

**PROVINCETOWN CONSERVATION COMMISSION**  
*CAUCUS HALL*  
**May 13, 2008**  
**6:30 P.M.**

**Members Present:** Dennis Minsky, Lynne Martin, David Hale and Jack McMahon.

**Members Absent:** None.

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

**PUBLIC MEETING**

Chair Dennis Minsky called the Public Meeting to order at 6:32 P.M.

**PUBLIC STATEMENTS:** None.

**MINUTES: April 22, 2008 – Regular Session – Jack McMahon moved to approve the language as written, David Hale seconded and it was so voted, 4-0.**

**April 22, 2008 – Executive Session – Lynne Martin moved to approve the language as written, David Hale seconded and it was so voted, 4-0.**

**OLD BUSINESS:**

**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. The application is continued until the June 10, 2008 hearing.

**Notice of Intent**

Application by the **National Park Service – Cape Cod National Seashore** 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 renovations to an existing bike trail with work to include clearing of downed trees and brush, re-pavement of the trail, re-location of the bike trail at segments # 1-5, stabilization along the bike trail corridor, the construction of pull-offs, the removal and replacement of wood retaining walls and other work at the **Cape Cod National Seashore** in Provincetown.

Chair Dennis Minsky disclosed that he is currently an employee of the Cape Cod National Seashore, but feels he can render a fair decision and has no financial stake in the outcome of this matter.

**Presentation:** Lauren McKean and Chelsea Clark appeared to present the application. The purpose of the project is to renovate the 8-foot wide National Parks Service Province Lands Bike Trail in the Cape Cod National Seashore. An Environmental Assessment was completed in December of 2006, to define the proposed scope of the renovations and assess the impact on natural resource areas. Only segments #1-3, as shown on the maps submitted to the Commission, will be renovated, as the money for the remaining segments is not yet available. The Project Narrative included the project background, purpose, need and description, as well as the proposed construction mitigation, stormwater management and a list of state-protected species and habitats that will be protected during construction.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Ms. McKean and Ms. Clark. There is no Department of Environmental Protection number assigned to the project nor is there a response from Natural Heritage. The applicant requested a continuance until the June 10, 2008 hearing.

*Jack McMahon moved to grant a continuance until the June 10, 2008 hearing, Dennis Minsky seconded and it was so voted, 4-0.*

## **NEW BUSINESS:**

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

Application by **Doug Dolezal** and **Greg Welch** 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 applicants propose site work to include removal of a garage and an abandoned driveway and to build a two-family dwelling unit with an attached walkway within the 50' buffer zone of a wetland resource area at the property located at **89 Franklin Street**, in Provincetown.

**Presentation:** Doug Dolezal and Greg Welch appeared to present the application. Only a small portion of the parcel lies within the 50' buffer zone. There is an asphalt public way that separates the property from the wetland. The garage structure sits within the buffer zone, as does the walkway that grants access to the building on site and an overgrown, deteriorating driveway. The applicants propose to build two-family structure outside of the buffer zone. The applicants also propose to retain as many existing, mature trees on the site as possible, to plant native species and to construct a pervious walkway where the garage and the driveway currently exist.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Dolezal and Mr. Welch.

*Dennis Minsky moved to grant a Negative #3 Determination with the standard conditions and with the following conditions, which will be reflected in the final plans for the project:*

- *dry well or drip wells will be installed on site where needed;*
- *permeability will be increased on the site with the use of appropriate materials on any proposed walkways or driveways;*
- *the grading that will take place at the site will lessen potential run-off towards the wetland resource area;*
- *sedimentation barriers will be installed prior to the start of construction; and*
- *only native plantings will be used.*

*Jack McMahon seconded and it was so voted, 4-0.*

### **Notice of Intent**

Application by **Lisa Gledhill** and **Debbie Blanton** 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 proposed work includes the elevation of an existing house to comply with FEMA standards and replacement of an approximately 400 square feet addition at the rear of the house at the property located at **124 Commercial Street** in Provincetown. The applicants requested a postponement until the June 10, 2008 hearing. Brian Carlson has requested that the applicants submit a power of attorney from the property owner giving them permission to move forward with the application.

*Dennis Minsky moved to grant a postponement until the June 10, 2008 hearing, Jack McMahon seconded and it was so voted, 4-0.*

### **Request for Extension Permit**

Request by **David Martin** represented by **Cape Associates, Inc.** for a **Request for Extension Permit** to an Order of Conditions under DEP Number SE 058-0386 issued on July 18, 2005 under the

Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40 and the Provincetown Wetlands By-Law Chapter 12 for work at **47 Commercial Street** in Provincetown.

Cape Associates, Inc. has submitted a letter to the Commission requesting an Extension Permit for an additional two years.

***Dennis Minsky moved to grant an Extension Permit to an Order of Conditions for the property located at 47 Commercial Street, David Hale seconded and it was so voted, 4-0.***

Dennis Minsky inquired of the Commissioners if any of them objected to taking the two Discussion topics out of order and none objected.

**DISCUSSION: Project at 49A Commercial Street** (*continued from April 22, 2008*)

**Presentation:** Attorney Chris Carroll and Tim Trani appeared to discuss the project. Mr. Trani submitted photographs showing evidence of the continued violation of and disregard for the Order of Conditions assigned to the project. Attorney Carroll and Mr. Trani both contend that the site is still being contaminated with lead paint, petroleum products and housing and construction debris. They are requesting that the Commission issue a Stop-Work Order, secure the site and inform the owner of the property that he needs to conform to the existing Order of Conditions for the project or that he will need to appear before the Commission in order to obtain an Amended Order of Conditions. In addition, they request that the Commission hire an independent consultant, to be paid for by the owner of the property, to test the soil for lead or other chemical contamination.

**Commission Discussion:** The Commission questioned Attorney Carroll and Mr. Trani. Dennis and Brian had made another site visit and spoke to Fred Ambrose who is in charge of the project. They spoke with Fred Ambrose, who is in charge of the project, and questioned him concerning the issues that Attorney Carroll and Mr. Trani had raised with the Commission at their last hearing. Several of the Commissioners had made site visits and stated that the site was a mess and observed several of the Orders of Conditions for the project being violated or ignored.

***David Hale moved to authorize Brian Carlson to issue a Stop-Work Order on the project and inform the property owner of the following:***

- *he must abide by the existing Order of Conditions for the project, specifically in regard to straw bales being placed at the limit of work, a dumpster be located at the site and a barge be placed on the beach as a staging area for construction work;*
- *he will be required to pay the Commission to hire a licensed soil professional to have the soil, beach and other materials on the site tested for lead or other chemical contaminants; and*
- *either he, or his contractor, Fred Ambrose, will be required to appear at an emergency show-cause hearing to be held by the Commission.*

***Lynne Martin seconded and it was so voted, 4-0.***

**DISCUSSION:**

**Rogue Wave Proposal** – Steve Aubrey has consulted with Paul Tasha and others familiar with the area in question that were recommended to him by Dennis. He anticipates finishing the work by the end of May. He is currently working with Rex to find a boat to use for his survey.

**SHANK PAINTER POND WILDLIFE SANCTUARY PROJECT UPDATE:**

The project is almost finished. There are still piles of soil in the hollow that need to be hauled off the site. There is someone who wants to take the soil. The fencing and benches will be installed shortly. An irrigation system is still being developed.

**COMMISSION BOARD STATEMENTS:**

Dennis Minsky spoke about Mill Pond and the sedimentation issue. He would like to start a discussion with the Seashore about this issue and will mention it to John Portnoy and Carrie Phillips.

Lynne Martin commented about 2 Commercial Street and the planting that is supposed to be taking place. She said that it looked like nothing had been done at the site. Brian will contact Greg Morris or Rose Kennedy about the project. Dennis would like to do a site visit.

**ANY OTHER BUSINESS:**

333R Commercial Street: There are boats and trailers being stored on the beach at this location. Dennis commented that this is a traditional use of the beach, but that it does have an impact on the resource area that is under the Commission's jurisdiction. He suggested that the Commission may want to think about having more control over what happens on the beach and that they need to make sure that beach grass growth is not being inhibited or destroyed when boats and trailers are on the beach.

Dennis also raised the beach cleaning issue. Brian will put the issue of mechanical beach raking on the agenda. Currently that activity would be a violation of one of the Commission's regulations.

Elaine Anderson is no longer a member of the Commission. The Commission discussed making Jack McMahon a permanent member of the Commission or his remaining an alternate. Brian will let the Commission know what the remaining terms for Elaine and Dieter are. The Commission discussed whether Jack should stay as an alternate for a longer period of time or take over either Dieter or Elaine's shorter, remaining terms.

Frank Vassello is considering joining the Commission, but he needs to think about it.

*Chair Dennis Minsky moved to go into Executive Session at 9:10 P.M. to discuss pending litigation, polling each Commissioner separately for their vote. The vote was unanimous.*

**ADJOURNMENT:** *Lynne Martin moved to adjourn at 9:20 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, Chair