

**PROVINCETOWN CONSERVATION COMMISSION  
JUDGE WELSH ROOM**

**May 1, 2018  
6:15 P.M.**

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

**Members Absent:** None.

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

Chair Alfred Famiglietti called the meeting to order at 6:12 P.M. He said that the Executive Session scheduled for 6:00 P.M. would be postponed.

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 of the matters in open session would have a detrimental effect on the Town's litigation position and the chair so declares.

Chair Alfred Famiglietti postponed the meeting at 6:13 P.M.

Chair Alfred Famiglietti reconvened and called the meeting to order at 6:31 P.M. He reminded Commissioners about the Wetland Protection Act guidelines that were discussed at a Work Session at the last hearing. He reviewed the Commission's hearing process.

2) **Public Comments:**  
None.

3) **Public Hearings:**

a) CON-18-080 **27 Commercial Street**

**Notice of Intent** filed by **Murphy Miller Family Trust** 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 replace deteriorating steel channel wales on an existing steel sheet pile bulkhead. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to a Coastal Beach.

**Presentation:** Jay Norton, of Coastal Engineering, appeared to present the application. The corroded steel channel wales will be replaced in kind. The existing bulkhead extends 100 linear feet across the width of the lot. He indicated that all equipment and material will be located and stored above the high tide line at the site for the duration of the construction activity. Heavy steel components are necessary for the new bulkhead and all construction materials and equipment will

be brought to the site via the existing Town Landing at the West End parking lot and travel will take place over the beach at low tide. Because of this restriction, the anticipated work will take about two weeks. There will be no excavation or re-grading of the beach during the project and any disturbance to the surface of the beach will be returned to its pre-construction condition following completion of the work at the site.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Norton. The Commission was concerned about steel shedding during the replacement process and discussed the issue with the Commission. Mr. Famulare reviewed his draft conditions for the project and the Commission discussed the conditions. Construction Condition #8 was amended to include language regarding placing a tarp in the construction area daily to collect and contain particulate matter from contaminating the beach and Construction Condition #10 had added language requesting that photographs showing existing conditions and post-construction conditions be submitted to determine if the area has been returned to its pre-construction status.

*Nathaniel Mayo moved to approve the Notice of Intent, CON-18-080 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 replace deteriorating steel channel wales on an existing steel sheet pile bulkhead at the property located at 27 Commercial Street with the revised Order of Conditions as discussed, Kiah Coble seconded and it was so voted, 5-0.*

b) CON-18-081 **828 Commercial Street**

**Notice of Intent** filed by **Marolima East, LLC**, 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 single-family home and appurtenances.

**Presentation:** Kieran Healy, of BSC Group, Inc., and Mark Legere, the property owner, appeared to present the application. Mr. Healy reviewed the project, which includes the construction of a single-family home, deck, porch, retaining walls, driveway, utilities, grading (fill) and septic system. He added that the dwelling would be constructed completely outside any resource area, however the deck and part of the structure falls within the 50-100' buffer zone to an IVW. The closest point of the construction is a proposed upper level deck that will be 78' from the IVW. The structure will be built partially on a foundation and partially on helical piles to compensate for grading differentials. Upon completion of the work, all disturbed areas will be loamed and seeded to lawn or landscaped with native plants.

**Public Comment:** Mary Ellen Dwyer, an abutter, expressed concerns about the negative effect of the project on the environment. There were 3 letters of concern from abutters about the environmental impact of the project on the existing undeveloped land and the IVW and about the cantilevered deck and 1 letter from Celine Gandolfo, representing the Provincetown Conservation Trust, another abutter, with great concern about the project's impact on the environment and the species that inhabit it, the IVW and the proposed installation of a lawn on the site.

**Commission Discussion:** The Commission questioned Mr. Healy about the project, including the cantilevered upper level deck, and discussed alternatives to the proposed loaming and seeding to lawn on the property. Mr. Famulare requested the submission of a detail of the drywell on the west side of the property for the approval of the Agent prior to construction and plans showing the location of the trees, of 8" dbh, to be removed. The Commission discussed how to reconfigure the deck so that it didn't overhang into the resource area. It was suggested that the applicant remove

the triangle-shaped portion of the upper level deck on the west side that encroached into the 80' buffer zone of the resource area and keep the triangle-shaped portion on the east side. The Commission agreed that the Conservation Agent would be responsible for approving the changes requested. Mr. Famulare reviewed his draft conditions for the project. He recommended to the Commission that the post-Construction conditions related to herbicides, pesticides and fertilizers be 'in perpetuity' for all projects. The requested revisions to the project include removing the encroachment across the 80' line of the western portion of the upper level deck, the relocation of the drywell on the west side of the property outside the 100' buffer zone, locating all trees that are 8" dbh or greater within the buffer zone that will be removed, expanding the extent of the groundcover to include all areas on the wetlands side of the right-of-way and along the eastern boundary of the property and proposing that the loaming and seeding conform to approved grasses. Mr. Famulare suggested that the applicant extend the number of bushes along the southern boundary in order to discourage the creation of a path.

***Robert Brock moved to approve the Notice of Intent, CON-18-081, 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 single-family home and appurtenances at the property located at 828 Commercial Street with the Special Conditions as drafted by staff and that the site plan revisions as discussed be approved by the Conservation Agent prior to the issuance of the Order of Condition, Alfred Famiglietti seconded and it was so voted, 4-1 (Kiah Coble opposed).***

4) **Approval of Minutes of April 17, 2018:**

**April 17, 2018:** *Kiah Coble moved to approve the minutes as amended, Robert Brock seconded and it was so voted, 4-0-1 (Nathaniel Mayo abstaining).*

5) **Conservation Agent Update:** Mr. Famulare asked the Commission to sign the extension of an Order of Conditions for the property located at 143 Commercial Street. He reminded them that the Massachusetts Conference on Conservation Commissioners was holding two free workshops in Barnstable.

6) **Any other business that shall properly come before the Commission:** Mr. Famulare said that Health and Conservation Agents from Provincetown, Truro and Wellfleet would be holding a community forum to discuss safe and effective pesticide use on May 2<sup>nd</sup>.

**ADJOURNMENT:** *Joseph Cooper moved to adjourn the Public Hearing at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

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