

PROVINCETOWN CONSERVATION COMMISSION

May 17, 2005
6:30 P.M.

Members Present: Dieter Groll, Elaine Anderson, John Santos, George Bryant, Brian Carlson and Paul Tasha (departed at 9:50 P. M.).

Members Absent: None.

Others Present: Doug Taylor (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

Chair Dieter Groll called the meeting to order at 6:30 P.M.

PUBLIC STATEMENTS:

Peter Souza urged the Conservation Commission to vote on a wetland management plan. In particular, he was concerned that dirt bikers have started to utilize the area around Clapp's Pond now that the weather was getting better. They are not allowed to use the area per the town wetland by-law.

Celine Gandolpho asked if any member of the public could comment on a case being heard by the Commission.

Determination of Applicability (continued from November, 2004)

Application by Reggie Donoghue, of Coastal Engineering Company, Inc., on behalf of Robert Gebelein 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 confirmation of resource area delineation for the property located at 438 Commercial Street, in Provincetown. Dieter Groll, Elaine Anderson, Paul tasha and George Bryant sat on the case.

Presentation: Reggie Donoghue and Robert Gebelein appeared to present the application. The independent environmental consultant that the applicant had hired per the request of the Commission, Paul Shea, determined the land in question was not an isolated or vegetative wetland subject to flooding. This report confirmed the initial determination as presented to the Commission last fall.

Public Comment: Robert Griffith, an abutter, disagreed with Mr. Shea's report and stated that he believed that the pooling on the property was present for longer periods of time than Mr. Shea's report stated. Peter Souza said that if there is a vernal pool on the property that the Commission should do a study of the area. He reminded the Commissioners that just because there was an abundance of brush present on the site that didn't mean that a vernal pool was not present, as vernal pools can be dry for years. Paul Shea said that in his opinion that neither of the two wet spots on the property held enough water to be vernal pools.

Commission Discussion: The Commission briefly discussed the issue of ownership of the property in question. It was decided that due to the questions and uncertainty surrounding this issue, only Parcel 1 would be discussed, even though the application included a second parcel as well. The Commission questioned Mr. Donoghue and Mr. Gebelein about the application and Mr. Shea about his report. The Commission requested that an accurate site plan showing the true metes and bounds be submitted by the applicant. The Commission's concerns included coastal storm flowage and flooding and the inundation of ground or surface water at the site and the question of whether a vernal pool may be located there.

Elaine Anderson moved to grant a Positive #2b Determination for Parcel 1, Paul Tasha seconded.

Elaine Anderson amended her motion to include a Positive # 2b and #3 Determination, Paul Tasha seconded and it was so voted, 3-1 (George Bryant opposed).

Notice of Intent (continued from previous meetings)

Application by Martha Roderick on behalf of M.R. Realty Trust 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 for the property located at 72 West Vine Street in Provincetown. Dieter Groll, Elaine Anderson, John Santos, and Paul Tasha sat on the case.

Presentation: Paul Shea, by Independent Environmental Consultants, and William N. Rogers II appeared to present the application. The applicant obtained Board of Health approval for the septic system as per the request of the Commission. The applicant proposes to use an alternative innovative system because of the septic system's location within the 100' buffer zone. No other changes have been made to the project.

Public Comment: Celine Gandolpho spoke against the application, questioning the location of a disposal system within the 100' buffer zone. Peter Souza informed the Commission that a spadefoot toad had been found in the area and that further development could be endangering that species habitat as well as that of others.

Commission Discussion: The Commission questioned Mr. Shea and Mr. Rogers. The issue of the septic system capacity (8 bedrooms) was of particular concern to the Commissioners. They felt that because of that number there was a potential for even more structures to be erected on the site in the future. After much discussion, the Commission concluded that it was not in the Town's best interest to have any construction within the 100' buffer zone in this area. Neither did they feel that this project fell within the intent of the wetlands by-law that had been passed in good faith at Town Meeting.

Paul Tasha moved to deny the application as presented, John Santos seconded and it was so denied, 3-0-1 (Dieter Groll abstain).

Notice of Intent

Application by Felco Engineering, Inc., representing Michael Winstanley 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 for the property located at **781 Commercial Street** in Provincetown. Dieter Groll, Elaine Anderson, John Santos, George Bryant and Brian Carlson sat on the case.

Presentation: Attorney E. James Veara and Alan Cabral, of Felco Engineering, appeared to present the application. Mr. Cabral stated that the work limit to be delineated will be in tight proximity to the building on the site and will be bounded by silt fencing and that any disturbed vegetated areas would be re-vegetated. Further, the materials to be used in the project will be stored on the street side of the property and there will be a dumpster on site for refuse containment.

Public Comment: Gordon Peabody, speaking for several abutters who could not attend the hearing, spoke about the insufficiency of the evidence in the file that he had examined. He stated that a thorough and detailed protocol should have been submitted by the applicant. Attorney Brian Wall, representing two abutters, spoke against the application and also cited the absence of critical information in the application submitted by the applicant. He elaborated on what he alleged the insufficiencies were and said that further study needed to be done by an environmental consultant hired by the Commission, including the verification of the boundaries on the site plan. Celine Gandolpho, an abutter, spoke against the application, stating that she thought that as a result of the project, there would be disturbances to animals that live in the area and pollution to swimmers who use that area of the bay. Attorney Veara then responded to some of the comments made by the public.

Commission Discussion: The Commission questioned Attorney Veara and Mr. Cabral. And in particular discussed the need for a construction protocol. The Commission then requested the following

information from the applicant;
information about the coastal bank delineation on the site;
a construction protocol in regard to the pilings to be used;
a vegetation plan;
information as to how stormwater drainage will be managed;
a diagram of drainage flow on the site; and
building elevation plans.

The applicant requested a continuance until the June 7, 2005 hearing.

Notice of Intent

Application by Davie Martin represented by David Lajoie, of Felco Engineering, Inc., 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 for the property located at **47 Commercial Street** in Provincetown. Dieter Groll, Elaine Anderson, John Santos, George Bryant and Brian Carlson sat on the case.

Presentation: Robert Valois, designer, Alan Cabral, of Felco Engineering, Inc., and Attorney E. James Veara appeared to present the application. Amy St. James, stenographer, was also present for the applicant. The boathouse, one of three buildings on the site, is having a concrete foundation put underneath it. Concrete piles will be placed on a concrete base. There will be a crane on a barge used to lift the house. The holes for the foundation will be dug by hand and the dirt wheel-barreled off the site.

Public Comment: **None.**

Commission Discussion: **The Commission questioned Attorney Veara, Mr. Cabral and Mr. Valois.**

Elaine Anderson moved to approve the 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 for the property located at 47 Commercial Street in Provincetown, with the following conditions:

the engineered piling design be submitted and approved by the Conservation Commission or the Conservation Agent before construction begins;
construction protocol numbers 1-10 be incorporated in the conditions requested of the applicant;
access be from the West End parking lot; and
non-arsenic treated decking material be used.

Brian Carlson seconded and it was so voted, 5-0.

NEXT MEETING

The next meeting will be on June 7, 2005.

ADJOURNMENT:

Brian Carlson moved to adjourn at 10:45 P.M.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2005
Dieter Groll and Elaine Anderson, Co-Chairs