

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**April 17, 2018**  
**6:15 P.M.**

**Members Present:** Alfred Famiglietti, Kiah Coble, Robert Brock and Joseph Cooper.

**Members Absent:** Nathaniel Mayo (excused).

**Others Present:** Tim Famulare, Conservation Agent and Ellen C. Battaglini, Permit Coordinator.

Chair Alfred Famiglietti called the meeting to order at 6:04 P.M.

1) **Executive Session:** Executive Session pursuant to M.G.L. c. 30A, S. 21(a)(3), to discuss litigation strategy in the following matters: Aqua King Fishery, 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 (ii) 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 would have a detrimental effect on the Town's litigation position and the chair so declares. Postponed.

2) **Work Session**

Presentation by Alfred Famiglietti re: Review of Public Hearing Procedures: Mr. Famiglietti reviewed material regarding guidelines and procedures needed for conducting an effective public hearing, including how Commissioners could stay on track during a meeting and posting the interests of the Commission in a prominent place in the meeting room. He also noted that the Commission had been given a handbook on Town Board conduct used by all Town Boards from the Town Clerk, and from Tom Coen on the same subject that is used by the Finance Committee. Mr. Famulare reviewed the Commission's procedure for hiring outside consultants for projects.

3) **Public Comments:**

None.

4) **Public Hearings:**

a) CON-18-066 **57A Pleasant Street** (*continued from the meeting of March 20, 2018*)  
**Notice of Intent** filed by **Karl Broussard** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a new residential structure within the same area as the existing residential structure and to install an outdoor rinsing station adjacent to an existing studio. Work to take place within Land Subject to Flooding and a Buffer Zone to a Bordering Vegetated Wetland. Kiah Coble had signed an affidavit attesting to the fact that she had listened to a recording of the previous meeting of the application and in order to be seated on the case.

**Presentation:** Paul Shea appeared to discuss the application. He reviewed the revisions to the site plan based upon moving the proposed dwelling closer to Pleasant Street and farther away from

the resource area and the labeling of the underground utility line. He explained that the proposed rinsing station had been deleted from the plan and a small outdoor shower was being proposed in the far northwest corner of the principal structure. It will be connected to the sewer line. A planting plan for the existing lawn area on the back and side of the property was also submitted. The plan includes 9 red maple trees, 15' on center, 9 highbush blueberry plants, 15 Azalea plants, 7 lowbush blueberry plants and 12 sweet pepperbush plants, 6' on center. He argued that the resource area was not being disturbed, but improved.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Shea. He was asked about the compliance of the foundation with flood zone regulations and asked to submit engineering plans for the foundation. Mr. Famulare reviewed the draft special conditions referring to the use of pervious materials for driveways and parking areas, that the roof run-off be directed to gutters that drain into dry wells or gravel-filled drip line trenches, that the amount of fill to be used on the site shall only be for foundation work, that prior to the commencement of construction the applicant submit for review and approval by the Commission professionally engineered plans showing that the foundation and first floor elevation of the new structure and the studio comply with flood zone requirements of the state building code then in effect.

*Kiah Coble moved to approve the Notice of Intent, CON-18-066, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a new residential structure within the same area as the existing residential structure and to install an outdoor shower adjacent to an existing dwelling unit at the property located at 57A Pleasant Street with the amended draft conditions as discussed, Joseph Cooper seconded and it was so voted, 3-0.*

b) CON-18-068 **795 Commercial Street**

**Notice of Intent** filed by **Safe Harbor Environmental**, on behalf of **Marina Seevak**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a 158 sq. ft. entry and bathroom addition; reframe a roof; replace a railed retaining wall, waterside deck, structural components of sills and first floor framing; and to restore a small dune area with native vegetation as mitigation. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune and NHESP Estimated and Priority Habitat. Robert Brock had signed an affidavit attesting to the fact that he had listened to a recording of the previous meeting of the application and was able to sit on the case.

**Presentation:** Gordon Peabody and Rosie LaMadrid, of Safe Harbor Environmental, and Eric Larsen and Trevor Pontbriand, of Aline Architecture, appeared to discuss the application. Mr. Peabody reviewed additional information that was submitted. He said that any vegetation that needed to be removed in the activity area would be transplanted to another location on the site, the center beach path would be abandoned and re-vegetated, as the official beach access path is located on the side of the property, including that the vegetation would be monitored for several years, that the Enforcement Order was resolved and the dead pine tree on the property would be flush cut. He said the project was given a DEP File Number and conditions from NHESP. The outdoor shower would have at least a dry well with 2' of stone beneath it for drainage and retention of excess nutrients such as nitrogen and phosphates, or possibly a bio-retention

vegetative swale nearby. Neither the rinse station nor the shower can be hooked up to the septic system, as it is located in a different area of the site.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Peabody. Mr. Famulare pointed out that the applicant's proposal included reducing the size of the patio, which Mr. Peabody reviewed, and having beach grass planted in the area that is exposed. Mr. Famulare requested that the applicant submit a stamped site plan. He reviewed and discussed with the Commission his draft special conditions that included where machinery can access the site, endangered species being monitored, with fencing installed for their protection and reporting, after August 31<sup>st</sup>, as to the presence of plover or least tern nests in the area, the re-grading of tire marks caused by vehicles accessing the beach, all machinery be parked off the beach but within the limit of work, monitoring for sea turtle strandings, the access point be from the town landing at 749 Commercial Street, a beach permit is required for any vehicles to be driven on the beach and all roof run-off be directed to dry wells.

**Robert Brock moved to approve the Notice of Intent, CON-18-068, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a 158 sq. ft. entry and bathroom addition; reframe a roof; replace a railed retaining wall, waterside deck, structural components of sills and first floor framing; and to restore a small dune area with native vegetation as mitigation at the property located at 795 Commercial Street, Joseph Cooper seconded and it was so voted, 4-0.**

Mr. Famulare requested that the Chair take the Requests for Certificates of Compliance out of order.

7) **Requests for Certificates of Compliance**

a) **CON-18-031 10 Meadow Road**

Request for a Certificate of Compliance by Thomas Sproat for the Order of Conditions (DEP File No. SE 058-0528) issued to Leslie Starr, dated October 6, 2014, to repair a boulder retaining wall. Mr. Famulare reviewed the project and said that a letter from an engineer attesting to substantial compliance of the project for the repair of a retaining wall and plant vegetation had been received. He recommended the issuance of a Certificate of Compliance.

**Robert Brock moved to issue a Certificate of Compliance for CON-18-031, DEP File No. SE 058-0528, Joseph Cooper seconded and it was so voted, 4-0.**

b) **CON-18-077 401½ Commercial Street**

Request for a Certificate of Compliance by Zoltan's Landing, LLC, for the Order of Conditions (DEP File No. SE 058-0507), dated May 14, 2012, to demolish an existing cottage, construct a new cottage and restore native landscape. Mr. Famulare reviewed the project and the conditions. He said that he had done a site visit with Mr. Peabody and confirmed the substantial compliance with those conditions. He recommended that the conditions be revised to say that the maintenance of the native species will be 'in perpetuity' and that the removal of invasive species be verified after two years following the date of issuance of the Certificate of Compliance.

**Kiah Coble moved to issue a Certificate of Compliance for CON-18-077, DEP File No. SE 058-0507), Joseph Cooper seconded and it was so voted, 4-0.**

c) **CON 18-079 59 Province Lands Road**

**Administrative Review** by **Rob Blood**, on behalf of **59 Province Lands Road Holdings, LLC**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for proposed site plan revisions to substitute surface materials shown on plans approved under the Order of Conditions (DEP File No. 058-0583), dated December 4, 2017. Work to take place within a Buffer Zone to a Salt Marsh and an Isolated Vegetated Wetland.

**Presentation:** Phil Cheney, landscape designer, appeared to discuss the application. He reviewed the revised site plan showing the removal of the asphalt and the proposed installation of artificial turf, which he said was permeable, instead of wood decking.

