

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

March 2, 2021

5:30 P.M

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

Members Absent: Joseph Cooper (excused).

Others Present: Tim Famulare (Conservation Agent).

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

Vice Chair Nathaniel Mayo called the Work Session to order at 5:30 P.M.

Mr. Famulare explained why a virtual hearing was being conducted and how applicants and the public can view the meeting on PTV and participate by calling a number that is shown on the screen and then entering a conference ID number. He asked that all participants keep their phones on mute when not speaking.

1) **Work Session** – Discussion with Cape Cod National Seashore staff and Town staff regarding the loss of the salt marsh in the West End Moors and the U.S. Army Corps of Engineer’s 2015 Feasibility study of the Long Point Dike Modification project: Geoffrey Sanders, the Chief of Natural Resource Management at Cape Cod National Seashore, and Stephen Smith, a plant ecologist at Cape Cod National Seashore, were in the meeting to discuss the topic. Mr. Smith said that one of the most rapid and concerning changes he has seen since 2002, when he first started working for the Seashore, is located at the West End marsh. The salt marsh has been closely monitored by the Seashore since 2003 and the changes have been taking place relatively recently. Starting about in 2010, this healthy, fully vegetated salt marsh started to deteriorate. Fiddler crabs had started to appear and colonize the marsh prior to this time, in addition to purple marsh (Sesarma) crabs. The latter have been responsible for devastating the vegetation in a lot of other bayside marshes on the south coast of Cape Cod, in addition to all the lakes on Long Island, and in other areas. These purple marsh crabs are native and nocturnal and are the only crabs in the marsh that actively consume the above-ground vegetation. Their numbers have exploded over the last decade and are more abundant than they should be. The reason, he said, that it has been hypothesized is that the large fish that are their predators, such as striped bass and tautog, have been over-fished to the point that the crab species has been able to explode. The purple marsh crabs have subsequently eaten away a large volume of the vegetation in the salt marsh. He said that the West End breakwater doesn’t really have a significant effect on, or dampen, tides, however it does prevent the access of fish predators that could otherwise feed on the crabs. The breakwater also most likely prevents marine sediment from getting through and denies the marsh a source of sediment to build itself up, which it should do, particularly in the face of sea level rise. The loss of vegetation causes the peat to oxidize and wash away. This peat has been building up over two thousand years and can get washed away in a matter of hours in a winter storm. Mr. Smith reviewed photographic images of what can be seen out there, showing large areas of bare soil, degraded and soft, and barriers that have opened up as a result of the loss

of vegetation. In addition, the elevation of the salt marsh is getting lower rapidly while sea level is rising. In response, he indicated that the Seashore did some small scale, low impact experiments in some areas, putting mesh material on the surface of the marsh to try and prevent the purple marsh crabs from inhabiting them. He said that the fiddler crabs are small enough to move through the mesh material. The experiment showed that healthy vegetation abutting the meshed areas was able to grow into those areas when the purple marsh crab was denied access. He said the Seashore would like to continue the experiment as an interim step until a more permanent solution can be devised to revegetate these areas. In addition, last fall he said that seeds were put under the mesh material to further accelerate the growth of vegetation in the affected areas and in an effect to retain soil. He said that unimpacted marshes are showing significant species composition changes due to the rise in sea level and some loss of total their total area. This marsh is particularly worrisome due to the rapidity of the deterioration, even in comparison to other marshes being impacted by the purple marsh crabs. He said that the Seashore had to think about how to slow the deterioration or reverse it. The Commission questioned Mr. Smith and discussed the issue. Steve Wisbauer, the Shellfish Constable, commented that he has gotten observations from “boots on the ground” that the predation for shellfish and aquaculture comes from green crabs and Asian shore crabs. He said that the data shows if you try to trap these predators, they will turn the traps into breeding areas, more so than if you leave them alone. He said that best way to get rid of them is a flash freeze from natural sources. Mr. Wisbauer also said if striped bass or mackerel do manage to get through the breakwater, they cannot find their way out of the saltmarsh. He suggested that any solution would have to be surgical in order to avoid trapping predator species. Mr. Famulare said that he can schedule another Work Session to discuss the 2015 Army Corps study.

Mr. Famiglietti opened the Public Meeting at 6:01 P.M. He reviewed the purview of the Commission and explained the protocol of the meeting, including not speaking until recognized by the Chair, and requested that all phones be muted unless called on to speak by the Chair. He explained how to unmute a phone and requested that all speakers state their names prior to speaking.

2) **Public Comments** on any item not on the agenda below: Doug Cliggott, an abutter to the salt marsh, asked how concerned citizens might help the Commission move this problem higher up on the list of Town issues that need urgent attention. He said the changes are moving at an alarming rate. Mr. Famiglietti suggested a warrant article for Town Meeting to deal with the issue. Mr. Famulare suggested getting the issue in front of the Select Board, however he noted that the Town didn't own the breakwater or the marsh. He said a dialogue with the Army Corps could be initiated.

3) **Public Hearings:**

a) CON-21-1 479, 481 & 485 Commercial Street (to be continued to the meeting of April 6, 2021)

Notice of Intent filed by **Cape Associates, Inc.** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law for a proposed bulkhead reconstruction Work to take place within

Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. Mr. Famulare said that the applicant requested to continue to the meeting of April 6, 2021.

Nathaniel Mayo moved to continue CON-21-1 to the meeting of April 6, 2021, Oriana Conklin seconded and it was so voted, 5-0 by roll call.

b) CON-21-3 129 Commercial Street

Notice of Intent filed by **Alfred J. Pickard, Jr.** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law to remove an existing 2-unit cottage and reconstruct and expand the building footprint. Work to take place within Land Subject to Coastal Storm Flowage.

Presentation: Paul Shea, from Independent Environmental Consultants, and William N. Rogers, II were in the meeting to discuss the application. Mr. Shea said that in 2016, both the Commission and the Department of Environmental Protection issued approvals for the project, which involves making the structure on the property flood-compliant, given its close proximity to Provincetown Harbor. He said that the 2016 Order of Conditions for the project (DEP File No. SE 058-0549) expired in 2019 and the property owner did not get an extension. He said that the applicant was filing a new Notice of Intent in order to complete the project. Mr. Shea said that there are only minor changes to the project that will make the structure flood-compliant, within the 100-year flood zone, and serve to reduce impacts from flooding and storm damage prevention to this and abutting properties. Plantings of coastal species will be done on the site. Mr. Shea said that they will be getting a new DEP File Number soon. Mr. Famulare reviewed the site, which is on the edge of the flood zone. He said he is confident that the DEP will have no comments, as the project had already been approved, and he advised the Commission to vote on the project without the DEP File No., a suggestion that he would not otherwise make.

Public Comment: John Fahimian, an abutter, had a question about what he could do to make the project go smoothly. Mr. Shea responded by saying that the new structure will be made safer and reduce impacts from flooding and storm surges for the new structure and for abutting structures.

Commission Discussion: The Commission discussed the application. Mr. Famulare said that the owner installed several of the footings for the new building in order to keep the building permit active. There were no questions from Mr. Shea or Mr. Rogers regarding the draft Order of Conditions.

Nathaniel Mayo moved to approve the Notice of Intent, CON-21-3, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law to remove an existing 2-unit cottage and reconstruct and expand the building footprint at the property located at 129 Commercial Street and to issue an Order of Conditions, pending a DEP File No., Oriana Conklin seconded and it was so voted, 5-0 by roll call.

4) **Requests for Certificates of Compliance:**

a) CON-21-5 487 Commercial Street – bulkhead renovation (DEP File No. 058-0574) and house renovations and site improvements (DEP File No. 058-0582). Mr. Skinner recused himself from the application because of a conflict of interest. Mr. Famulare reviewed the project, saying that there were two outstanding Certificates of Compliance: one for the bulkhead renovation and one for the house renovations and site improvements. He said that the applicants had previously

requested a partial Certificate of Compliance, when some plantings needed to be amended and revised, and now the 3-year survivability requirement for those plantings was coming to an end. He recommends the issuance of full Certificates of Compliance. He said that there were on-going conditions for the bulkhead renovation (SE 058-0574), such as the maintenance of a 10' wide buffer strip of American beach grass and the perpetual maintenance of the bulkhead to prevent the degradation and loss of structural integrity.

Nathaniel Mayo moved to issue a final Certificate of Compliance for the bulkhead renovation, SE 058-0574, Oriana Conklin seconded and it was so voted, 4-0 by roll call.

Nathaniel Mayo moved to issue a final Certificate of Compliance for the house renovations and site improvements, SE 058-0582, with no on-going conditions, Oriana Conklin seconded and it was so voted, 4-0 by roll call.

5) **Approval of Minutes of February 2, 2021:**

February 2, 2021: *Nathaniel Mayo moved to approve the minutes as written, Oriana Conklin seconded and it was so voted, 5-0 by roll call.*

6) **Conservation Agent Update:** Mr. Famulare said that he would like to start giving the Commission an update on projects that are underway. He has done several pre-construction meetings, including for 467 Commercial Street for the repair of a bulkhead, 36 Shank Painter, Unit 18, for a screened-in porch, for 66 West Vine Street for the construction of multi-family buildings, and for 53 Commercial Street for the demolition of a structure.

The new Commission member will be at the next hearing, Loretta Butehorn.

He asked if the Commission would like another Work Session scheduled for the West End dike to discuss the Army Corps study. The Commission agreed.

7) **Information:**

a) **CON-21-4 353A Commercial Street** – replace stair and landing on new sonotube footings. Mr. Famulare briefly reviewed the Administrative Review.

b) **CON-21-9 280 Bradford Street** – pruning for tree limbs and branches. Mr. Famulare said that this was a request from the Cape Inn to do some pruning to prevent potential storm damage.

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

9) **Executive Session:** Thomas Skinner recused himself from the Executive Session.

Mr. Famiglietti said that the Conservation Commission will move to enter Executive Session pursuant to G.L. c. 30A, s. 21(a)(3) and (7) to review and approve minutes from prior Executive Sessions from March 27, 2018, and November 19, 2019, and February 2, 2021 and to discuss litigation strategy in the following matters: Aqua King Fisher, 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; if discussion the matters in open session will have a detrimental effect on the Town's litigation position and the Chair so declares.

Nathaniel Mayo moved to enter Executive Session pursuant to G.L. c. 30A, s. 21(a)(3) and (7) to review and approve minutes from prior Executive Sessions from March 27, 2018, and November 19, 2019, and February 2, 2021 and to discuss litigation strategy in the following matters: Aqua King Fisher, 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; if discussion the matters in open session will have a detrimental effect on the Town's litigation position and the Commission will not reconvene in open session, Oriana Conklin seconded and it was so voted, 4-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair