

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
September 19, 2017
6:30 P.M.

Members Present: Dennis Minsky, Mark Irving, Alfred Famiglietti, Nathaniel Mayo, Kiah Coble and Gregory Howe.

Members Absent: Robert Brock (excused).

Others Present: Tim Famulare, Conservation Agent, Gloria McPherson (left at 6:33 P.M.) and Ellen C. Battaglini, Permit Coordinator.

Chair Dennis Minsky called the Public Hearing to order at 6:01 P.M.

1) **Executive Session:**

Executive session pursuant to G.L. c. 30A, §21(a)(3), to discuss litigation strategy in the following matters: Aqua King Fishery, LLC v. Conservation Commission, Barnstable Superior Court, C.A. No. 2015-00064; Conservation Commission v. Stellwagen Bank Fisheries Corp., Barnstable Superior Court, C.A. No. 2015-00387; Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386; and the Request for Superseding Determination of Applicability filed with the Massachusetts Department of Environmental Protection by David Kelley regarding commercial fishing operations for surf clams utilizing Hydraulic fishing gear off Herring Cove.

Chair Dennis Minsky declared that an Open Session might have a detrimental effect on the Town's litigating position with regard to these matters. He called for a motion to go into Executive Session pursuant to M.G.L. c. 30A, §21(a) (3).

Alfred Famiglietti moved to go into Executive Session pursuant to M.G.L. c. 30A, s. 21A (3), Nathaniel Mayo seconded and it was so voted by roll call vote: Mark Irving: Yes; Alfred Famiglietti: Yes; Nathaniel Mayo: Yes; Kiah Coble: Yes; Gregory Howe: Yes; and Dennis Minsky: Yes.

The Commission returned to Open Session at 6:34 P.M.

2) **Public Comments** on any item not on the agenda below:
None.

4) **Emergency Certification**

CON-18-022 561 Commercial Street

Update on Emergency Certification issued to Marcey Oil Company, dated August 23, 2017, for remediation of a release of fuel oil and site restoration work within Land Subject to Coastal Storm Flowage and the 100-foot Buffer Zone to a Coastal Beach. Bill Kenney, of River Hawk Environmental, Jon Salvador, owner of Marcey Oil Company, Lucas Salvador and Jon Salvador, Jr. appeared to discuss the issue. Mr. Famulare said that this was an update of the situation. Mr. Salvador, Sr. explained what happened at the site to cause the spill. He explained how procedures had been changed and tanks have been upgraded in order to prevent a spill from happening in the future. The Commission had received an email from Mr. Kenney with a brief description of the

release of the oil and the response actions conducted thus far and summarized the anticipated additional responses. Mr. Kenney explained the remediation process undertaken at the site. The Commission briefly questioned Messrs. Salvador and Mr. Kenney.

3) **Public Hearings:**

a) CON-18-025 **645 Commercial Street**

Request for Determination of Applicability filed by **645 Commercial LLP** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, to repair foundation footings on the west side of an existing house. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Deborah Paine appeared to present the application. She described the project to replace foundation footings underneath a cottage in order to stabilize the northwest section. The project proposes to dig and pour 9 shallow footings for 9 posts on the west side of the structure to replace 9 rotten footings. She explained that each day a new tarp will be placed along the driveway on which to cut lumber and mix concrete. At the end of each day, the tarps will be taken up and put into barrels that will be emptied off the site. Only a small amount of vertical skirt boards will be removed to allow access to the area beneath the cottage on the right corner of the porch.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Paine. Mr. Famulare reviewed his draft conditions.

Alfred Famiglietti moved to grant a Negative #3 Determination for CON-18-025, 645 Commercial LLP, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to repair foundation footings on the west side of an existing house on the property located at 645 Commercial Street with the Standard Order of Conditions as discussed, Dennis Minsky seconded and it was so voted, 5-0.

b) CON-18-024 **Province Lands Road**

Notice of Intent by the **Massachusetts Department of Transportation** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) to reconstruct an existing concrete sidewalk, reconstruct existing wooden railings and repair eroded slopes along Province Lands Road. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Salt Marsh and a Coastal Beach. (The project is exempt from Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law).

Presentation: Andrea Coates, a MassDOT engineer and project manager, participating by speakerphone, presented the application. She gave a brief overview of the project, which involves the reconstruction of an existing concrete sidewalk abutting a rotary and the installation of ADA-compliant curb ramps. In addition, the MassDOT proposes to reconstruct a wooden railing with concrete posts along the seaward side of the reconstructed sidewalk. Crushed stone and rock fill will be placed over geotextile fabric between the existing rip-rapped slope and the reconstructed sidewalk in order to repair erosion and to prevent future occurrences of erosion. She said that

some asphalt debris near edge of limit of work would also be removed during the project. She will send the specifications for the seed and loam mix to the Commission.

Public Comment: Rich Waldo, Dept. of Public Works Director, said that the Town would be taking over the ownership of the area and would be responsible for the maintenance of the site.

Commission Discussion: The Commission questioned Ms. Coates. Mr. Famulare reviewed his draft conditions.

Nathaniel Mayo moved to approve the Notice of Intent by the Massachusetts Department of Transportation, CON 18-024, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) to reconstruct an existing concrete sidewalk, reconstruct existing wooden railings and repair eroded slopes along Province Lands Road with the conditions as amended, striking Special Condition #5, Mark Irving seconded and it was so voted, 5-0.

c) CON-18-030 **3 Heather's Way**

Administrative Review application by **Robert Sheehan** pursuant to Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the installation of a 6' by 10' shed. Work to take place within a Buffer Zone to an Isolated Vegetated Wetland.

Presentation: Cori Malone, representing Robert Sheehan, appeared to present the application. The shed is located outside the 50' buffer zone.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Malone. Mr. Famulare reviewed draft conditions.

Alfred Famiglietti moved to approve the Administrative Review, CON-18-030, pursuant to Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the installation of a 6' by 10' shed at the property located at 3 Heather's Way with the Special Conditions as drafted, excluding a proposed access and egress deck and with the requirement that the tree located near the site of shed not be removed, but branches can be removed as necessary, Mark Irving seconded and it was so voted, 5-0.

d) CON-18-019 **157A Commercial Street and 0 Atlantic Avenue Foot**

Notice of Intent by **Alfred P. Famiglietti & James M. Staniscia** and **the Town of Provincetown** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a vinyl bulkhead and an access stairway to the beach. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune and a Buffer Zone to a Coastal Beach. Alfred Famiglietti recused himself because of a conflict of interest.

Presentation: Jay Norton, of Coastal Engineering and James M. Staniscia appeared to present the application. Mr. Norton said that the project proposed to construct a vinyl bulkhead along the width of the property, and including the Town landing to the east of it, and construct an access stairway to the beach. The landward side would be restored with sandy fill and American Beach grass plantings. All work is above the observed high water mark and not within MESA priority or estimated habitats. All affected areas will be restored to pre-construction construction conditions. Mr. Norton said that alternatives were analyzed in an Alternative Analysis and Performance Standards document submitted with the application. An existing drift fence on the property will remain. He said abutters on the west were spoken to and were in full support of the project. He also provided some of the history of the area, including evidence of a concrete wall on the

property. He said there was no physical evidence, but the conjecture was based on historical evidence and physical evidence on an abutting property further to the west, at 153 Commercial Street. He added that the owners of the property have put a lot of effort into maintaining the property and had tried many soft solutions to the erosion issue and nothing has worked. All sediment moves either to the northeast or the southwest due to the breakwater in the harbor. That creates a sediment trap landward of the breakwater. Mr. Norton explained why he thought the dune was not a functioning coastal dune system.

Public Comment: Rich Waldo, DPW Director, spoke in support of the project on behalf of the Town. An abutter at 153 Commercial Street spoke in support of the application. There was 1 letter from an abutter that was read by Mr. Minsky and 1 letter from the Department of Environmental Protection stating that the project would not meet the performance standards for a coastal dune and assigning a file number.

Commission Discussion: The Commission questioned Mr. Norton. Mr. Famulare reviewed his conversation with Jim Mahala, from DEP, about the historic concrete seawall, the fact that it is not currently functioning as a seawall and that there was only some evidence on an abutting property that it existed. Mr. Famulare added that Mr. Mahala thought the dune met the definition and was functioning as a coastal dune, albeit with a limited lifespan, and that it did contribute sand to the beach. Mr. Famulare said that the Commission has to consider the impact on adjacent properties, as this project would cut off the supply of sand, cause the profile of the beach to drop and exacerbate erosion further down drift. He has asked the applicant to submit evidence of similar projects to show extent of scour down drift from this kind of seawall. The soft solutions employed by the owners of the property have slowed down the rate of erosion in the past several years.

Mr. Minsky suggested getting input from Greg Berman, a coastal geologist who has written a report about this issue, and more information from DEP. Mr. Staniscia argued that further soft solutions would not work because, according to Mr. Berman's report, the conditions have changed. Mr. Norton requested a continuance to the October 3, 2017 Public Hearing at 6:30 P.M. Mr. Famulare suggested having a peer review done by another engineer. He also suggested that the applicant obtain an estimate of the project's cost and when the information from Mr. Berman is received, most likely before the next hearing, the Commission can then assess whether more study is needed.

Dennis Minsky moved to grant the request to continue to the October 3, 2017 Public Hearing at 6:30 P.M., Mark Irving seconded and it was so voted, 5-0.

5) **Enforcement Orders**

a) **ENFCON-18-001 173 Commercial Street**

Unauthorized installation of kayak and wooden posts within a Coastal Beach and Land Subject to Coastal Storm Flowage. Janette and Mark Anderson appeared to discuss the issue. Ms. Anderson explained that they did not know that the installation of the kayak racks was not allowed without the permission of the Commission. She said they have since been removed and she apologized to the Commission.

Dennis Minsky moved to ratify ENFCON-18-001, 173 Commercial Street, Gregory Howe seconded and it was so voted, 5-0.

b) **ENFCON-18-002 6 Winston Avenue**

Unauthorized construction of a wooden walkway/deck within a Coastal Dune and Land Subject to Coastal Storm Flowage. Mark Irving recused himself because of a conflict of interest. Derik Burgess appeared to discuss the issue. He explained that he thought the grade-level walkway did not need a permit from the Town and he was not aware of the Commission's jurisdiction over the project. He said a Notice of Intent would be filed for the project. He apologized to the Commission for the mistake. *Nathaniel Mayo moved to ratify ENFCON-18-002, 6 Winston Avenue, Gregory Howe seconded and it was so voted, 4-0.*

6) **Request for Certificate of Compliance**

a) **CON-18-031 10 Meadow Road**

Request for a Certificate of Compliance by Thomas Sproat for the Order of Conditions (DEP File No. SE 058-0528) issued by Leslie Starr, dated October 6, 2014, to repair a boulder retaining wall. There was a letter from Safe Harbor requesting a Certificate of Compliance for this project. The letter said that Safe Harbor had re-vegetated the area and that it is in its second growing season and performing well. Mr. Famulare gave a report based upon a site visit. He recommended that the matter be continued until he can obtain a statement from the engineer of record concerning the project. *Dennis Minsky moved to continue CON-18-031 until the October 3, 2017 Public Hearing at 6:30 P.M., Nathaniel Mayo seconded and it was so voted, 5-0.*

7) **Conservation Agent Update**

Mr. Famulare said that DEP has rescheduled its site visit at 99 Commercial Street until next week, to Wednesday, September 27, 2017 at 11:30 A.M.

There is a Coastal Zone Management Agency workshop on how Commissions can better protect the interests of flood control and storm damage prevention in coastal resource areas on October 12, 2017 from 8:00 A.M. to 12:00 P.M. in Barnstable.

8) **Approval of Minutes of August 15, 2017:** The approval was postponed.

September 5, 2017: *Dennis Minsky moved to approve the minutes as written, Gregory Howe seconded and it was so voted, 5-0.*

9) **Information:**

Administrative Review applications approved by Agent:

a) **CON-18-026 539 Commercial Street**– replace siding on a pile-supported building over beach.

b) **CON-18-027 269 Commercial Street** – annual SKIP benefit party on beach behind Tin Pan Alley.

10) **Any other business that shall properly come before the commission:**

Nathaniel Mayo suggested that the Commission try to reduce the amount of paper that is involved in its process of reviewing cases.

ADJOURNMENT: *Gregory Howe moved to adjourn the Public Hearing at 8:45 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017
Dennis Minsky, Chair