

# PROVINCETOWN CONSERVATION COMMISSION

February 26, 2008

6:30 P.M.

**Members Present:** Dennis Minsky, Elaine Anderson, Dieter Groll, Lynne Martin and David Hale.

**Members Absent:** None.

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

## PUBLIC HEARING

Co-Chair Dennis Minsky called the Public Hearing to order at 6:44 P.M.

**PUBLIC STATEMENTS:** None.

**MINUTES:** February 12, 2008 – Regular Session - *Elaine Anderson moved to approve the language as amended, Dennis Minsky seconded and it was so voted, 4-0-1 (David Hale abstaining).*  
Executive Session - *Elaine Anderson moved to approve the language as written, Dennis Minsky seconded and it was so voted, 4-0-1 (David Hale abstaining).*

## NEW BUSINESS:

### Notice of Intent

Application by **David Guertin, Provincetown Department of Public Works**, represented by **Environmental Partners Group**, 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 applicant proposes to do work for the capping of an historic dump onsite at the property located at **90 Shank Painter Road**, in Provincetown.

**Presentation:** David Guertin, DPW Director, Mark White and Carter Fahey, both of Environmental Partners Group, appeared to present the application. Mr. Guertin stated that the DPW, with the permission of the Board of Selectmen, intends to use its own field force to perform the work and the procedure will mirror the activity of the closure of the other old burn dump that was done to make way for the wastewater treatment plant. Mr. White explained that since the property in question is the site of an old burn dump, it requires remediation under the Massachusetts Contingency Plan. This program consists of having the material at the site consolidated in order to maximize the usable area at the site. The capping system will involve the use of a geotextile fabric underneath 6 inches of intermediate-permeability soil material, 6 inches of sand bedding layer, an impervious bentamat capping material, 9 inches of sand drainage and a 9 inch vegetative layer on top. The footprint of the capping system is outside of the 100' buffer zone. The Town intends to place hay bales and silt fencing at the edge of the limit of work activities.

Mr. Fahey discussed a letter from the Natural Heritage & Endangered Species Program in regard to the project, which stated the conditions that they would require the project to follow. The NHESP is concerned about the inadvertent direct harming or killing of state-listed turtles at the site. They are requiring that the work occur during the turtles' active season, April 15-October 31<sup>st</sup>, and that prior to the start of work a qualified biologist search the work area for turtles and if any turtles are found, that they be removed to a suitable habitat outside of the work area. They also are requiring that the construction crew be watchful for the presence of turtles during work and if any are found, that they be

removed to a suitable habitat outside of the work area. The Town would like to begin the work earlier than April 15, and, according to Mr. Fahey, NHESP has agreed to allow the Town to start on March 15 and will issue a revised letter confirming their assent.

**Public Comment:** John Fay, an abutter, had concerns about the state of Province Road, which had already been damaged from work related to sewer installation, and about a retaining wall in the area. Mr. Guertin told Mr. Fay to contact him about those issues before work is commenced.

**Commission Discussion:** The Commission questioned Mr. Guertin, Mr. White and Mr. Fahey. Brian Carlson reminded the Commission that the DEP has not assigned a file number to the project. After discussing the project, the Commission requested that the applicant submit both a management plan for box turtles at the site and a revised letter from NHESP confirming their agreement to an earlier start date of March 15, 2008 for the project. The applicant requested a continuance until the March 11, 2008 hearing.

*Elaine Anderson moved to grant a continuance for the Notice of Intent for the property located at 90 Shank Painter Road, in Provincetown to the March 11, 2008 hearing, Dieter Groll seconded and it was so voted, 5-0.*

### Notice of Intent

Application by **Michael Leger, Airport Commissioner**, represented by **Jacobs, Edwards and Kelcey**, 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 applicant proposes to reconstruct the existing terminal apron at the property located at **176 Race Point Road**, in Provincetown. This case is continued until the March 11, 2008 hearing.

## **OLD BUSINESS:**

### Notice of Intent

Application by **Berg Family Trust, c/o Astrid Berg**, represented by **Woods Hole Group, 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 applicant proposes the reconstruction of an existing outer wharf restaurant and public accessibility improvement at the property located at **371-373 Commercial Street**, in Provincetown. Lynne Martin recused herself because of a conflict of interest.

