

PROVINCETOWN CONSERVATION COMMISSION

October 5, 2021

6:00 P.M

Members Present: Nathaniel Mayo, Joseph Cooper (virtually), Brett McNeilly, and Cody Sullivan.

Members Absent: Alfred Famiglietti (excused), Oriana Conklin (excused), and Loretta Butehorn (excused).

Others Present: Tim Famulare (Conservation Agent).

Vice Chair Nathaniel Mayo called the meeting to order at 6:00 P.M.

Mr. Famulare explained that even though the public hearing was being conducted in person, there were procedures for public participation in this hybrid-style public meeting. The meeting will not be suspended or terminated if there are technical difficulties interrupt the virtual broadcast, unless otherwise required by law. He reviewed how to use the Microsoft Teams app for public participation or how to participate if using the phone number provided on the agenda. He asked that all members of the public wanting to comment on a particular application state their names. Cell phones should always be muted, other than when speaking, and *6 will mute or unmute your phone.

1) **Public Comments:** on any item not on the agenda below. Roger Bonhomi, representing Hatches Harbor Condominium, asked when the Order of Conditions would be issued for the property located at 75 Province Lands Road. Mr. Famulare said that he issued it today.

Carrie Morning asked about the west end breakwater project. Mr. Famulare said the Town is looking into advancing the study to the next stage, along with the Army Corps of Engineers, and is planning to get money approved at the next Town Meeting for a Capital Improvement Project for the project. Mr. Mayo said that the money to fund the project after the first study was completed was not approved at the 2017 Town Meeting.

Mr. Famulare repeated the phone number to call into the meeting to make public comment.

2) **Public Hearings:**

a) CON-21-53 78 West Vine Street

Request for a Determination of Applicability filed by **Angela Bonazinga** and **Catherine Lewis** 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 determine whether the subject property or a portion thereof is an area subject to the jurisdiction of the Massachusetts Wetlands Protection Act or the Provincetown Wetlands Protection By-Law.

Presentation: Theresa Sprague, from Blue Flax Design, representing the applicants, who were attending the meeting virtually, appeared to present the application. Ms. Sprague said the purpose of the application is to determine if this property is located within a buffer zone to a wetland resource area as defined by the Massachusetts Wetlands Protection Act, 310 CMR, or as defined

by the Provincetown Wetlands Protection By-Law. She gave a brief overview of the property, which has been densely colonized by invasive vegetation, including Japanese knotweed, tree-of-heaven, spotted knapweed, and weeping love grass. The area directly around the property is densely developed with residential condominium units to the east and west, has an existing horse stable and a single-family house under construction to the south, and there is a shallow marsh wetland across the street. The property is located 220' from the wetland resource area and 120' from the 100' buffer to the wetland. The land abutting the northern property line is what is relevant to the discussion, and it is identified as 30 Creek Road on the Town Assessor's maps. It is an undeveloped parcel and currently owned by the Town. It is a steeply sloping lot on the north, south, and west elevations, and there is a low depression located in the center of the east elevation. There is an old culvert located on the northeast corner of the depression. She said that it looked like at one time the culvert may have directed water from the surrounding slopes and roadways into the area. She did not find any direct connections to any road drains in the area. She surmised that some of the street drains may have been replaced or relocated due the construction of residential condominium units in the area. She said it was unclear how much of the roadway runoff is being directed into this depression. The vegetation in the depression and the surrounding slopes includes dense stands of invasive Japanese knotweed, Japanese honeysuckle, border privet, English ivy, multiflora rose, greenbriar, raspberry vine, and fox grape. The canopy includes black cherry, black locust, tree-of-heaven, and one red maple, along with a large invasive gray willow.

She said that Blue Flax Design completed a wetland delineation survey on March 9, 2021, with a vegetation analysis showing no dominant wetland plant species on the property. A soil study was also conducted and the soils on the property are mapped as excessively drained Hooksan Sand, hilly, and rolling. There was deep, coarse, and fine-grained sand present, little to no 'O' horizon (little or no organic content in the surface layer) when soil samples were taken on March 9th. Soil samples taken throughout the lowest elevations on the property showed no gleying and no redoximorphic features, indicating a lack of hydric soils. Another soil survey was done on September 21st and 28th. An upland plot and wet plot were located, and some puddling was shown at the time, as there had been a significant amount of rainfall prior to both site visits. There is still some standing water in the lower elevations as of today, however the soil survey showed no hydric soils, indicating no regular change of water levels with the changing of the seasons. There was a determination that the property is well outside of the 100-foot buffer zone to the marsh to the south. A study of the undeveloped property to the north of 78 West Vine Street shows no hydrologic connections to other wetlands in the surrounding area. Vegetation analysis shows no dominant wetland vegetation, and soil samples show no indication of hydric soils. Therefore, the area in question does not meet the definition of Bordering Vegetated Wetland or an Isolated Vegetated Wetland as defined in the Local By-Law. The property located at 78 West Vine is not then within a buffer zone to a BVW or an IVW. While there is no indication that the depression stores at least an 1/8 acre-feet of water to an average depth of six inches at least once a year, this landform likely provides some capacity to capture and infiltrate stormwater runoff. It is unclear if this depression was ever intended to specifically function as a stormwater runoff basin, though a culvert into the area does indicate that stormwater runoff was purposely directed into this area. The Provincetown Local By-Law does not prescribe a 100-foot buffer zone to unvegetated wetlands. If the depression at 30 Creek Road is delineated as an unvegetated wetland with no associated 50-foot or 100-foot buffer zone, the property at 78 West Vine Street is not located

within any jurisdictional areas and is not therefore subject to any provisions of either the Mass. WPA or the Provincetown Local Wetlands By-Law. Ms. Sprague said the applicant's goal is to manage the invasives on the property and restore a meadow area so they can then manage the invasive vegetation surrounding and rapidly taking over the property. They also want to support wildlife habitat values. The meadow habitat would support pollinators and they would be able to mow it once a year to control the invasives.

Mr. Famulare reviewed an aerial view of the property and its surroundings and noted the issues relevant to the application. He said that 30 Creek Road was designated as an IVW and Isolated Land Subject to Flooding, however since that designation, it has been taken over by non-wetland dependent species. It serves as flood control, but there are no hydric soils or wetland vegetation. He reviewed the species of vegetation on the 30 Creek Road property. Ms. Sprague discussed and explained the vegetated findings for the property. She reviewed the soil analysis done on September 28th and the processes that were involved. There was a wet area of approximately 408 sq. ft., but no mottling and a lack of oxidized rhizospheres, which are iron deposits. Mr. Famulare reviewed the definition of an Unvegetated Wetland, or Isolated Land Subject to Flooding in the Local Wetland By-Law. He said this land might have been taken by the Town with the intent of using it as a stormwater runoff basin. He said that this area was not a vegetated wetland according to the data presented by Ms. Sprague. The depression acts as stormwater runoff and allows water to infiltrate and act possibly as a retention basin, but it does not provide significant habitat wildlife, support wetland vegetation, or support any of the functions of a bordering vegetated wetland or an isolated vegetated wetland. It doesn't function as a wetland under the Mass. WPA or the Local wetland By-Law. Ms. Sprague explained mottling, which is a characteristic of hydric soils.

Public Comment: None.

Commission Discussion: Mr. Famulare and the Commission questioned Ms. Sprague and discussed the issue. Mr. Famulare said that there was not enough data to support this as being designated as an isolated land subject to flooding. This data would be important if there was a proposal to fill the area, in which case compensation for flood storage would need to occur. But if its only value under the Mass. WPA and the Local By-Law is for flood control, meaning it does not provide habitat, it does not deal with pollution prevention, or storm water control, a way could be found to store that water temporarily. The question is if this meets the trigger of other wetland characteristics, such as habitat for plant and animal species. He said that the Commission could ask for a second opinion, however this time of year is ideal for attacking knotweed. If this area only serves as flood control, there is no buffer zone, and this property would not be under the jurisdiction of the Commission if the conclusions of Ms. Sprague are true. Ms. Sprague said she wasn't appearing before the Commission for a determination as to whether this is or is not isolated land subject to flooding, although she believes it is acting to hold some flood capacity and stormwater management. She is seeking a determination as to whether this property is located within a buffer zone to a resource area that would require another type of filing, or the best way to come before the Commission to seek approval for a project that the applicants are interested in undertaking. Mr. Famulare had a plan showing a 2006 wetland delineation that marked the area as an isolated vegetated wetland with a 100' buffer zone marked on it. Since that time, significant upland development that has occurred. He added that the property doesn't show up on the state data layer as a wetland. The Commission needed to decide whether it had enough information to

make a negative determination, saying it is not a wetland, and if it is not willing to make that determination, it must decide whether it would be appropriate for him to approve the management plan that will be proposed by the applicants at an administrative level. The Commission discussed the issue. Ms. Sprague requested a continuance of the RDA to gather more data and allow the Commission more time to read and consider the data that was presented and submitted. In the meantime, the administrative review for Japanese knotweed management in the landscaped areas could move forward.

Brett McNeilly moved to continue CON-21-53 for 78 West Vine Street to the Public Hearing of October 19, 2021 at 6:00 P.M. Cody Sullivan seconded and it was so voted, 3-0.

3) **Project Update:**

a) **CON-21-56 63-R Howland Street**

Update on performances of The Witch at “Site Y” off Old Colony Nature Trail. Mr. Famulare said this is an update related to the administrative review that he had presented to the Commission at the last hearing and an opportunity to assess the impacts of the activity on the area. Megan Nussle, with Campfire Quorum, appeared to discuss the request. The theater company co-produced The Witch at Site Y starting in late September as part of the Provincetown Tennessee Williams Theater Festival. They are hoping to do another 2-week run of 8 performances between October 14th and October 24th. She said the company tried to reduce the impact of both actors and audience on the area during the run of the play. They seated the audience in the sandy areas to keep them off the vegetation and the lichen. They treated a grassy area lined with trees on two sides as a stage. A maypole was installed and then moved to the grassy area, as dancing was occurring around the maypole. Wooden planks were put down to protect the lichen to act as bridges. They also demarcated the path of the audience entering the site. Rocks and branches that would be trip hazards for the actors were removed. Mr. Famulare said he thought the company had been good stewards of the property so far. He said the Open Space Committee has commissioned an environmental survey of this site and it appears that the wetlands are more extensive than first thought or as mapped on the Town’s software. He noted that this type of activity brings public attention to the area and the need to preserve it. Ms. Nussle said the performances conform to the company’s mission statement to combine the arts and the environment in a theatrical setting in a sustainable way and without negatively impacting the setting.

4) **Approval of Minutes:**

September 21, 2021: Brett McNeilly moved to approve the minutes of September 21, 2021 as written, Cody Sullivan seconded, and it was so voted, 3-0.

5) **Conservation Agent Update:** Mr. Famulare said that the MACC invitations have gone out. He said all the fundamentals are available and can be done remotely. There is a seminar on wetland delineation.

He said that work at the Anchor Inn, 175 Commercial Street, has begun.

6) **Information:**

a) CON-21-57 505 Commercial Street – removal of trees. Mr. Famulare said that this is for the removal of 2 locust trees, which do not do well in windy conditions. The roots are rotten, and they are too close to a structure on the property.

b) CON-21-58 1 MacMillan Wharf – reconfiguration of floating dock. The Pier Corp was seeking a re-configuration of one floating dock. Mr. Famulare said that there was already an Order of Conditions issued for a project wherein all of the floating docks were reconfigured.

c) CON-21-59 755 Commercial Street – native dune plantings. These will help stabilize a dune in front of the property and consist of native bayberry and dune grass.

7) **Any Other Business that shall properly come before the Commission:** Nathaniel positively commented about the theater project and any future activity at Site Y will be considered carefully and nothing that would have major impact on the environment would not be approved.

Cody Sullivan moved to adjourn the Public Hearing at 7:21 P.M., Brett McNeilly seconded, and it was so voted unanimously.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2021
Nathaniel Mayo, Vice Chair