

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

May 18, 2021

5:45 P.M

Members Present Virtually: Alfred Famiglietti, Nathaniel Mayo, Oriana Conklin (arrived at 6:11 P.M.), Brett McNeilly, Thomas Skinner, and Loretta Butehorn.

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.

Chair Alfred Famiglietti called the meeting to order at 5:45 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 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) Election of Chair and Vice Chair in accordance with Section 5.c. of the Town Charter:

Nathaniel Mayo moved to elect Alfred Famiglietti to the position of Chair of the Conservation Commission, Loretta Butehorn seconded and it was so voted, 5-0 by roll call.

Alfred Famiglietti moved to elect Nathaniel Mayo to the position of Vice Chair of the Conservation Commission, Thomas Skinner seconded, and it was so voted, 5-0 by roll call.

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

3) **Public Hearings:**

a) **CON-21-19 225 Commercial Street** (continued from 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 took place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. Alfred Famiglietti, Nathaniel Mayo, Brett McNeilly, Thomas Skinner, and Loretta Butehorn sat on the case.

Presentation: Gordon Peabody, of Safe Harbor Environmental, and Loic Rossignon, a co-owner of the property, were in the meeting to present the application. Mr. Famulare asked Mr. Famiglietti if he wanted to discuss the permit conditions or hear Mr. Rossignon's appeal of fines that were imposed. Mr. Famiglietti said he would prefer to discuss the permit conditions first.

Mr. Rossignon said he had seen the draft conditions and that they looked good, but he would like to discuss condition #7 concerning oyster shells. He explained that his intention is to be able to recycle the shells and said that this was important to both him and Rob Anderson, a co-owner of the property. He said that this was the reason why there was a pile of shells in the rear of the property and both he and Rob thought that re-using them was a better disposal solution than having them end up in a landfill. He said that the shells weighted down trash bags and they could be of some benefit to people. He said the reason why they were located on the dune is that there was nowhere else to put them. He said the shells needed to be bleached by the sun and the portion of the dune where they were located is a 4' by 4' area where the restaurant has already been granted usage for the storage of kayaks and a dinghy. He said he would like to extend the use of that area for stock-piling shells. He has in the past looked for other uses for the shells but was unable to find them. He said that oysters were not sold last year in the restaurant and he did not know yet if they will be served this year. He is currently looking for an option for the oyster shells and wants to have an area on the property to keep the shells so people can just come and pick them up. This would avoid disposing of them in a landfill or dumping them into the Harbor.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Rossignon. Mr. Famiglietti explained a ruling that was made by the Commission when aquaculture was first being introduced in the Harbor and why that approved process did not involve scattering cultch material. Mr. Peabody noted the narrative of the application submission packet, page 3, #5, where oyster shell storage was addressed. He said that American Indians used shards of oyster shells to add natural nutrients in their gardens to counter the effects of acid rain. He suggested that the oyster shells be brought to the B Street Gardens for such a use. He said that the property owners had not necessarily agreed to this, but he was looking for an alternative option. He said that some communities' harbors on the Cape were cultch-free, but others used cultch. Mr. Rossignon said he would be more active in advertising that there were oyster shells to be given away, such as putting the information on Facebook. Mr. Famulare reviewed the Commission's permitting, in 2017, of the expansion of the seating at the site, including the conditions that were issued regarding beach grass and the permission to allow kayak storage. In 2019, Mr. Famulare said he had been informed that oyster shells were being dumped on an area of beach grass. He met with Mr. Rossignon on the site and they discussed re-configuring the area to make it more usable with as little impact on the beach grass as possible, and by re-aligning the kayak area. Mr. Famulare said that he had recommended that Mr. Rossignon contact the Shellfish Constable and other restaurants to find out if they had any ideas about recycling the shells. The use of the area for shell storage, however, was discontinued because some beach grass was being destroyed. He said he had sent the 2017 Order of Conditions to Commissioners.

Mr. Peabody said he had tried to provide context and indicate where the storage of the shells would be on the site plan and he wanted to segment the storage area from the beach grass. He wanted to give the Commission a sense and representation of what was where on the beach. He

said they are not asking or proposing any changes to what is in that area. The property owners would like to be able to have something to do with the shells. Mr. Peabody said that Safe Harbor would be willing to work in a volunteer capacity to come up with a model protocol for this and other restaurants that wanted to recycle shells to avoid this kind of issue in the future. He said the shells could be used for coastal erosion, cultch, garden nutrition, or for oyster reefs. The Commission discussed where the shells could be stored on the property. Mr. Famulare said that he would be willing to meet with Mr. Peabody and Mr. Rossignon, and with any Commissioners who were interested, on the site to find a solution. Mr. Peabody suggested that Safe Harbor would be willing to volunteer over the next 60 days to research the topic in depth and write a report outlining alternatives for the disposal or recycling of shells. Mr. Rossignon said that during the 60-day Safe Harbor research period he can work on making the pile smaller, as the restaurant is not now selling oysters. Mr. Famulare said that it seemed that the Commissioners were ready to vote on the conditions, except for changing the language regarding the shells and to expect a report within 60 days on alternatives for disposing or recycling the shells. Mr. Famulare had a suggestion for condition #7 to the effect that the applicant present a plan to manage shell storage and disposal from the site by the Commission's meeting on July 20th. That plan would then be incorporated into the Order of Conditions. This would allow the shells to remain where they are until the Commission can review and approve the plan, including how to deal with shells in the future when the restaurant does resume selling oysters. He reviewed several of the draft conditions and confirmed with Mr. Rossignon that he agreed with them.

Nathaniel Mayo moved to approve the After the Fact Notice of Intent, CON 21-19, 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 with the conditions as discussed, Thomas Skinner seconded and it was so voted, 5-0 by roll call.

Mr. Rossignon wanted to discuss the fines that had been levied for unauthorized work on the property. He reviewed the circumstances that led to the fines. He admitted that mistakes had been made and that three separate activities were taking place on the site at the same time. He takes full responsibility for the mistakes and understands what should have been done to avoid them. He disputed the allegation that the burial of the propane tank was done without a permit, which led to 2 of the fines. He said that the propane tank installer had gone to Town Hall, obtained a permit for the work, and subsequently performed the work, which was then inspected by a Town official. He said what was pulled at Town Hall was not a full permit. He said there was no engineer or surveyor involved in the project. He said the tank installer said that they would take care of obtaining the permit and he trusted them to do so. He wished that, in retrospect, the gas inspector had questioned whether approval by the Commission was needed. He said he did not make a conscious decision not to seek Commission approval but did not do so because he thought the installer was handling the permitting process correctly. He said it did seem that the installer was starting rather expeditiously, but he thought it was because the propane tank had been approved by the Dept. of Environmental Protection a couple of years ago. He said it was not intentional on his part not to seek Commission approval, but that he had relied on licensed professionals to handle the project correctly. He said he hoped that the installer learned from the mistake, as he had. He asked that the fine related to the propane tank installation be reduced. The Commission

discussed the issue. As a side note, Mr. Famulare said he would be reaching out to the 4 gas installers in Town to let them know about the need to permit work done in a flood plain.

Nathaniel Mayo moved to rescind 1 of the 3/\$300 fines, for a total of \$600, imposed on the property located at 225 Commercial Street, Thomas Skinner seconded and it was so voted, 4-1 (Brett McNeilly opposed).

b) **CON-21-20 175 Commercial Street** (continued from 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. Mr. Famulare said that he had received a request from Paul Shea to continue this matter to the meeting of June 15, 2021, as no DEP file number had been received. ***Nathaniel Mayo moved to grant the request to continue CON-21-20 to the meeting of June 1, 2021, at 6:00 P.M. Loretta Butehorn seconded and it was so voted, 5-0 by roll call.***

4) **Request for Extensions of Orders of Conditions:**

a) **CON-18-46** (formerly CON-18-084) **1 Highpole Hill Road** (construction of inclined elevator at Pilgrim Monument and Provincetown Museum): Mr. Famulare reviewed a statement from the applicant's representative, Brad Malo, of Coastal Engineering Co. The letter indicated that the infrastructure was essentially complete and the elevator company is working through the pre-testing steps. Safe Harbor Environmental Services/Gordon Peabody continues to be actively involved in maintaining and monitoring the bank pursuant with the approved slope environmental management plan. Due to the challenges throughout the COVID-19 pandemic, the project took longer than the team had hoped and anticipated, so to continue with Safe Harbor's work in the monitoring process of the slope and vegetation, the applicant is seeking an extension of three years for the Order of Conditions. Mr. Peabody commented that Safe Harbor had developed a five-year management plan, pursuant to the conditions of a Planning Board permit, and therefore would be involved for several more years. He sees no cessation or reduction in their participation and involvement, including in ways that are unrelated to what is being discussed this evening, but are necessary nonetheless in order to see the project to fruition.