**Presentation:** Pete Markunas appeared to discuss the application. He submitted a letter that discussed an onsite meeting that was held with Town Manager Sharon Lynn, DPW Director David Guertin,

Harbormaster Rex McKinsey, Mr. Markunas and the applicant, Astrid Berg. The Town has agreed to cooperate with the applicant in remedying the drainage issues at the property, which is impacted by drainage issues occurring at the abutting Town-owned lot. Instead of installing concrete steps at the end of the asphalt walkway as previously proposed, it was agreed that both the asphalt and concrete would be removed and a stone and rip-rap basin would be established commencing a few feet from the parking lot bulkhead. It was recommended, and agreed to by the applicant, that a handicap accessibility ramp could go over the stone/rip-rap in lieu of the proposed steps to the beach. It was also agreed that the open stone pavers would be used for the walkway. Another change in the proposed project is that a kayak rack will be placed on the beach instead of the previously proposed dinghy tie-ups. This change was at the request of the Harbormaster and would be the preference of the Harbor Committee. Also submitted was a Stormwater Management Plan for the property, a Project Narrative and a Construction Narrative for the project. The Stormwater Management Form, as required by the DEP, and requested by the Commission, was included with the Stormwater Management Plan packet submitted by the applicant. Mr. Markunas will keep Brian apprised of negotiations with the Town concerning protocol and funding for the additional expenses which the Town would cause the applicant in order to address additional items not in the original scope of the project. The final Stormwater Management Plan, which has been worked on cooperatively between the Town and the applicant, will be submitted to the Commission before construction begins.

**Public Comment:** None.

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

*Elaine Anderson moved the approve the Notice of Intent for the proposed reconstruction of an existing outer wharf restaurant and public accessibility improvement at the property located at 371-373 Commercial Street, in Provincetown with the standard conditions and with the conditions as stated in the following documents:*

- i. the Stormwater Management Plan, as may be amended, that the applicant and the Town have cooperatively written; and*
- ii. the Construction and Project Narratives as submitted by the applicant.*

*Dieter Groll seconded and it was so voted, 4-0.*

#### **Request for Determination of Applicability**

Application by **Joel Shaw (West Beach Club Condo Trust)**, represented by **Cape Associates, Inc.**, for a Request for 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 proposes site work for the construction of a 15' by 15' pressure-treated deck on the beach at the property located at **101 ½ Commercial Street**, in Provincetown. This case is continued until the March 25, 2008 hearing.

#### **DISCUSSION: Chapter 91 Amnesty License Application: 63 Commercial Street**

Brian Carlson reported on his conversation with Lou Gitto of DEP concerning this issue. The Commission's job is to confirm that there have been no changes in the footprint of that portion of the deck within the Chapter 91 jurisdiction and that there has been no change in use of the structure since 1984. The Commission discussed the property. Brian Carlson will do further research about the property in the files downstairs. This matter is continued.

#### **CORRESPONDENCE: Bill White's Motel**

The applicant has requested a continuance of his Request for a Determination of Applicability to the March 25, 2008 hearing. The Commission discussed the request.

*Dennis Minsky moved to request that the Commission's agent, Brian Carlson, notify the applicant that the Commission will agree to hear his Request for a Determination of Applicability on March 25, 2008, however he must re-notice the abutter's and he must submit plans for the proposed project, Elaine Anderson seconded and it was so voted, 5-0.*

#### **Stipulation of Dismissal:**

There was correspondence from Town Counsel that stated that the Stipulation dismissing the matter of *Winstanley v. Harris et.al.* with prejudice has been filed. A copy of the Stipulation was included.

#### **CONSERVATION COMMISSION STATEMENTS:**

Dieter Groll discussed the organization of Commission files. He suggested that the Commission might want to organize their files like the Zoning Board of Appeals. The Commission briefly discussed the issue.

Dennis Minsky briefly summarized the Work Session about the Shank Painter Sanctuary Project held earlier that evening. Brian has placed the matter on the agenda for hearing on March 11, 2008. Dieter brought up the issue of amending the RDA for the project and the Commission discussed the issue.

Dennis Minsky introduced Jack McMahan, who is interested in joining the Commission.

Brian Carlson handed out the proposed warrant article for amending the Provincetown Wetland Protection By-Laws for the spring Annual Town Meeting to be held in April of 2008. The Commission briefly discussed the amendments and made some minor changes. The Commission decided to hold a

meeting on Tuesday, March 4, 2008, to discuss the proposed warrant article in more detail.

The Commission discussed the status of the matter with Jon Nordahl and decided to discuss it in more detail at their next hearing on Tuesday, March 11, 2008.

**ADJOURNMENT:** *Lynne Martin moved to adjourn at 8:55 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Conservation Commission at their meeting on \_\_\_\_\_, 2008.

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2008

Dennis Minsky and Elaine Anderson, Co-Chairs