

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

May 19, 2020

6:00 P.M.

Members Present Virtually: Alfred Famiglietti, Nathaniel Mayo, Robert Brock, Oriana Conklin, Brett McNeilly and Thomas Skinner.

Members Absent: Joseph Cooper (excused).

Others Present: Tim Famulare (Conservation Agent) and Ellen C. Battaglini (Recording Secretary).

Conservation Agent Tim Famulare introduced the remote participation meeting, called the roll and determined that a quorum was present.

Chair Alfred Famiglietti called the Public Meeting to order at 6:01 P.M. and reviewed the purview of the Commission.

Mr. Famulare explained how applicants and the public can view the meeting on PTV and participate by calling a number that will be shown on the screen. He reviewed the protocol of the meeting and requested that all phones be muted unless the individual is speaking. Mr. Famiglietti requested that no cross-talk occur amongst the meeting participants and that each identify themselves before speaking in order to avoid confusion.

1) **Public Comments:** David Gluck, an abutter to the project at 397 Commercial Street and the Town's new waterfront park, had concerns about both and asked questions about signage and access through the latter property to the beach. He said that people are using the park to access the beach and trampling beach grass. Mr. Famiglietti said that any questions about the project on the property located at 397 Commercial Street should have been asked at the previous meeting when the Commission discussed it and said his concerns about the waterfront park would be taken under consideration.

2) **Public Hearings:**

a) **CON-20-063 200 Route 6; various locations in Shank Painter Road, Browne Street, Commercial Street, and Freeman Street**

Notice of Intent filed by the **Town of Provincetown** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for upgrades to Provincetown Wastewater Treatment Facility (WWTF), including construction of a peak flow storage tank (PFST), below-grade effluent pump station, and other WWTF upgrades; and sewer collection system upgrades in multiple locations in downtown Provincetown to provide connections for additional parcels. Work to take place within Land Subject to Coastal Storm Flowage, NHESP Estimated and Priority Habitat, and a Buffer Zone to Bordering Vegetated Wetlands.

Presentation: Rich Waldo, Director of the Dept. of Public Works, Matt Ribeiro and Tom Touchet, of AECOM, and Rob Adams, chief engineer, were in the meeting to present the application. Mr. Waldo explained the need for upgrades and for the creation of additional sewer

capacity in the amount of 155,000 gallons of Title 5 flow in Town. He said that the new capacity will be spread over 4 existing priority categories and create a 5th category, voluntary connections that are not now available. Mr. Ribeiro gave an overview of the project, which includes the construction of a 400,000-gallon PFST and associated above-grade equipment, below-grade effluent pump station, below-grade valve vault, and associated piping at the WWTF property. Additional upgrades within the WWTF building will take place, including replacement of the existing filters and UV disinfection equipment and collection system upgrades such as the installation of sewer stubs, vacuum structures, and short sewer extensions to serve additional properties within existing sewer subareas. The vast majority of the work will be performed within paved roadways/paved areas, within 10' of the shoulder of existing roadways, or existing lawn/landscaped areas. A small amount of unavoidable impacts is proposed within previously vegetated areas. The proposed project activities at the WWTF site include site clearing and grading, construction of a gravel access road, construction of the PFST, rip-rap tank slope reinforcement, asphalt cutting, trench excavation, below-grade pump stations, valve vault, electric conduit, and pipe installation, backfilling, paving, and site restoration. The proposed project activities for the collection system upgrades include asphalt cutting, excavation, installation of sewer mains, stubs, vacuum structures, backfilling of trenches, and repaving. An approximate trench depth would likely be between 4 and 10' below grade, with some isolated sections reaching deeper depths. Excavated soil will be used to backfill trenches. Trenches will be backfilled to grade or covered with steel plates at the end of each day. Soil which is not immediately used for backfilling will be covered or surrounded by straw bales and a silt fence to prevent erosion or sedimentation of adjacent areas. All activities will be performed using heavy equipment. Site clearing, grading, and excavation will be kept to a minimum. The proposed PFST and associated equipment will result in a small amount of impervious surface; approximately 2300 sq. ft. for the concrete pads that the tank and associated equipment will be constructed on, as well as the concrete pad for the electrical control panel adjacent to the effluent pump station. No new impervious surfaces will be created for the collection system upgrades.

Mr. Touchet reviewed the resources areas and the environmental aspects of the project. He said that the western portion of construction activities associated with the PFST at the WWTF will be located within Estimated and Priority Habitat. The MA NHESP has reviewed a similar design for upgrades at the WWTF, which would have involved impacts to Estimated and Priority Habitat. All work will be within disturbed areas on existing roadways or right of ways within existing roadways. Paved areas disturbed by the construction activity will be repaved and disturbed vegetated areas that are not permanently impacted by the project will be reseeded with a grass seed mix and no work will be done within a 50' buffer zone or a wetland. Mr. Famulare called the Commission's attention to the NHESP letter from July of 2019, stating that the project, as proposed, would not result in a prohibited 'take' of state-listed rare species. Since the time of that determination, the project has been slightly revised and Mr. Touchet said he anticipated a similar 'no-take' decision.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Waldo, Mr. Touchet, Mr. Ribeiro and Mr. Adams. Mr. Famulare said that he would like to review and finalize the draft conditions, in anticipation that the letter from NHESP, determining a 'no-take', will be received before the next meeting. He reviewed the draft conditions. He proposed changing #6 to add wording about the

stormwater management report requirement, which he had neglected to include in the conditions, along with the operation maintenance plan, both of which will be incorporated into the conditions. He noted #14 regarding proposed new driveways and vehicle access areas being composed of crushed stone or shell or pervious pavers or gravel, which would prevent the gravel access road from being paved in the future. The Commission decided to continue the matter and will vote to approve the draft conditions at the next meeting.

Nathaniel Mayo moved to continue the Notice of Intent, CON-20-063, to the meeting of June 2, 2020 at 6:00 P.M., Oriana Conklin seconded and it was so voted by roll call, 6-0.

b) CON-20-058 **345A Commercial Street** (continued from the meeting of May 5, 2020)
After-the-Fact Notice of Intent filed by **Richard Baker**, on behalf of **Fish and Yee Condominium Association**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to reconstruct an existing deck and install new concrete footings. Work to take place within Land Subject to Coastal Storm Flowage and a Coastal Dune.

Presentation: Richard Baker, Oscar Millan, and Robert Nee were present in the meeting to discuss the matter. Mr. Famulare reviewed the project and why it has been continued. He explained that the contractors had initially submitted an Administrative Review application to replace a deck surface and a sill along the back of the deck where it joins the structure. However, when the deck was removed, it was found that the supports had to be replaced. Excavation for concrete footings was started, which was when Mr. Famulare issued a cease and desist order. The project, because of the additional work proposed, needed a Notice of Intent, which would be an After-the-Fact NOI because of the excavation having been started. It has been continued several times because it took some time for the applicant to get the plans and the appropriate narrative together and submitted. The deck is located in an unvegetated portion of a coastal dune and in a coastal flood plain. Mr. Baker explained the construction process and the design of the deck.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Baker and Mr. Nee about the deck framing plan. Mr. Famulare reviewed the draft Order of Conditions, noting #5, that the existing wood barrier along the southern edge of the deck as shown on the Deck Frame Plan shall not be flush with grade as indicated on the plan entitled, "Proposed Deck Reconstruction". In lieu of that condition, the wood barrier shall be open to allow floodwaters to pass under the deck and any design of same shall be approved by the Conservation Agent and the Building Commissioner prior to its construction. He also noted #6, that no vehicular access to the work area shall be made from the vegetated coastal dune or from the coastal beach and access will be from Commercial Street only. And #8, that no equipment, materials, or debris shall be stored on the coastal dune or the coastal beach. He addressed an email from Mr. Nee about a staircase accessing the second-floor deck from the first-floor deck, which he would like to extend further seaward, but still within the footprint of the old deck. Mr. Famulare said that was fine and that that kind of detail would not require a plan amendment, but a Special Condition will be added stating that no site alterations will occur beyond the footprint of the new deck.

Nathaniel Mayo moved to approve the After-the-Fact Notice of Intent, CON-20-058, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to reconstruct an existing deck and install

new concrete footings subject to the Special Conditions as amended, Robert Brock seconded and it was so voted by roll call, 6-0.

c) CON-20-042 361 Commercial Street (continued from the meeting of April 21, 2020) **Notice of Intent** filed by **Todd Perry** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to replace existing timber pile supports beneath an existing structure, renovate and elevate an existing structure, and to replace an existing deck and beach access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune, a Coastal Beach, and a Buffer Zone to a Coastal Dune and a Coastal Beach. There was a request from the applicant to continue the matter to the June 16, 2020 Public Hearing. ***Nathaniel Mayo moved to continue CON-20-042 to the Public Hearing of June 16, 2020 at 6:00 P.M. Oriana Conklin seconded and it was so voted by roll call, 6-0.***

3) **Request for Certificate of Compliance:**

a) CON-20-064 493, 495, & 495A Commercial Street (repair of steel sheetpile seawall). No removable stair has not yet been installed on the property. This matter is continued to the Public Hearing of June 2, 2020. ***Nathaniel Mayo moved to continue the Request for a Certificate of Compliance for CON-20-064 to the Public Hearing of June 2, 2020 at 6:00 P.M. Oriana Conklin seconded and it was so voted by roll call, 6-0.***

4) **Other Business:**

a) Discussion and possible adoption of M.G.L. c. 110G, regarding the use of electronic signatures by Commission members pursuant to Amendment 13-7 to the Massachusetts Deed Indexing Standards 2018, effective April 17, 2010. Mr. Famulare reviewed the law. The Commission briefly discussed the matter. If the Commission voted to approve this, said Mr. Famulare, the vote would be recorded at the Barnstable County Registry of Deeds. It would be an indefinite authorization and would cover electronic signatures in the future, even after the COVID State of Emergency had ended.

Nathaniel Mayo moved that the Provincetown Conservation Commission hereby recognizes and accepts the provisions of M.G.L. c.110G regarding electronic signatures and its members will henceforth execute documents either with electronic signatures or with wet ink signatures and that both will carry the same legal weight and effect, Oriana Conklin seconded and it was so voted by roll call, 6-0.

b) Discussion and possible delegation of authority to sign permits issued by the Commission to the Conservation Agent during the COVID State of Emergency. Mr. Famulare reviewed the issue. He said that other Conservation Commissions on the Cape have authorized their Agents to sign permits on their behalf. This would be a vote that would be recorded at the Registry of Deeds and referred to when a document is signed. Currently he said he is able to get signatures from Mr. Famiglietti and Ms. Conklin and if he could get one more Commissioner to sign, the Commission could forego this vote. Mr. Mayo and Mr. Skinner are available and volunteered to make themselves available in order to sign documents.

5) **Work Session:**

a) Review and approval of B Street Garden expenses: Mr. Famulare said that a squirrel's nest had to be removed from the shed. The cost would be about \$400. *Nathaniel Mayo moved to authorize the expenditure of \$400 to remove a squirrel's nest from the B Street Garden shed, Alfred Famiglietti seconded and it was so voted by roll call, 6-0.*

b) Discussion of possible conditions regarding temporary, seasonal use of Provincetown Harbor beaches for food and beverage service. Mr. Famulare reviewed the proposal from the Town's coalition to reopen restaurants. It includes allowing visitors to utilize proposed seating areas on the beach, with picnic tables and trash cans, to utilize when eating take-out food from Town restaurants during the COVID emergency. He said a more formal version of the proposal will come later. He would like the Commission's initial thoughts and concerns. The Commissioners expressed concerns about an increase in trash, so an increase in trash cans would be needed, as well as a regular maintenance schedule to empty those new trash cans and other trash cans on the beach. There would have to be an increase in vigilance regarding picking up dog waste and an increase in the supply of poop bags for that purpose in those designated areas. There should be no glass containers allowed on the beach. An increase in the public's awareness of beach grass via signage in order to avoid any disturbance to resource areas should be implemented. Mr. Mayo suggested that a trial in a small area, on a couple of beach areas, be conducted before the Commission approved the program in order to find out what kind of issues arise. Any restaurant that wanted to install seating on the beach would have to be aware of Chapter 91 issues, however Mr. Famulare said that the Commission did not enforce those regulations. The Commission discussed the topic and what it might look like. Mr. Famulare will have something more concrete at the next hearing.

6) **Approval of Minutes of May 5, 2020:**

May 5, 2020: *Nathaniel Mayo moved to approve the minutes as written, Oriana Conklin seconded and it was so voted by roll call, 5-0-1 (Alfred Famiglietti abstaining).*

7) **Any other business that shall properly come before the Commission:** None.

ADJOURNMENT: *Thomas Skinner moved to adjourn the Public Hearing at 8:00 P.M., Oriana Conklin seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2020
Alfred Famiglietti, Chair