

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

June 15, 2021

6:00 P.M

Members Present Virtually: Alfred Famiglietti, Oriana Conklin, Brett McNeilly, Thomas Skinner (via Microsoft Teams), and Loretta Butehorn.

Members Absent: Nathaniel Mayo (excused) and Joseph Cooper (excused).

Others Present: Tim Famulare (Conservation Agent).

Chair Alfred Famiglietti called the meeting to order at 6:00 P.M. He reviewed the purview of the Commission and said one of its charges is to implement the Massachusetts Wetlands Protection Act, G.L. c. 131, s. 40. The Act protects important water-related lands bordering wetlands and the sea. Examples include swamps, beaches, dunes, vegetated inland wetlands and wet meadows, floodplains, and vernal pools, all of which are protected from alteration or destruction. Most work performed in these areas requires permitting from the local Conservation Commission's Agent. Another charge of the Commission is to implement a Provincetown ordinance, the Provincetown Wetlands Protection By-Law, Chapter 12, which may, in some cases, be stricter than the state WPA. He reviewed the seven areas of the Commission's concern.

He reviewed several rules of decorum for public meetings, including no cross-talking, whether virtually or in-person, will be allowed amongst the public while applicants or their representatives are speaking and all comment must be approved by the Chair. The Chair has the right to stop any such conduct and call for order if these rules are not followed. All public comments will be limited to three minutes and, to save time, if a speaker wants to agree with a preceding comment, that speaker, after stating his or her name, should just say that he or she agrees with the previous speaker.

Mr. Famulare reviewed how the meeting would be run pursuant to the Open Meeting Law and no longer pursuant to the Governor's Order regarding public meeting during the COVID-19 term. Both Commissioners and members of the public can participate either in person or remotely. Those using the Microsoft Teams app should use the raised hand icon in order to be recognized. Mr. Famulare will be monitoring Microsoft Teams for any raised hands. The link is on the Town's website and in the posted agenda, as is the dial-in information. He added that those joining by phone should press the star key and then the number 6 to unmute their phones.

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

2) **Public Hearings:**

a) **CON-21-20 175 Commercial Street** *(continued from the meeting of June 1, 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, a pump, and fill, and to abandon 2 leaching and 3 geothermal pits; to remove existing asphalt and install new asphalt on an access drive and parking areas; remove an existing propane tank; and to 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.

Presentation: Paul Shea, from Independent Environmental Consultants, and Billy Rogers, were on the phone to present the application. Mr. Shea reviewed the project, saying that all proposed work activities will take place on land that has already been disturbed. He said that there is an existing asphalt pavement, access drive and a paved parking area, which is located seaward of the guesthouse, on the property. The proposal includes taking up the old asphalt and replacing it with new asphalt. No new impervious areas will be created. At the shoreline, there is an existing timber bulkhead. Just landward of the top of this bulkhead, proposed permeable pavers will be installed 10' from the back face of the bulkhead. There are 3 old geothermal pits located within the parking area seaward of the guesthouse that will be removed.

Mr. Rogers said that the geothermal pits were installed by a previous owner and then abandoned. He pointed out the location of the geothermal pits on the site plan. There are also 2 septic leaching pits that are non-functioning, as the property is hooked up to the Town's sewer system. These will be filled and removed. There are 2 existing leaching catch basins that serve the asphalt area drainage. He said that these are performing well. There has been settling behind the timber bulkhead and there will be re-grading under the pavers undertaken to cover the tie rods, or anchors, and proposed permeable pavers will then be laid down. Installing the permeable pavers were a special condition of the Chapter 91 license, which was never completed.

Mr. Shea said that there is an existing old propane tank on the property landward of the guesthouse, close to the concrete seawall under the pavement, which will be removed and a new propane tank installed. All work will be within existing disturbed footprint and no new impervious surfaces will be created. The Department of Environmental Protection file number is SE 058-0649 and there were no comments. He said he has reviewed Mr. Famulare's draft conditions and has no issues with them.

Public Comment: There was 1 letter in support of the application.

Commission Discussion: The Commission and Mr. Famulare questioned Mr. Shea. Mr. Famulare reviewed his draft conditions.

Oriana Conklin moved to approve the Notice of Intent, CON-21-20, 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, a pump, and fill, and to abandon 2 leaching and 3 geothermal pits; to remove existing asphalt and install new asphalt on an access drive and parking areas; remove an existing propane tank; and to install a new 500-gallon propane tank at the property located at 175 Commercial Street, Loretta Butehorn seconded and it was so voted, 5-0.

a) CON-21-36 6 Duncan Lane (continued from the meeting of June 1, 2021)

Local Wetlands By-Law application filed by **Stephanie Cave** and **Haley Freeman** pursuant to the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law, to amend an existing permit (CON-20-034) to remove unpermitted fill over a septic system and driveway, install retaining wall and mitigation plantings, and request approval of unpermitted deck and patio. Work to take place within a Buffer Zone to Isolated Vegetated Wetlands.

