

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
December 4, 2012
6:30 P.M.

Members Present: Dennis Minsky, David Hale, Barbara Prato and Mark Irving.

Members Absent: Lynne Martin (excused).

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

Chair Dennis Minsky called the Public Hearing to order at 6:34 P.M.

PUBLIC STATEMENTS:

None.

MINUTES: Postponed.

Certificate of Compliance

Application by **Kathleen Cote**, represented by **Coastal Engineering Co., Inc.**, under the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and the Provincetown Wetlands By-Law, Chapter 12 for a **Certificate of Compliance** for work conducted under DEP file number SE 58-0485 for the property located at **19 Commercial Street** in Provincetown. No one appeared for the request. A letter was submitted by Coastal Engineering Co., Inc. attesting to the completion of a final inspection at the property and that the work had been completed in substantial conformance with the plan entitled, "Site Plan for Proposed Building Modifications", dated 9/9/10, specifications and an Order of Conditions issued on November 2, 2010. Brian has made a site visit to confirm compliance.

Documents Submitted: WPA Form 8A, a statement of compliance from Coastal Engineering Co., Inc. and a reproduction of a check for the filing fee.

David Hale moved to grant the request for a Certificate of Compliance under the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and the Provincetown Wetlands By-Law, Chapter 12 for work conducted under DEP file number SE 58-0485 for the property located at 19 Commercial Street, Barbara Prato seconded and it was so voted, 4-0.

Request for Determination of Applicability

Application by **Tadeusz** and **Grazyna Mleczko** for a **Determination of Applicability** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12. The applicant seeks approval for site work to include building a storage shed and landscaping at the property located at **34 Snow's Lane** in Provincetown.

Presentation: Tadeusz Mleczko appeared to present the application. The applicant seeks to build a storage shed measuring 12' by 24'. The shed will be a mock replica of the shell of the existing house on the property. The shed will include a roof with asphalt shingles and walls with white cedar shingles and will be in compliance with construction requirements in a 110 mph exposure B wind zone. The closest point the proposed shed will be to the isolated wetland abutting the property is 45'.

Documents Submitted: A project description, a plot plan, dimensional drawings of the proposed shed and photographs of the area where the proposed shed will be located.

Public Comments: None.

Commission Discussion: The Commission was concerned about the proximity of the shed to the wetland and the fact that the area had not been previously disturbed or cultivated. The applicant stated that the area used to be cultivated, however it is currently overgrown. The Commission asked the applicant if he was willing to move the shed farther away from the wetland and to plant native species in the area between the shed and the wetland.

David Hale moved to grant a Negative #3 Determination under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12 for site work to include building a storage shed and landscaping at the property located at 34 Snow's Lane with the Standard Order of Conditions and with the Special Conditions that the closest point of the new shed be located no closer than 31' from the isolated wetland and that an area located approximately 6' from the corner of the shed and the isolated wetland be replanted with native species to be determined by the Conservation Agent, Barbara Prato seconded.

The Commission discussed a procedural question.

David Hale amended his motion to add that the catalpa tree be removed from the property.

The motion was so voted, 4-0.

Request for Determination of Applicability

Application by the **Kenneth Fulk** for a **Determination of Applicability** under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12. The applicant seeks approval for site work to include the repair of a foundation at the rear of the building on the property located at **471 Commercial Street** in Provincetown.

Presentation: Deborah Paine appeared to present the application. The applicant seeks to perform foundation repair work and subsequently fill in an excavated area on the water side of the property. The sunroom located on the back of the structure will be supported and the roof over the sunroom replaced. Fill will be brought in via a small dump truck to the end of the driveway where a bobcat will pick it up and dump it into the hole at the foundation. Protocols will include tarps being placed on the ground, a cessation of work when it's windy and the clearing of debris daily. The limit of work is delineated on the site plan and a silt fence will be placed along that limit.

Documents Submitted: A WPA Form 1, a site plan by William N. Rogers, II, dated November, 2012, a memo from Deborah Paine to the Commission detailing construction protocols for the project and photographs of the structure's foundation.

Public Comment: George Bryant stated that approximately a dozen trees, including a linden tree, were removed from the property without permission from the Commission. A large linden tree, 16" in diameter, in the setback area on his property was removed as well.

Commission Discussion: The Commission asked Ms. Paine for specifics of the work to be done on the foundation. Some work will be performed in the interior of the structure and minor roof work on the street side of the structure. It was brought to the attention of the Commission that at least two large trees were removed from the property. Ms. Paine replied that the Commission would have to ask the property owner about the tree at the property. The Commission discussed the removal of the trees and what mitigation it could require of the applicant. Brian suggested

that the tree issue be separated from the RDA. Ms. Paine thought that the applicant would be amenable to submitting a landscaping plan for the property.

David Hale moved to grant a Negative #3 Determination under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40 and the Provincetown Wetlands By-Law, Chapter 12 for site work to include the repair of a foundation at the rear of the building on the property located at 471 Commercial Street with the Standard Order of Conditions and with the construction protocols as detailed in a December memo from Deborah Paine to the Conservation Commission, Mark Irving seconded and it was so voted, 4-0.

Notice of Intent

Application by the **Noah Santos**, represented by **Donald Munroe**, of **Coastal Engineering Co., Inc.** 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 scope of work will include expansion of a current marina by extending a wharf 216 feet, adding an 8 foot by 617 foot pile-supported pier and moving an existing float system to deeper water at the property located at **131A Commercial Street** in Provincetown.

Presentation: Donald Munroe and Noah Santos appeared to present the application. The applicant seeks to expand the existing licensed/permitted water-dependent use at the property. There is a need for a larger facility in this part of Town. The expansion includes lengthening the existing wharf that was licensed in the early 1900s. Also included in the request is the addition of an 8' by 617' pile-supported pier in order to take the existing float configuration to deeper water to comply with the Department of Environmental Protection and the Army Corps of Engineers requirements to be in at least 2.5' of water during low tide. Mr. Munroe stated that the design has addressed the issue of eel grass and shellfish. He and Mr. Santos would gladly answer any questions that abutters, or other members of the public, and the Commission may have, including the seeming lack of information on the application regarding certain issues. The resource areas involved in this project are land under the ocean, land containing shellfish and a coastal beach. Each of these interests of the Wetland Protection Act are addressed in the Performance Standards Narrative submitted and the factors related to those interests, including water circulation, water quality and sediment distribution. CCH-treated materials will not be used in the pilings so no pollutants will be introduced into the water and the project will maximize the distance between pile bents to minimize the effect on water circulation and water quality. The diameter and square footage of the piles will minimize the shading effect on eel grass beds. The proposed height of the pier, 15', will maximize the ability of sunlight to penetrate the water surface so that eelgrass will be able to grow. Also, by moving the pier out to deeper water, turbidity, which negatively impacts the growth of eel grass, can be avoided. In order to protect shellfish, DEP requires docks to be at least 4' above grade and the project proposes 15', with the lowest supporting member being 14'. This is well above the mean high water line and will minimize any effect the pilings would have on water circulation and turbidity in the area.

Documents Submitted: A Notice of Intent application filing package from Coastal Engineering Co., Inc., a letter from E. James Veara, Esq., dated 11/30/12 and a letter from DMF, dated 12/4/12.

Public Comment: E. James Veara, Esq., on behalf of his client who is a direct abutter, spoke against the project. Mr. Anderson is concerned about the impact on his property as it relates to storm damage, flooding and erosion. Alfred Pickard, who owns an abutting boatyard, was concerned about losing access to his railway from the water.

Commission Discussion: The Commission stated that the scope of the project is large and the Commissioners did not have the level of expertise to adequately assess the veracity of the information. The Commission would like to the time to discuss the project further and seek the advice of an outside consultant prior to making a decision. Dennis reviewed Article 9 of the local regulations pertaining to the hiring of outside consultants.

Mark Irving moved to request the applicant provide the Conservation Commission with a cost estimate of the project for the purposes of hiring an outside consultant pursuant to Article 9 of the local conservation regulations, Dennis Minsky seconded.

The Commission discussed what information it would like from a consultant.

The motion was so voted, 4-0.

The public portion of the hearing will remain open. The applicant requested a continuance to the February 5, 2013 Public Hearing.

Barbara Prato moved to grant the request for a continuance to the February 5, 2013 Public Hearing, Dennis Minsky seconded and it was so voted, 4-0.

Administrative Review

Application by the **Chris Fiset**, represented by **SITEC Environmental**, under the Provincetown Wetlands By-Law, Chapter 12. The scope of work will include the gifting of two lots of land for conservation purposes, said lots being shown as A and B on Creek Road, being approximately 5,024 sq. ft. +/- and 5,019 sq. ft. +/- and the creation of habitat according to determinations made by the Massachusetts Natural Heritage and Endangered Species Program.

Presentation: Rod Gaskell and Chris and Donald Fiset appeared to discuss the Review. The applicant seeks to gift Lots A and B on Creek Road from Donald and Robert Fiset to the Town of Provincetown, an area of approximately 10,000 sq. ft. MESA determined that the project would not result in a “take” of state-listed species. Mr. Gaskell provided information related to the habitat on the property. He explained that the spadefoot toad has been seen in this area, but not specifically on the lots in question. After a property survey with a spadefoot toad expert, it was determined that an open sandy area on the southeast corner of the property was most likely a habitat area for the toad. However, the actual breeding area for the toad is to the southwest, behind the horse farm across the street. This situation would place the toad in danger because of the necessity of passing over 400’ of asphalt or trying to get through the development. The proposal to solve the issue, which was approved by Natural Heritage, is to re-create and expand the toad’s habitat in a contiguous area to the southwest of the property. Natural buffers will be maintained on the southeast and northeast sides to prevent the movement of the toad in these directions, and pitch pine and beach grass, which are favorable to the movement of the toad, will be planted on the western side of the property.

Documents Submitted: A cover letter from Attorney Christopher S. Fiset, dated 11/15/12, a letter from the Division of Marine Fisheries, a proposed deed, a Plan of Land prepared by SITEC Environmental, a proposed Acceptance of Deed and a proposed Approval by the Provincetown Board of Selectmen.

David Hale moved to accept the deed for the gift of Lots A and B on Creek Road from Donald and Robert Fiset for conservation purposes, Barbara Prato seconded and it was so voted, 4-0.

The Commission signed the deed.

The Commission discussed the 2013 meeting schedule. The August 20th date was revised to August 27th and the November 5th date was changed to November 12th and the November 19th meeting was cancelled.

DISCUSSION:

Browne Street pipe:

No new information.

Herbicides and Pesticides:

Catherine Russo and a group of concerned citizens are meeting tonight to discuss the issue. Dennis explained to them that the Commission could not pass a regulation, however it could direct the Town to ban the use herbicides and pesticides on Town property.

Mowing at the Transfer Station:

Brian e-mailed Ray Duarte who directed him to e-mail Scott Bronson.

Boats on the beach:

No new information.

MINUTES: November 13, 2012 – *Dennis Minsky moved to approve the language as written, Barbara Prato seconded and it was so voted, 4-0.*

October 16, 2012 – *Dennis Minsky moved to approve the language as written, Mark Irving seconded and it was so voted, 4-0.*

October 2, 2012 – *Dennis Minsky moved to approve the language as amended, Barbara Prato seconded and it was so voted, 4-0.*

The Commission discussed 471 Commercial Street and the removal of trees from the buffer zone. *David Hale moved to direct the Conservation Agent to issue a Violation Notice to the owner of 471 Commercial Street for the removal of trees from the buffer zone, Barbara Prato seconded.*

The Commission discussed mitigation and will require a list of species and diameters of the trees removed from the home owner. The Commission will discuss mitigation after receipt of that information.

The motion was so voted, 4-0.

The Town received a state PARC grant for the campground.

Brian received a letter that the Open Space Plan was conditionally approved, however they need some corrections and more information from the Town.

ADJOURNMENT: *Mark Irving moved to adjourn at 8:56 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Conservation Commission at their meeting on _____, 2013

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2013
Dennis Minsky, Chair