Ms. Butehorn requested that Commissioners utilize their video capability when asking a question.

Mr. Famulare said that the Commission was not the last stop on the permitting road for this project. He said that there was an appeal process as the result of a Board decision and a traffic study had to be done, so the project was slowed down. The request, if granted, would extend the Order to August 18, 2024. ***Nathaniel Mayo moved to issue an extension of the Order of Conditions for CON-18-46 (formerly CON-18-084), 1 Highpole Hill Road for a period of three years, Thomas Skinner seconded and it was so voted, 5-0 by roll call.***

5) Emergency Certification

a) CON-21-26 911 Commercial Street

Removal of soils and remediation of groundwater impacted by release of #2 fuel oil. Work to take place within Land Subject to Coastal Storm Flowage, a Buffer Zone to a Coastal Dune, a Coastal Dune, and a Coastal Beach.

Presentation: Steven Fleming, a Licensed Site Professional from Vineyard Engineering and Environmental Services, Inc., and Paul Lockwood, of Lockwood Remediation Services, LLC, were in the meeting to discuss the request. Mr. Fleming said that on April 6th when a portion of the hotel was opened, oil smells were detected in some of the rooms. The Fire Department was called and they found a 275-gallon above-ground storage tank located in a crawl space. They were unaware of the location of the tank, which was corroded on the bottom and was leaking. The Fire Department contacted the DEP and reported the oil release. His company responded shortly thereafter and were asked to provide licensed site professional and remediation services. He said his company started working on the site on April 15th. He summarized what was done, including digging 10 test holes and the installing well piping, to begin to delineate the extent of the contamination. They found evidence of contamination on the west side of the building. The inside of the building was searched as well. When they arrived, the space was being vented via a couple of bulkhead doors, one of which led to a basement measuring 16' by 21'. The remainder of the underside of the structure is crawl space. He said the tank was removed, cleaned, cut open, and set aside in case an insurance company needed to inspect it. They then installed borings and wells inside the basement and determined that there was about an inch of oil floating on the groundwater table located directly below the slab of the floor. Mr. Fleming said that it seemed that the worst of the contamination was in the basement area, and as they continued their search, they installed 2 wells in the crawl space because access was difficult. They found that there was no contamination directly beneath the tank or in the direction behind it. Since then, the oil odors have not been very strong on the west side of the building, but they did continue to test soil samples in the field, screening and characterizing them, looking for visual and olfactory evidence of contamination. They used a photo ionization detector to re-screen the soil samples. He said that the contamination was not as bad as he thought on the west side of the building leading him to think it might be contained just in the basement area. On the east and south side of the building, which are paved, a drill rig was brought to the site and 6 more boring holes were installed. Samples from those holes were analyzed. The oil odor and contamination levels from samples around the perimeter were found to be below regulatory standards and laboratory minimum reported detection limits. By analyzing samples from drilled wells, they found that the soil contamination appeared to be largely beneath the footprint of the building. But there is a bulkhead on the west side of the building near where there was an oil odor in the water in a well just south of that. He pointed out the wells that had some contaminated groundwater on a site plan of the property. He said they tested the groundwater samples from 7 wells and found 3 that had traces of oil in them. The levels were below the regulatory standard. The site plan indicated the extent of the release and Mr. Fleming said that there is no level that presents a significant risk beyond the footprint of the building, however it was a testament to how far the leak had spread. He guessed that the leak occurred between the closing of the property at the end of last season and its opening on April 6th.

Mr. Fleming said that the building had structural issues that needed to be considered before the site could be remediated, in addition to the presence of groundwater and the proximity of the property lines. He said his plan was to shore up the building, with the help of a structural engineer, put a couple of de-watering pumps in the basement, and mobilize a 10,000-gallon tank to the site in preparation for remediation. Since the location is 980' from the ocean, they do not expect to lower the water table, but the oil and the water needed to be pumped out and the soil beneath the footprint of the building needed to be removed. From May 6th to the present, shoring had been installed. There are 2 existing stockpiles of soil on the site, one of which is composed of contaminated soil and covered with plastic. The remediation plan includes excavating in the crawl space, a 16' by 43' area, down to the water table and then working from the crawl space towards the front of Commercial Street. He anticipates the depth will be from 6" to 2' into the water table. He said they did a 6-hour tidal survey and found out that the fluctuation of the water table was very small. He said that the vertical extent of contamination is minimal. He said he was asking permission, as part of the Emergency Certification, to lower the water table, treat the water, and return it to the Harbor. They do not want to move significant volumes of water, so they may need to manage the excavation in smaller sections. The water will be pumped into the 10,000-gallon frac tank, with the permission of the Commission, the DEP, and the Environmental Protection Agency. In the tank, the solids will settle out and the oil will be skimmed from the surface. Mr. Fleming reviewed a schematic of the frac tank and explained how it worked.

The Commission questioned Mr. Fleming. Mr. Lockwood, who is a geologist and de-watering water treatment specialist, joined the discussion and commented on the issue of potential scouring of the Harbor, from the hose and the pumping action, during the de-watering process. He explained the use of an energy diffuser, which should deal with the scouring issue. Mr. Famulare explained that there was no local control over what the discharge standards are, but there were state regulations. He asked Mr. Fleming and Mr. Lockwood to review how the de-watering would be monitored and what the thresholds for contaminants in the effluent were for the discharged water. Mr. Fleming explained the remediation process required by the EPA, including the reporting and testing procedures. Mr. Lockwood commented on the permitting process and what it included as well. Mr. Famulare questioned Mr. Fleming and Mr. Lockwood about the process. ***Nathaniel Mayo moved to authorize the issuance of an Emergency Certification for the groundwater remediation at 911 Commercial Street contingent on the approval of the response action by the DEP and the EPA and subject to any conditions deemed reasonable and necessary by the Conservation Agent, Oriana Conklin seconded and it was so voted, 4-0-1 by roll call. (Oriana Conklin abstaining)***

6) **Approval of Minutes:**

May 4, 2021: *Nathaniel Mayo moved to approve the minutes of May 4, 2021 as written, Oriana Conklin seconded and it was so voted, 5-0 by roll call.*

7) **Conservation Agent Update:** Mr. Famulare said that he had done another site visit at 53 Commercial Street. The building next to the West End parking lot has been demolished and new pilings and a bulkhead will be installed at this site and at the abutting site of 51 Commercial Street.

Mr. Famulare said that the renovations at B Street Garden are almost complete. Fencing is going up now. The expected finish date for the project is the end of this week. 10 yards of new loam that gardeners can help themselves to was delivered yesterday. He will contact the Advisory Group for help for gardeners who may need it.

Mr. Famulare said that Delft Haven had received an Order of Conditions, prior to his tenure as Conservation Agent, to modify the dune and beach area in front of the condominium. Each year sand is blown onto patios and the condominium moves it back to the beach. There was a requirement that the Agent go out and inspect in the spring and in the winter, which is when sand fencing is erected to help hold the dune in place. He said he did do that this year. The Order of Conditions is set to expire this winter and he has asked that a new Notice of Intent be submitted by Delft Haven proposing a more permanent solution to stabilize the dune.

8) **Information**

a) **CON-21-32 14 Thistlemore Road** (removal of decaying tree, selective pruning). Mr. Famulare reviewed the request and said that the removal of the decaying tree and the limited pruning will enable construction equipment to access the site to finish a reconstruction of a deck.

b) **CON-21-34 Various Town Landings and Town parking lots** (Expedition Blue sign installation). Mr. Famulare reviewed the installation of helical piles and posts for signage to promote the blue economy in Provincetown. These will minimally impact the parking lot and Town Landings.

c) **CON-21-35 26 Commercial Street** (replacement of an existing deck, stairs, and driveway). Mr. Famulare reviewed the project, which is to replace deck stairs and a driveway within a buffer zone with minimal impact.

9) **Any Other Business that shall properly come before the Commission**: Mr. Famiglietti asked about creating a sand repository in Town. Mr. Famulare said that there is no land resource in Town and that sand that comes from private property belongs to the property owner, not the Town. He said that a goal of 4 regional Conservation Agents, funded by a Coastal Zone Management grant, is to set up a regional sand banking system for beach nourishment projects.

Nathaniel Mayo moved to adjourn the Public Hearing at 8:15 P.M., Oriana Conklin seconded and it was so voted, 5-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair