

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**August 21, 2012**  
**6:30 P.M.**

**Members Present:** Dennis Minsky, Lynne Martin, Barbara Prato and Mark Irving.

**Members Absent:** David Hale.

**Others Present:** Brian Carlson (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

Chair Dennis Minsky called the Public Meeting to order at 6:30 P.M.

**PUBLIC STATEMENTS:**

None.

**MINUTES: July 17, 2012** – Postponed.

**DISCUSSION:**

Winston Avenue public access to beach: Brian reviewed the issue, which is a fact-finding request from Steven Lambert, a property owner on Winston Avenue. It involves a parcel of land abutting a lot purchased by Mr. Lambert. That land contains a roadway, Winston Avenue, which accesses the beach and the request is in regard to a sand pathway that traverses the corner of Mr. Lambert's property. He is requesting that the sand pathway be moved off of his property and onto Winston Avenue. After a site visit conducted last Friday and Brian's research with the Town Assessor and the Town Clerk, it has been confirmed that Winston Avenue is a private way. The owners of abutting properties to a private way have ownership up to the middle of the road. In order to move the pathway, a Notice of Intent will have to be filed by those property owners whose land abuts Winston Avenue. The issue would also include what kind of mitigation the Commission would be looking for if it agreed to approve the Notice of Intent. Brian has contacted Mr. Lambert and informed him of the issues involved, but has not heard back from him. The Commission discussed the issue. The Commission concluded that Winston Avenue is not a public way and the parties involved are free to file a Notice of Intent and the application will be reviewed.

555 Commercial Street rocks on beach: This issue was introduced at a previous hearing by a property owner who has an easement abutting the property. The easement has a set of stairs to the beach which were in danger of being compromised due to the movement and proximity of large rocks on the beach, some of which move during fall and winter storm events. John Chuckran of Atlantic Concrete, the installers of the bulkhead at the property, appeared to discuss the issue. He stated that the rocks usually bury themselves in the sand due to tidal action. They have been replaced once already. Although they are exposed to southwest winds, there are buttresses that are supposed to protect them in those instances. On the beach where the abutter's stairs are located, there is a void that goes back 4-5' and that creates problems in terms of the

rocks holding their positions. Brian did a site visit today and took photographs that the Commission studied. When Dennis did a site visit he observed six or seven rocks beyond the buttresses on the beach itself. This would be a violation, as the beach is a resource area. The Order of Conditions for the project at the property is still in effect and that Order does not mention the rocks. There was no notice of the rocks, or the rip-rap, in the Notice of Intent or in the scope of work for the project. There is a reference on the site plan of August 12, 2009, stating that the concrete grout was to be removed. The existing site plan showed that all of the rip-rap was behind the buttresses. Mr. Chuckran disputed that and stated that there were rocks existing beyond the buttresses before the project began and that some of the buttresses were actually sitting on the rocks. The Commission questioned Mr. Chuckran and discussed the situation. The Commission, in light of its duty to protect the resource area, concluded that the rocks need to be removed, preferably voluntarily, by Mr. Chuckran. Mr. Chuckran pointed out that the rocks moved during Hurricane Irene in 2011 and he alleges that in six months the rocks will sink into the beach. He suggested that the Commission wait until next spring to see if the situation changes before he takes action. The Commission continued the discussion.

**Public Comment:** Brian O'Malley, the abutter to 555 Commercial Street, gave his version of the history of the rocks movements. He would like to be able to repair his stairs, as he has done for many years, and is not able to because of the location of the rocks. One rock sits right in front of the stairs and is a safety issue. He contends that the rocks will not sink into the beach based on photographs he took of the area last August. The rocks sit in the same location as they sat at that time. He would like the rocks off his property and alleges that the project was done in violation of the Order of Conditions imposed by the Commission. He also asserts that there are as many as 10-12 rocks beyond the buttress line.

**Commission Discussion:** Mr. Chuckran claimed he had permission from the Conservation Agent to place the rip-rap in its present location. He also asked the engineer if a revetment could be put in front of the wall. The Commission is requesting that the property owners voluntarily give Mr. Chuckran permission to remove any and all rocks that are outside the buttress line. A site visit with the Conservation Agent and all parties involved will occur to identify which rocks need to be removed.

## **ANY OTHER BUSINESS:**

### **Certificate of Compliance**

Application by **William N. Rogers, II**, under the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown Wetlands By-Law, Chapter 12. The scope of work included alterations to a deck and the structure below at the property located at **107 Commercial Street** in Provincetown.

**Presentation:** Billy Rogers appeared to request the Certificate of Compliance. The Order of Conditions, dating from March 14, 2006, is for repairs and alterations to the deck and the structure below it, which was in disrepair and under a Chapter 91 directive. All work has been completed. Photographs were provided by Mr. Rogers. Brian has made a site visit and agrees that the work has complied with the Order of Conditions and has been completed.

***Dennis Minsky moved to issue a Certificate of Compliance for work done at 107 Commercial Street, DEP Permit No. 058-0402 and as referenced on a site plan dated April 12, 2005, Barbara Prato seconded and it was so voted, 4-0.***

Beach Cleaning Regulations: Brian received a request from potential property owners in the east end to clear seaweed on the beach behind a house. He was looking for direction from the Commission. Dennis read the regulations in Article 7, subparagraph 7.6, of the local regulations of the Conservation Commission regarding beach cleaning. The Commission discussed the regulation, including how much could be removed without altering or damaging the resource area. The Commission confirmed the intent of the regulation that a small amount of seaweed or debris could be removed, ideally by hand, or reasonable traditional uses would be allowed without its permission, but the removal of large quantities of seaweed would not be permitted. Brian will advise the potential property owners of the Commission's interpretation of the regulation.

Aquaculture Order of Conditions: Dennis found out from a member of the Truro Conservation Commission that it refused to consider the Town of Provincetown's aquaculture project because of a lack of information. Dennis reminded the Commission that he had been looking for the opinion of the Center for Coastal Studies, or other relevant organization, to assure the Commission that the project would not harm whales, seals or turtles. He asked what other Commissioners thought. The issue was discussed, however the vote on the Notice of Intent has already been taken. The Commission decided to monitor the project closely for any problems that may arise.

B-Street Garden Update: Lynne wanted clarification of the Commission's role vis-à-vis the B-Street Garden Advisory Group as several problems that have caused divisions in the Group have arisen during the past two years. She suggested re-organization and re-structuring. The Commission discussed the issue. Dennis requested Brian collect all information regarding the Advisory Group for the Commission's review. David Hale, the Commission's liaison to the Group for the past two years should be present at the review. Dennis has consulted with Sharon Lynn and David Gardner about the procedure for dealing with the divisive issues, which include conflicts of personality, and will speak with Ms. Lynn again before the Commission acts. Brian reported that Bernie Piantedosi, the electrician, bought a back-up pump and battery pack for the Garden. He is looking for an appropriation of money for payment of those items. ***Dennis Minsky moved to appropriate the sum of \$2000 for pump parts purchased by Bernie Piantedosi for the B-Street Garden from the B-Street Garden Fund, Lynne Martin seconded and it was so voted, 4-0.***

The Executive Session is cancelled because of a noticing issue.

The November 6, 2012 Public Hearing is cancelled because of Election Day and rescheduled for November 13, 2012.

There is no report on dump mowing.

There has been no mitigation yet for any of the problems identified by the Shank Painter Pond Study.

On-going issues for the Commission: boats on the beach, kayaks at the moors and social trails.

**ADJOURNMENT:** *Lynne Martin moved to adjourn at 8:15 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Conservation Commission at their meeting on \_\_\_\_\_, 2012

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2012  
Dennis Minsky, Chair