Presentation: William Ashmore, the project contractor, who was on the phone, and Alex Kent, of Kent Land Design, LLC, who was in the meeting room, presented the application. Mr. Kent reviewed the request for approval of unpermitted elements on the property, including for fill over a septic leach field and an existing driveway, an unpermitted bluestone patio, and an unpermitted deck. He said that the applicants are proposing an extensive mitigation planting.

Mr. Ashmore reviewed the history of the project. There was a situation that arose when a new septic system was installed that ended up being taller than was anticipated because of its proximity to ground water and a wetland resource area. A mound of fill was left on the property when the system was backfilled, so the plan had to be revised. Mr. Famulare reviewed photographs of the property, including the mound of fill, which was in an area that was designated as a parking space and will have to be removed. He indicated where a proposed retaining wall will be installed. A much smaller area will be designated as a parking space, at the grade of Duncan Lane, and another smaller retaining wall will be installed. Mr. Ashmore said that the property will have 2 level stack-block retaining walls, with the upper level containing the tank and soil absorption system. To the left of that, the leach field drops down enough to put in another small retaining wall, which will keep a level surface around the property. That way any runoff will be retained on the site. The lower wall will retain the driveway elevation and match the elevation of Duncan Lane. Mr. Famulare noted on the grading plan a section of the septic system and 2 of the stack-block walls, with respective elevations, on the north side of the property. The parking area is located between the 2 retaining walls shown on the section. The bluestone patio, which was initially built to be impermeable, will be made permeable by making more of a gap between the stones, leveling them, and pitching them away from the building. The patio will have to be repositioned, realigned, and re-elevated. There is an existing water retention system that the patio runoff can be tied into. Mr. Ashmore said that one of the decks will be covered and gutters and downspouts will handle roof runoff. He pointed out a tree on a photograph of the second deck that he alleged is unstable. The second deck was supposed to be mahogany, but that was not done, however Mr. Ashmore said that he would like to modify the existing decking to allow water to drain through. He reviewed how he outdoor shower on the second deck would drain. He said that mitigation with native plantings would stop erosion in the rear of the building off the first deck, and which is a strip of conservation land. The proposed mitigation area is about 1200 sq. ft.

Mr. Kent reviewed the proposed planting plan, which will include putting down jute netting and native groundcover. Some ornamentals that are potentially invasive will be removed and native vegetation put in their place. In addition, areas that were disturbed by construction activity will be replanted.

Public Comment: Deborah Minsky, an abutter, spoke of her concerns about 1 of the retaining walls and the runoff onto her parking area, which abuts the subject property, and Duncan Lane. The Commission discussed the plantings with Dennis Minsky, an abutter. Ms. Minsky was also concerned about the encroachment of any new trees onto her property. Mr. Ashmore assured Ms. Minsky that no trees will be planted on the abutting property. Mr. Minsky brought up the issue of silt fencing that has been on the property for a year, which he said was now a wildlife obstacle and would like to know when it will be removed. In addition, he asked about leaving a pathway to access the Dwyer Woods Conservation Trust land or whether the Town should be thinking about constructing a new pathway. Mr. Ashmore indicated that the property owners did not have an

issue with leaving the pathway. Mr. Famulare said that the Open Space committee should take the opportunity to realign the pathway to the conservation land now that there is now a proposed vegetation plan and adjustments can be more easily made, such as putting vegetation on this property where the pathway is now located. The property owners can consult with the Open Space Committee in order to come to an agreement about re-aligning the pathway and moving it off of the private property and onto the Conservation Trust property.

Commission Discussion: The Commission questioned Mr. Kent and Mr. Ashmore. Mr. Famulare raised the issue of the accuracy of the property line on 2 of the drawings. He said that there were 2 plans that were submitted labeled “Mitigation Plan” and he asked if they could be re-titled. He requested that the applicants make a distinction between what is being illustrated on each plan. He said that the grading plan showing the specificity of the grades and the retaining walls shows where the bound is and the property line running through the proposed lower retaining wall along 4 Duncan Lane. The mitigation plan shows the plantings and does not indicate the location of the property bound on Duncan Lane. He would like plans that accurately show the property line and stakes on each of the 4 corners of the lot. Mr. Ashmore argued that he would like to move the project forward given its various interruptions during the pandemic and asked if he could back-fill the missing information and stake the property. The Commission discussed the issue. Mr. Famulare recommended that the Commission not approve any plans that do not depict whose property the work is going to be on. Mr. Famiglietti recommended that all Commissioners visit the site. Mr. Ashmore argued against continuing the application. Anna Grab, a member of the public who was attending the hearing, argued against the continuance.

Loretta Butehorn moved to continue CON-21-36 to the Public Hearing of July 6, 2021 at 6:00 P.M., Oriana Conklin seconded and it was so voted, 5-0.

b) CON-21-39 387-395A Commercial Street (to be continued to the meeting of July 6, 2021)

Request for Determination of Applicability filed by the **Town of Provincetown Recreation Department**, 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 a temporary railing or guard along a bulkhead and temporary beach access stairs near the southwest corner of the property. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach and a Coastal Dune. ***Oriana Conklin moved to continue CON-21-39 to the Public Hearing of July 6, 2021 at 6:00 P.M., Loretta Butehorn seconded and it was so voted, 5-0.***

3) Request for Certificates of Compliance:

a) CON-21-37 425 Commercial Street (DEP File No. SE 58-0604) (construction of single-family home with pool, greenhouse, and decks). Mr. Famulare said that this was a two-family that was converted to a single-family residence with a pool, greenhouse, and decks. He said he had an engineer’s certification that the project was built in accordance with the plans. He recommended a final Certificate of Compliance. There are 3 on-going conditions, numbers 12, 13, and 16, related to the salt pool and herbicides and fertilizers. ***Oriana Conklin moved to issue a final Certificate of Compliance for CON-21-37, Alfred Famiglietti seconded and it was so voted, 5-0.***

4) **Other Business**

a) Approval of LAND Grant application – 86R and 88 Atkins Mayo Road: Mr. Famulare reviewed the topic. This was an article that was placed on the warrant at Spring Town Meeting by the Open Space Committee to acquire these 2 parcels using Land Bank funds and it was approved. Mark Robinson, of the Compact of Cape Cod Conservation Trusts, has been engaged to help prepare the LAND grant application. The application must be approved and signed by the Commission. This application goes to the state Division of Conservation Services and the LAND grant program provides a reimbursement for land purchased for conservation purposes. The Select Board must vote on the application to authorize the Town Manager to submit it. This vote will occur at the end of June. These parcels directly abut the Old Colony Nature Trail. ***Oriana Conklin moved to approve the LAND grant application, Loretta Butehorn seconded and it was so voted, 5-0.***

b) Appointment of Conservation Committee representative to the Community Preservation Committee: Mr. Famiglietti said that term has ended and a new representative, or the same, needs to be approved by the Commission. ***Loretta Butehorn moved to nominate and elect Alfred Famiglietti to serve as the Conservation Commission's representative on the Community Preservation Committee, Oriana Conklin seconded and it was so voted, 5-0.***

5) **Approval of Minutes:**

May 18, 2021: Loretta Butehorn moved to approve the minutes of May 18, 2021 as written, Oriana Conklin seconded and it was so voted, 5-0.

6) **Conservation Agent Update:**

a) B Street Garden Update – Mr. Famulare reviewed the activities happening at the B Street Garden. He said that the reconstruction of half of the garden beds has been completed. A CPC application will be submitted this fall to Town Meeting to rehabilitate the remaining beds.

He mentioned the attempt by the Open Space Committee to remove vegetation to create a vista to Shank Painter Pond by using goats. He had sent an email to Commissioners about the proposal. The goats were not happy there and the electric fence that they were contained inside lost its charge, so they were able to escape into the garden beds. They were wrangled back to the fenced-in area and the fence was re-charged.

He mentioned the status of remote Town Board hearings and public participation by stating that he was waiting for more guidance from Town Counsel on this issue.

He said that as part of a LAND grant application, the Open Space Committee is responsible for updating the open space and recreation plan. This has to be done every 7 years. A public workshop will be held on Tuesday, June 22nd at 5:30 P.M. in the Auditorium to discuss this topic. The Open Space Committee has engaged the Horsley Witten Group, which prepared the original open space plan, to facilitate that process. He will send Commissioners a link to a survey and encourages all Commissioners who cannot attend the workshop to fill out the survey.

On June 24th at 5:30 P.M., there is an open house and discussion about usage of the property at 387-395A Commercial Street. He said that a design team had been hired with a CPC grant to lead the public process and then to develop initial preliminary plans in order to be able to start doing some cost estimations and permitting for the eventual improvement of the properties. The beach stairs requested in CON-21-39 would be temporary only until the larger project has begun.

7) **Information**

a) CON-21-38 21 Dewey Ave., Unit 1 (new deck). Mr. Famulare reviewed the project, which involves a deck that is in a flood plain and located about 300' from the beach. It will have 3 footings and he is not sure if it will be able to get a Zoning Variance to be constructed.

b) CON-21-40 99 Commercial Street (repair second floor deck, replace exterior stairs). The Building Commissioner has ordered these repairs. The unit owners will have to eventually rebuild the entire deck and submit an NOI for that work, but they will just be sistering a structural framing member to a deteriorating one. The stairs will be brought in pre-made and attached to a new header. No work is being done on the ground.

9) **Any Other Business that shall properly come before the Commission:**

Oriana Conklin moved to adjourn the Public Hearing at 8:09 P.M., Loretta Butehorn seconded and it was so voted, 5-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair