

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

April 20, 2021

5:30 P.M

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

Members Absent: Joseph Cooper (excused) and Loretta Butehorn (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.

Chair Alfred Famiglietti called the meeting to order at 5:33 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.

Chair Alfred Famiglietti reviewed some rules and regulations, including the Commission's purview of protecting the environment. This includes enforcing the state Wetlands Protection Act and the local wetlands protection by-law. He added that all members of the public need to go through the Chair in order to speak and there is no crosstalk or talking over anyone. Any member of the public can speak for 3 minutes.

1) **Work Session**

a) Presentation of the Stellwagen Bank National Marine Sanctuary Visitor Center: Conrad Ello, of Oudens Ello Architecture, and Anne Marie Runfola, from Stellwagen Bank National Marine Sanctuary, were in the meeting to present the project. Mr. Ello said that since last summer, his firm has been working on a concept design for the 10,000 sq. ft. visitor center. He stressed that while the functions of museum and Sanctuary visitor center are important, the aspirations for the building will go beyond these. The project is a collaboration with three entities: the Town of Provincetown, the National Oceanic and Atmospheric Administration (NOAA), and the Center for Coastal Studies. Although the proposed work is on-going, he is appearing before the Commission to share progress images, conduct an informal discussion of the project, and get feedback. He said that a feasibility study had been done in 2018 and identified the center of Town, in and around the area of Lopes Square, and in the vicinity of the transportation center and comfort stations as the most promising locations. Sites in these areas were examined and after discussions with the Dept. of Public Works and the Town's engineer, it was decided that building over critical underground sanitary/sewer infrastructure would be too great a risk going forward. This eliminated the comfort stations area. Alternative sites in that vicinity, such as the Municipal Parking Lot and MacMillan Pier, were then examined. About a month and a half ago, two options for the building proposed to be located in or around the MPL were presented to the Select Board. The Select Board expressed support for the project and a preference for developing the site closest to MacMillan Pier. Mr. Ello will review the two versions of that site. He said that he hopes that

there will be aspects of the project that will benefit the Town and its residents, including several improvements to the transportation center area along Ryder Street Extension. These would consist of new electrical vehicle charging station locations (an expansion from 2 to 8 stations), including those for buses, looking to the future of green technology. Also included would be an increase in green space and a plan to demolish the existing comfort stations, relocating that functionality into the visitor center. This area would then turn into more of a park, which would be a benefit to those businesses on that portion of Commercial Street, serving to activate and energize the area. He pointed out the FEMA flood zones (A & V) delineated on the site plan. He said the building would extend into the V Zone, requiring the location of the underside of the structure of the main floor to be at 2' above the base flood elevation of 13'. At a height of 6.5' above the Pier boardwalk, it would allow flood waters to flow underneath the building. The two-storied building would have an information space, a concierge desk, some exhibits, and information about the Sanctuary and the Town on the ground floor, as well as a modest retail element that is related to Stellwagen Bank. The public bathrooms will be relocated along the boardwalk. He said that the proposed location would serve as a gateway building for tourists getting off ferries and going off the Pier into Provincetown and a gateway building in the opposite direction for those tourists coming onto MacMillan Pier to use the whale watch boats and ferries. The comfort station functionality would be improved and be in a much safer location above the flood plain. The second floor would have Sanctuary exhibits, a community room, and a proposed multi-purpose room, for events, classes, lectures, Town meetings, etc., with a capacity of 80 people and having the functionality of being subdivided into smaller spaces.

Mr. Ello next reviewed images of both options and the proposed expansion of the boardwalk. He reviewed a building section of one option that showed a main floor level of 6' above the boardwalk level, which would allow for V Zone floodwaters to flow beneath. The underside of the building, placed on piers, would be 5' above the boardwalk. He explained that entrances would come up from both the north and the south sides and an elevator installed for handicapped patron access. A photo-voltaic solar array would be placed on the building. There are aspirations for making the building net zero as to energy consumption and generation, with on-site renewable energy elements. He reviewed images of the second option that shows the building 9' above the boardwalk, taking into consideration the likelihood that sea level would rise in the future and that FEMA requirements for distances above the flood elevation would increase. It would also allow for an activation of the lower underbelly of the building to install seasonal vendor stalls or parking, creating more pedestrian activity and vitality on the boardwalk. He said that there was a potential to locate the comfort stations at ground-level. Although current regulations and codes do not allow for that, he said that there are future building regulations that would offer some allowances for public restroom facilities of a certain size, or below a certain size, to be situated in the flood plain. All the infrastructure would be situated above the flood plain and materials used would be flood resistant, with flood openings allowing for water to move freely through the area and under the building. Placing parking beneath the building would help mitigate for the loss of parking spaces in the MPL. The Commission questioned Mr. Ello

Ms. Runfola commented that there has been a lot of interest by citizens of the Town for using this facility on a year-round basis. Ms. Runfola reviewed the path forward for the project, including scheduling meetings with regulatory Boards in Town and obtaining funding for the project. She

said that there are webpages for community comment purposes. The Commission questioned Ms. Runfolo.

b) Review of conditions regarding temporary, seasonal use of Provincetown Harbor beaches for food and beverage service to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective May 28, 2020.

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

3) **Public Hearings:**

a) CON-21-10 419 Commercial Street (continued from the meeting of April 6, 2021) **Notice of Intent** by **Christine Barker** 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 demolish an existing building and construct a new structure compliant with FEMA floodplain regulations. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune.

Presentation: Ginny Binder, Paul Shea, and Christine Barker were in the meeting to discuss the application. Mr. Shea reviewed the revisions to the site plan created by Schofield Brothers, revised 4/17/21, and noted that more thorough protocols for the demolition work that had also been submitted. He said that information was added to the site plan, including showing the landward limit of the coastal dune and the 50- and 100-foot buffer lines, the latter of which extends up to the sidewalk on Commercial Street, associated with that wetland area. He said that regarding the idea proposed at the last meeting of filing an Administrative Review for the demolition, an application had been filed on April 9th. This was accompanied by the revised site plans and photographs of the site. The applicant seeks approval to do the demolition work with all access to be from Commercial Street. No access is being requested through the coastal dune or the coastal wetland areas. A demolition plan prepared by Highland Builders has been submitted and a Dept. of Environmental Protection file number has been issued with no comments from DEP. Mr. Shea concluded that that applicant is looking for an approval and a final Order of Conditions for the NOI and an Administrative Review approval for the demolition work. He said that demolition within the structure had already been started before the applicant bought the property, so that would continue and the old structure would be taken down on site. After demolition, a small dump truck would load up the debris and remove it. He thought that a couple of days would be required for all of the trips to remove the material. Mr. Famulare said that he wanted the Commission to review the request to demolish as opposed to his just signing off on it. He can then issue the demolition approval and the proposed work can be done while the appeal period for the NOI tolls.

Public Comment: None.

Commission Discussion: The Commission and Mr. Famulare questioned Mr. Shea, Ms. Binder and Ms. Barker. Mr. Shea said that a photographic survey will be done of the two abutting properties before and after the shoring of the areas needed. Ms. Barker reviewed a meeting that took place with Town staff, abutters, and contractors about the demolition process, the latter of which she indicated was sound and considerate of the existing conditions on either side of the

building and of other neighbors. Regarding pre-construction condition #6 that final approved plans needed to comply with FEMA flood plain requirements and approved by the Building Commissioner, Mr. Famulare suggested a modification to read that final plans for the deck should be submitted to the Conservation Agent for approval prior to construction. This is because a portion of the deck is in the V Zone and requires special fastening requirements to prevent uplift. He also suggested that #7 be modified to include not just construction protocol, but also to incorporate demolition protocol, even though the demolition is being allowed to proceed under Administrative Review. He added that the Order of Conditions would include the demolition protocol as well. He mentioned that Chapter 91 authorization would be needed, if required, before a Certificate of Compliance was issued. Ms. Binder commented on the latter issue and will get back to the Commission as to whether it was required or not. The applicant agreed that a planting plan would accompany the Building Permit application.

Oriana Conklin moved to approve the Notice of Intent, Con-21-10, 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 demolish an existing building and construct a new structure compliant with FEMA floodplain regulations at the property located at 419 Commercial Street with the conditions as drafted and discussed, Alfred Famiglietti seconded and it was so voted, 5-0 by roll call.

b) CON-21-19 225 Commercial Street (to be continued to the meeting of May 4, 2021) **After the Fact Notice of Intent** filed by **Topknot Properties**, 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 install an underground propane tank behind concrete bulkhead and place renourishment sand. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

c) CON-21-20 175 Commercial Street (to be continued to the meeting of May 4, 2021) **Notice of Intent** filed by **175 Beach House, LLC** 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 install pervious pavers; pump, fill, and abandon 2 leaching pits and 3 geothermal pits; remove existing asphalt and install new asphalt on an access drive and parking areas; remove an existing propane tank and install a new 500-gallon propane tank. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach. ***Oriana Conklin moved to continue CON-21-19 and 21-20 to the Public Hearing of May 4, 2021, Nathaniel Mayo seconded and it was so voted, 5-0 by roll call.***

4) Emergency Certification

a) CON-21-26 911 Commercial Street

Removal of soils and (if necessary) remediation of groundwater impacted by the release of #2 fuel oil. Work to take place within Land Subject to Coastal Storm Flowage. Mr. Famulare said that the Commission needed to vote to ratify the Emergency Ratification. He said that the property was on Route 6A, was affiliated with Sandcastle Resort, and was located about 300'-400' from the Harbor. He said that the issue involved a 275-gallon above-ground storage tank in a crawl space beneath a one-story motel building. The applicant is looking for approval to conduct a site investigation to determine the extent of the leak and to remove 20 cu. yds. of soil using a vactor truck. Usually, Emergency Certifications are only good for 30 days. If the work is not completed

in 30 days, a Request for Determination of Applicability or a Notice of Intent would have to be filed. The exception, present in this situation, is for hazardous waste clean-ups wherein 60 days are allowed. Groundwater monitoring wells have been marked out on the site and Mr. Famulare said he should be getting a report shortly from the engineering firm regarding whether the oil had migrated into the groundwater. If this had occurred, the report should indicate in which direction it had migrated. There are systems wherein the water can be treated, including with a pump and by introducing bacteria that would eat the oil, or by aeration. If the situation required a longer-term solution to remediate the groundwater, an RDA or NOI would have to be filed. For the initial surveillance work and the removal of the tank and the contaminated soil, given that it was located well far away from a sensitive resource area, the protocols would include bagging the dirt, keeping it in the parking lot, and then trucking it away.

Nathaniel Mayo moved to ratify the Emergency Certification, CON 21-26, 911 Commercial Street, Oriana Conklin seconded and it was so voted, 5-0 by roll call.

5) **Other Business**

a) **CON 21-14 Conwell Street from Route 6 to Cemetery Road**

Proposed modifications to drainage outfall for the Bicycle and Pedestrian Accommodation Improvements Project along Conwell Street. Work to take place within an Isolated Vegetated Wetland and a Buffer Zone.

Robert Capurso, the Town's engineer, was in the meeting to request the modifications. He said that when they were replacing the underground drainage structures, they found out that the previous 2 catch basins drained out into the wetland area through a 12" outflow pipe. When they installed 5 new catch basins, they removed the 2 old ones, and all connect to the existing outflow pipe. They discovered that the outflow from the pipe was buried in 18" of silt that had built up over many years. He indicated that the silt was able to run right off the road into the wetland area. The way the water has to drain out of the outflow pipe is by flowing up and out through the 18" build-up of silt. He said that they are looking to clear out the silt from around the outflow pipe by digging a 6' wide channel down to ground level. He referred to an aerial view of the site and pointed out that the vegetation was different from the surrounding area, in that there is an absence of healthy growth. There is 1 tree, an overgrown shrub, and vine growth. He said it was not very appealing when you turn onto Conwell Street from Route 6, as now you get a clear view of Days' Propane because of this lack of vegetation caused by the silt build-up. If the pipe does not get cleared, the drainage structures will not act correctly to separate out the silt and the problem would likely continue. The proposal for the removal of the silt is to use an excavator that would go into the area beyond the silt socks, about 5-10' in, over the vine growth, at which point the excavator could reach in and clear out the outflow pipe. Mr. Famulare commented on the project and reviewed a drawing that had been made of the issue. He said the channel would be about 6' wide and about 25' to the wetland edge. The Commission questioned Mr. Capurso and discussed the issue. Mr. Capurso said that he could get Bartlett Tree Experts and Rich Waldo to weigh in on adding vegetation in the area to make the excavated area less visible and to replace any damaged growth. He said that Ken McPhee, of Bartlett's, had suggested planting red cedars in an area closer to Hensche Lane. He will have Lawrence Lynch contact Mr. McPhee and he will contact Mr. Waldo and then send the information to Mr. Famulare. Mr. Famulare said that this was a local by-law filing, so the ability to consider this modification was straightforward.

Oriana Conklin moved to approve the excavation of a spillway for the outfall pipe, including the grubbing of vegetation and the removal of trees as necessary, with a replacement plan for native vegetation to be approved by the Conservation Agent, Thomas Skinner seconded and it was so voted, 5-0 by roll call.

b) **Dunes Edge Campground (386 Route 6)** Approval to install five platform tents at existing tent sites pursuant to Conservation Restriction held by the Conservation Commission. Mr. Famulare introduced the project. He said that he thought an Administrative Review was sufficient. Matthew Krumme, of the Trustees of the Reservation, spoke about the project and how it conformed with the mission of the organization. He said that he views this project as an opportunity to get more people outdoors to go camping, especially those who may not have the skills or equipment to do so. These may include families and new campers who would now have the opportunity to have an enhanced camping experience. He reviewed a plan of the design and layout of the five existing sites. No other issues or trees removed during the project. The platforms will be permanent, but the tents will be removed at the end of each season. He reviewed a photograph of a canvas tent. He said that 8” sono-tubes will be employed for the footings, 6 per site, each will be hand-dug, as recommended by Town Building staff. He said they were looking to do this as soon as possible, as their season begins on May 21st. There will be no negative impacts on the sites. The Commission questioned Mr. Krumme and Mr. Famulare about the project.

Oriana Conklin moved to approve the installation of 5 tent platforms at the Dunes Edge Campground, Thomas Skinner seconded and it was so voted, 5-0 by roll call.

6) **Approval of Minutes of April 13, 2021:**

April 13, 2021: *Nathaniel Mayo moved to approve the minutes as written, Oriana Conklin seconded and it was so voted, 5-0 by roll call.*

7) **Conservation Agent Update:** Mr. Famulare said that prior to Elena Hall’s death, she had received an Order of Conditions requiring the property located at 397 and 401 Commercial Street to hook up to the Town’s sewer system. That work took place this past winter. The new owner of the property had decided not to elevate the cottage, however he has replaced the deck, putting it on sono-tubes. Mr. Famulare said he did approve that process under the existing Order of Conditions.

Mr. Famulare congratulated to Mr. McNeilly for completing his MACC fundamentals. Ms. Butehorn has almost completed hers.

8) **Information**

a) **CON-21-22 10 Oak Drive:** Mr. Famulare said that this approval pertained to some minor fill at the edge of a buffer zone to level an area for a garage.

b) **CON-21-23 4 Commercial Street:** Mr. Famulare said he gave the property owner, who had engaged Safe Harbor, permission to pull out invasives and replant native coastal vegetation at

the site and to make landscaping improvements, such as installing walkways, a bench, and a sundial. It is out of the buffer zone, but in a flood zone.

c) CON-21-24 225 Commercial Street: Mr. Famulare has not taken any action regarding this because he determined that it should be an RDA. It will be on the May 4th Public Hearing along with the NOI submitted by the property owners.

9) **Any Other Business that shall properly come before the Commission**: None.

Oriana Conklin moved to adjourn the Public Hearing at 7:21 P.M., Nathaniel Mayo seconded and it was so voted, 5-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair