. and it was so voted unanimously.*

#### **NEXT MEETING**

The next meeting will be on January 4, 2005.

These minutes were approved by a vote of the Conservation Commission at their meeting on January 4, 2005.

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2004  
Dieter Groll and/or Elaine Anderson, Co-Chairs