

**PROVINCETOWN
CONSERVATION COMMISSION
JUDGE WELSH ROOM
MAY 19, 2015
6:30 P.M.**

Members Present: Dennis Minsky, Lynne Martin (arrived at 7:40 P.M. and left at 8:12 P.M.)
David Hale, and Barbara Prato.

Members Absent: Mark Irving (excused).

Others Present: Austin Brandt (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

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

PUBLIC STATEMENTS:

None.

NEW BUSINESS:

Presentation by **Alice Hintermann** and **Natalie Wall** on **Americorps Cape Cod's** service in Provincetown:

Alice Hintermann and Natalie Wall appeared to review Americorps projects in Provincetown and Barnstable County and about Americorps in general. A report of Barnstable County's Americorp Cape Cod, 2013-2014 was submitted to the Commission. This is Americorps' 16th year of service to Cape Cod communities. They will be building new beds at the B-Street Garden this week. The Commission thanked them for their service to Provincetown.

Discussion and possible issuance of fine for work being conducted at 31 Point Street in Provincetown:

Kevin Bazarian, William N. Rogers, II and Lyn Plummer appeared to discuss the issue. Mr. Rogers summarized the work that has been done at the property. The excavation contractor hired to install sheeting at the property cleared vegetation from the hill, contrary to the instructions given to him. When hired, he had stated that he was capable of installing the sheeting, however he was not able to complete the job. Mr. Rogers said that there was also an issue with the concrete retaining wall that had been installed on the site, as it is structurally inadequate to support the hill and back-filling behind it would be impossible. He said that Mr. Bazarian and Ms. Plummer had asked him to figure out whether a structurally adequate retaining wall could be installed behind it. In his opinion, a professional planting plan needed to be done for the site. Ms. Plummer said that an initial planting plan had been done and that they intended on implementing that plan.

The Commission questioned Mr. Bazarian, Mr. Rogers and Ms. Plummer.

Public Comment: David Sanford, a direct abutter, spoke in opposition to the project detailing his observations regarding the excavation of the site and the erosion of the since the beginning of

the project. His attorney, Eliot Parkhurst, has submitted a letter to the Commission outlining Mr. Sanford's opposition to the project. Tom Walter, a direct abutter, spoke in opposition to the project. He questioned whether the project needed to be reviewed by the Planning Board given the location of the property in a high elevation area.

The Commission discussed the project. The Commission will direct the Conservation Agent to consult with the Building Department in regard to the high elevation district issue raised by Mr. Walter. Dennis said that the Commission did have jurisdiction over the property pursuant to Chapter 12 of the Provincetown By-Laws and that the issue was whether work had been performed that had not been permitted. At a hearing for the project's Administrative Review, held in August of 2013, the Commission had required that the vegetation at the back of the house should remain the same and that the Conservation Agent would approve a detailed planting plan. The Commission noted that a violation had occurred because the vegetation had been cleared. Ms. Plummer clarified that there were supposed to be two rock retaining walls built on the property and the vegetation above the top wall was supposed to be left untouched. The Commission is going to require some kind of restoration of the vegetation to stabilize the dune and that was needed as soon as possible. The Commission will also require that an expert landscaping architect be hired to devise a planting plan to stabilize the dune. The Commission discussed the violation and a restoration plan.

Dennis Minsky moved to impose a Type 4 violation for work done beyond the Order of Conditions for the property located at 31 Point Street, Barbara Prato seconded and it was so voted, 3-0.

The Commission wants immediate action for restoration and stabilization of the dune by a qualified professional landscaper using native plantings. The Commission considered the stabilization of the dune to be a priority and discussed this issue with Mr. Rogers and Ms. Plummer. The Commission discussed its options, including issuing an enforcement order with the requirement that a restoration plan be submitted. In addition, the Commission will stipulate that a restoration plan be submitted by a professional landscaper who will be approved by the Conservation Agent.

Dennis Minsky moved to impose an enforcement order on 31 Point Street and that a restoration plan for stabilizing the dune on the property, executed by a professional approved by the Conservation Agent, be submitted, Barbara Prato seconded and it was so voted, 3-0.

Discussion and possible issuance of enforcement order of violation of the Massachusetts Wetlands Protection Act and Provincetown By-Law Chapter 12 at 7 Commercial Street in Provincetown:

Austin explained the violation that occurred at the site. On May 11th, he received an anonymous report that a bobcat was pushing sand around on the beach, including up on a dune and cutting vegetation at the property located at 7 Commercial Street. He did a site visit where he spoke with representatives of the condominium association, who admitted that they had authorized the work, but claimed that they didn't know that the work required a permit. They also claimed that the cut vegetation was the result of the winter weather. The Commission discussed the issue. There were two violations that occurred; one of which was an alteration of the resource area without a permit and the other of which was the clear-cutting of *Rosa rugosa* on the property. The Commission

discussed the issue. There was a concern about who performed the work and whether they should have known that the work they were doing needed permitting.

Dennis Minsky moved to issue an enforcement order to the Delft Haven II Condominium Association at 7 Commercial Street, with the requirement that a Notice of Intent be filed after the fact in regard to the alteration of a resource area with a permit, David Hale seconded and it was so voted, 3-0.

Dennis Minsky moved to issue a Type I violation to the Delft Haven II Condominium Association at 7 Commercial Street for altering the beach with a machine without a permit, Barbara Prato seconded and it was so voted, 3-0.

Dennis Minsky moved to issue a Type I violation to the Delft Haven II Condominium Association at 7 Commercial Street for the alteration of dune vegetation, namely the wholesale cutting of Rosa rugosa on a dune, without a permit, Barbara Prato seconded and it was so voted, 3-0.

Administrative Review application by **Provincetown Harbor Committee** to conduct a one-time beach raking of the Ryder Street and Freeman Street beaches in preparation for the installation of beach mobility mats. The Harbor Committee seeks to use the beach rake to clean two beaches under the same conditions as the prior three-year pilot project. The activity will be performed once to clean and level beaches prior to Memorial Day weekend and prior to the installation of mobi mats. The Harbor Committee will report the finding and file a Notice of Intent for the activity at the Commission's June 2, 2015 meeting. Austin explained that he was working with the Harbormaster, Rex McKinsey, to file a Notice of Intent for this project. Mr. McKinsey originally had filed to extend the original Order of Conditions. But because those expired over a year ago, he needed to submit a new Notice of Intent with new Order of Conditions. Austin explained that this is a one-time request that would be done in accordance with the old Order of Conditions because of the time element and the need to put out the mobi mats before the Memorial Day weekend. The Commission discussed the project. The Commission noted work to be done in a resource area required a Notice of Intent and could not be approved through the Administrative Review process.

Dennis Minsky moved to deny the Administrative Review application by the Provincetown Harbor Committee to conduct a one-time beach raking of the Ryder Street and Freeman Street beaches in preparation for the installation of beach mobility mats, Barbara Prato seconded and it was so voted, 4-0.

Administrative Review application by **Austin Brandt** for the creation of additional plots at the **B-Street Garden** at **6R Brown Street** in Provincetown. David Hale recused himself because of a conflict of interest. Austin explained that this was an alternative proposal to the plan that was proposed at the last Commission meeting. This plan shows the proposed beds located outside the 60' buffer zone pursuant to the Conservation Restriction held by the Conservation Trust. The project involves the construction of five or six 8' x 12' garden plots similar to the existing garden plots, and four standing garden beds measuring approximately 3' x 7'. All work will be done

outside of the 60' buffer zone to the wetlands resource area as delineated by Safe Harbor and mandated by the Conservation Restriction on the properties.

Gordon Peabody, of Safe Harbor Environmental, appeared and submitted a preliminary report explaining how the wetlands delineation to establish the Conservation Restriction setback at the premises was accomplished. A 60' setback from the edge of the wetland to the proposed new bed installation was located on the property. He reviewed the report. Dennis recommended that the Conservation Agent work to have the CR line around the entire property permanently as a reference point as a place to start in the creation of a management plan for the property. The Commission discussed the issue.

David Hale, a direct abutter to the project, commented that in the CR Section C, there is a notice of approval wherein the grantee is required to notify the grantor at 60 days in advance of the activity taking place. He noted that that the Commission did not pay the \$50 filing fee and that Chapter 12 of the by-law had no provision for waiving of that fee. The Commission noted that customarily, Town entities did not pay filing fees to Town Boards. Austin explained that the written notice was not required in this case and that the fee could be waived by the Commission or the Conservation Agent and he would look in the regulations to find provision. He thought that the proper entity to question whether the CR was being followed was the Conservation Trust. The Commission discussed the Mr. Hale's objections. He does not object to adding new beds, but he would like to do it according the CR.

Dennis Minsky moved to approve the Administrative Review application by Austin Brandt for the creation of additional plots, six regular beds and four standing beds at the B-Street Garden at 6R Brown Street, as shown on a plan submitted by Safe Harbor Environmental in regard to the Conservation Restriction line, Lynne Martin seconded and it was so voted, 3-0.

Barbara Prato moved to direct the Conservation Agent to explore the cost of getting a wetland delineation for the entire property, Dennis Minsky seconded and it was so voted, 3-0.

MINUTES: May 5, 2015 – Dennis Minsky moved to approve the language as amended, Barbara Prato seconded and it was so voted, 3-0.

Austin informed the Commission that instead of a Negative Determination #3 for the Determination of Applicability related to the planting of beach grass should have been a Negative #2 Determination. The Commission will have to revise that decision at the next meeting.

ADJOURNMENT: Barbara Prato moved to adjourn at 8:15 P.M. and it was so voted unanimously.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2015

Dennis Minsky, Chair