**Commission Discussion:** The Commission questioned Mr. Cheney. Mr. Famulare reviewed the revision. The Commission requested that Mr. Cheney submit more information about the polystyrene component of the artificial turf.

**Robert Brock moved to approve the Administrative Review CON-18-079 pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for proposed site plan revisions to substitute surface materials shown on plans approved under the Order of Conditions (DEP File No. 058-0583), dated December 4, 2017, at the property located at 59 Province Lands Road, Kiah Coble seconded and it was so voted, 4-0.**

5) **Request for an Extension of Order of Conditions**

a) **CONLGY-17-004 143 Commercial Street**

Request Extension of Order of Conditions (DEP File No. SE 058-0525), issued May 14, 2014, as amended on July 13, 2017, and previously extended May 14, 2018, filed by George Tagaris for the construction of a new building and the replacement of two existing structures. Mr. Tagaris appeared to request the extension for another two years. The Commission questioned Mr. Tagaris.

**Robert Brock moved to approve the extension of the Order of Conditions for CONLGY-17-004, (DEP File No. SE 058-0525), issued May 14, 2014, as amended on July 13, 2017, and previously extended May 14, 2018, filed by George Tagaris for the construction of a new building and the replacement of two existing structures for the property located at 143 Commercial Street, Joseph Cooper seconded and it was so voted, 4-0.**

6) **Emergency Certification**

a) **CON-18-076 Herring Cove Beach North**

Ratification of an Emergency Certification issued to Cape Cod National Seashore, dated March 29, 2018, for the removal of a vault toilet at the north end of the north parking lot at Herring Cove Beach due to repeated storm damage and coastal erosion. Work to take place within Land Subject to Coastal Storm Flowage and a Coastal Dune. Mr. Famulare said that the project would be completed imminently.

**Robert Brock moved to ratify the Emergency Certification issued to Cape Cod National Seashore, dated March 29, 2018, for the removal of a vault toilet at the north end of the north parking lot at Herring Cove Beach due to repeated storm damage and coastal erosion, CON-18-076, Alfred Famiglietti seconded and it was so voted, 4-0.**

7) **Requests for Certificates of Compliance**

c) **CON-18-078 77A Commercial Street**

Request for a Certificate of Compliance by Land and Sea Engineering, LLC, for the Order of Conditions (DEP File No. SE 058-0577), dated September 25, 2017, issued to Claudia Newberry Martin, Wharf House, LLC, to replace an existing pier. Mr. Famulare reviewed the project that included the reduction of the number of piers at the property and added that an as-built plan had been submitted.

*Kiah Coble moved to grant a Certificate of Compliance, CON-18-078, (DEP File No. SE 058-0577), dated September 25, 2017, issued to Claudia Newberry Martin, Wharf House, LLC, to replace an existing pier at the property located at 77A Commercial Street, Robert Brock seconded and it was so voted, 4-0.*

8) **Approval of Minutes of March 20, 2018 and March 27, 2018:**

**March 20, 2018:** *Robert Brock moved to approve the minutes as written, Alfred Famiglietti seconded and it was so voted, 4-0.*

**March 27, 2018:** *Joseph Cooper moved to approve the minutes as written, Robert Brock seconded and it was so voted, 4-0.*

9) **Conservation Agent Update:** Mr. Famulare said that Commissioner Gregory Howe had resigned and that the Commission was looking for new members.

He added that the MACC would be offering two components of training for new Conservation Commissioners on May 5<sup>th</sup> at Barnstable Town Hall.

10) **Information:**

Administrative Review applications approve by Agent: Mr. Famulare briefly reviewed the two projects.

- a) CON-18-074 **14 Sandy Hill Lane** – tree removal and trimming.
- b) CON-18-075 **429 Commercial Street** – remove Ailanthus tree.

11) **Any other business that shall properly come before the Commission:** Mr. Famiglietti said that Commissioners should be on the alert for projects going on around Town that may be subject to the Commission's jurisdiction and should contact Mr. Famulare to find out if they need his or the Commission's review.

**ADJOURNMENT:** *Joseph Cooper moved to adjourn the Public Hearing at 8:15 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2018  
Alfred Famiglietti, Chair